

STATE OF MICHIGAN
COURT OF APPEALS

ADVANCED BORING & TOOL CO.,
CRAFT INDUSTRIES, INC.,
SNYDER CORPORATION and
GENERAL BROACH & ENGINEERING,

UNPUBLISHED
May 29, 2001

Petitioners-Appellants,

v

MICHIGAN DEPARTMENT OF TREASURY,

No. 220352
MTT
LC Nos. 00-250302
00-250303
00-250304
00-250305

Respondent-Appellant.

Before: K.F. Kelly, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Petitioners appeal as of right from an order affirming respondent's assessments for tax deficiencies. We affirm.

Petitioners argue on appeal that the Tax Tribunal erred when it allowed respondent to adjust petitioners' business income for purposes of the single business tax. We disagree. This Court's review of a Tax Tribunal decision is limited to determining whether the tribunal committed an error of law or adopted an incorrect legal principle. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). The tribunal's factual findings will not be disturbed on appeal if "they are supported by competent, material, and substantial evidence on the record." *Id.* at 490-491.

Michigan's single business tax (SBT) is a value added tax that is imposed upon the adjusted tax base of every person with business activity in Michigan. *Consolidated Aluminum Corp v Dep't of Treasury (After Remand)*, 206 Mich App 222, 227-228; 521 NW2d 19 (1994). The SBT is calculated by taking the tax base, which is defined as business income, and then making certain adjustments as described in section nine of the act, MCL 208.9; MSA 7.558(9). *Id.* at 228. Common adjustments under section nine include adding back compensation paid by the taxpayer to the extent deducted from federal taxable income. *Id.* "Business income" is defined as federal taxable income, which in turn is further defined as gross income minus

deductions, such as compensation. *Town & Country Dodge Inc v Dep't of Treasury*, 420 Mich 226, 235; 362 NW2d 618 (1984). Thus, in calculating the SBT, the starting point is the business income or federal taxable income. *Id.*; *Consolidated Aluminum Corp, supra* at 228. In this case, petitioners challenge the adjustment made by respondent to the business income line of their SBT returns. Petitioners claim the amount they reported on their original SBT return was correct and respondent lacked authority to adjust it. However, petitioners' argument is without merit.

Petitioners reported as business income on their individual SBT returns the federal taxable income reported on their separate Form 1120 schedules, which were included as part of the consolidated federal income tax return petitioners filed with their parent company. However, in reviewing petitioners' SBT returns and the individual schedules, respondent found that petitioners had inappropriately allocated employee compensation between subsidiaries, which resulted in a miscalculation in compensation on the SBT return. On audit, respondent adjusted the compensation reported by petitioners in calculating the add back component of the SBT tax base, which petitioners accepted. Respondent further found that the misallocation of compensation also affected petitioners' individual federal taxable income or business income, and as a result, respondent adjusted the business income line of petitioners' SBT returns in order to arrive at the correct SBT base. Contrary to petitioners' arguments, respondent had the express authority to adjust petitioners' business income lines of their SBT returns.

In *Maxitrol Co v Dep't of Treasury*, 217 Mich App 366; 551 NW2d 471 (1996), this Court held that respondent "has the express authority to audit Michigan tax returns, and that express authority necessarily includes the authority to assess the validity of the federal tax statements upon which Michigan tax computations depend." *Id.* at 372. Because the tax computations contained in the Michigan SBT returns depend upon the validity of federal tax statements, specifically the federal taxable income, respondent properly adjusted the business income on the SBT returns where the deductions reported to arrive at the federal taxable income were incorrect and unacceptable. It is irrelevant that petitioners did not file a consolidated return in Michigan, or that no adjustment or amendment was made to the consolidated federal tax return, as the misallocation of compensation on individual returns does not appear to affect the aggregate figures reported on the consolidated return. Thus, the Tax Tribunal applied the correct legal principles and did not commit an error of law.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper