STATE OF MICHIGAN

COURT OF APPEALS

WOLVERINE TUBE, INC., Petitioner-Appellant,	UNPUBLISHED January 9, 2001
v	No. 219722 Tax Tribunal
MICHIGAN DEPARTMENT OF TREASURY, Respondent-Appellee.	LC No. 00-265064

Before: O'Connell, P.J., and Zahra and B. B. MacKenzie,* JJ.

PER CURIAM.

Petitioner appeals as of right from a Tax Tribunal order granting respondent's motion to dismiss. The Tax Tribunal held that the petition contesting an agency decision, received one day after the statutory deadline, was not timely, and that as a result the tribunal lacked jurisdiction over the matter. We affirm.

Petitioner argues that its petition was timely for two reasons: the statutory period did not begin to run until respondent's decision was mailed and the petition is deemed filed when it is postmarked, not when it is received. On February 5, 1999, respondent mailed to petitioner its decision, dated February 4, 1999, denying petitioner's request to participate in respondent's voluntary disclosure program. Petitioner mailed its appeal of this decision by certified mail, postmarked March 11, 1999, and received by respondent on March 12, 1999. Petitioner asserts it was told by respondent that this procedure would be adequate.

The Revenue Division Act states that a taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within thirty-five days, or to the court of claims within ninety days after the assessment, decision, or order. MCL 205.22; MSA 7.657(22). An appeal is to be perfected under the Tax Tribunal Act, MCL 205.735(2); MSA 7.650(35)(2), which states:

> The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved. Except in the residential property and small claims division, a

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

> written petition is considered filed by June 30 of the tax year involved if it is sent by certified mail on or before June 30 of that tax year. In the residential property and small claims division, a written petition is considered filed by June 30 of the tax year involved if it is postmarked by first class mail or delivered in person on or before June 30 of the tax year involved. All petitions required to be filed or served by a day during which the offices of the tribunal are not open for business shall be filed by the next business day. In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner filing a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review.

In a question involving interpretation of the Tax Tribunal Act, the tribunal's construction of the statute is entitled to respectful consideration. *General Motors Corp v Detroit*, 141 Mich App 630, 633; 368 NW2d 739 (1985). An agency's ruling regarding a question of law is set aside only where a party's substantial rights were prejudiced because of a substantial and material error of law. *Tyler v Livonia Public Schools (On Remand)*, 220 Mich App 697, 699; 561 NW2d 390 (1996), aff'd 459 Mich 382 (1999).

There is no error in the tribunal's interpretation of the timing required by the statutes. The thirty-five day period begins to run when the decision is issued. *Kelser v Dep't of Treasury*, 167 Mich App 18, 21; 421 NW2d 558 (1988); *Curis Big Boy v Dep't of Treasury*, 206 Mich App 139, 142; 520 NW2d 369 (1994). The petition concerned an agency decision, not an assessment, so it is an "other matter" under the Tax Tribunal Act. Therefore, the omission of the "postmark exception" in the part of the statute dealing with non-assessment matters is construed to mean that the Legislature did not intend that exception to apply to the petition. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993); *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich App 153, 170; 610 NW2d 613 (2000). This language was drafted in response to this Court's decision in *General Motors Corp v Detroit*, 141 Mich App 630, 634; 368 NW2d 739 (1985), which held that the Tax Tribunal Act adhered to the general rule that mailing does not constitute filing. This Court held that the tribunal had no authority to invalidate, change, or enlarge a statute by rule, and that the jurisdiction of the tribunal cannot be invoked beyond the deadline by mailing in the absence of a statute allowing such extension. *Id.* at 635. The petition was not received by the statutory deadline, so it was untimely.

Petitioner's assertion that respondent should be estopped from denying the petition was timely because of respondent's own statements is not without merit, but it is nonetheless without import. Estoppel arises where a party, by representations, admissions or silence, intentionally or negligently induces another party to believe facts and the other party justifiably relies and acts on this belief and would be prejudiced if the first party is permitted to deny the existence of the facts. *Clarkson v Judges' Retirement System*, 173 Mich App 1, 14; 433 NW2d 368 (1988). To estop the state, the acts or conduct of an officer must be within the scope of the officer's authority. *State Treasurer v American Surety Co of New York*, 264 Mich 516, 518; 250 NW 295 (1933). There is no evidence in the record whether petitioner was justified in relying on respondent's statements or that respondent's employees were within the scope of their duties

when they made the statements, and this Court can make no determination whether the tribunal was correct in denying petitioner a hearing on this matter.

Nevertheless, we need not remand on the estoppel issue because the facts involved in the original petition clearly show that petitioner's substantial rights were not prejudiced by the tribunal's dismissal of the petition. Petitioner wished to participate in respondent's voluntary disclosure program, but respondent determined petitioner was ineligible because it had already filed its tax returns. MCL 205.30c; MSA 7.657(30c), the statute outlining the program, reads:

> (1) Through December 31, 2003, the commissioner, or an authorized representative of the commissioner, on behalf of the department, may enter into a voluntary disclosure agreement with a person who makes application, *who is a nonfiler*, and who meets 1 or more of the following criteria:
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> * * *
>
> (11) As used in this section:
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> * * *
>
> (b) "Nonfiler" for a particular tax is a person that has *never filed a return for the particular tax being disclosed*. [Emphasis added.]

This language unambiguously provides that once a taxpayer files, the nonfiler status is lost and the taxpayer becomes ineligible to participate in the program. Because its situation would not be changed even if respondent had granted it a hearing, petitioner's substantial rights were not prejudiced by the tribunal's summary disposition of the case. Accordingly, we reject petitioner's estoppel argument.

Affirmed.

/s/ Peter D. O'Connell
/s/ Brian K. Zahra
/s/ Barbara B. MacKenzie