STATE OF MICHIGAN

COURT OF APPEALS

EATON FARM BUREAU CO-OP,

Petitioner-Appellee,

v

TOWNSHIP OF EATON,

Respondent-Appellant,

and

STATE TAX COMMISSION,

Respondent-Appellee.

UNPUBLISHED
December 21, 2001

No. 224187
Tax Tribunal
LC No. 00-203676

EATON FARM BUREAU CO-OP,

Petitioner-Appellee,

v

STATE TAX COMMISSION,

Respondent-Appellant,

and

TOWNSHIP OF EATON,

Respondent.

No. 224418
Tax Tribunal
LC No. 00-203676

Before: O'Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

In these cases consolidated on appeal, respondent Township of Eaton and intervening-respondent State Tax Commission appeal as of right from the October 27, 1999, order of the

Michigan Tax Tribunal holding exempt from personal property tax drying and grading equipment belonging to petitioner Eaton Farm Bureau Co-op. We reverse.

I. Facts

Petitioner is a farmer-owned cooperative organized as a domestic for-profit corporation. The dispute between petitioner and respondent originated in 1993 when respondent assessed petitioner $138,500 for personal property owned as of December 31, 1992. In 1994, respondent assessed petitioner $132,000 for personal property owned as of December 31, 1993. Petitioner appealed to the Tax Tribunal, claiming that the property was used for agricultural operations and was therefore exempt from personal property tax under MCL 211.9(j). The State Tax Commission was ultimately added as an intervening respondent. This Court granted amicus curiae Michigan Municipal League Legal Defense Fund and Michigan Townships Association leave to file briefs on appeal.

In its initial order, the Tax Tribunal referred to legislative history to discern the Legislature's intent in enacting MCL 211.9(j) and held that none of petitioner's property qualified for exemption from personal property tax. Petitioner appealed, and this Court rejected the tribunal's interpretation of MCL 211.9(j), concluding that the statutory provision applied to farmer-owned cooperatives. *Eaton Farm Bureau v Eaton Twp*, 221 Mich App 663, 667; 561 NW2d 884 (1997) (*Eaton I*). This Court subsequently vacated the tribunal's decision and remanded the case for factual findings relevant to MCL 211.9(j). *Eaton I*, *supra* at 670.

Petitioner appealed to the Supreme Court, which remanded the case to this Court for clarification of its opinion. See *Eaton Farm Bureau v Eaton Twp*, 457 Mich 887-888; 586 NW2d 232 (1998) *(Eaton II)*. In response, this Court again vacated the tax tribunal's 1995 order and remanded to allow the tax tribunal

> to consider all property for which petitioner is claiming the exemption and issue findings of fact and conclusions of law concerning which items do and do not fall within the exemption. Property directly used in farming operations is exempt, for petitioner or anyone else. . . . Property only indirectly used in farming operations, as described in the third sentence of subsection j, is exempt only for farmers, and thus petitioner and other nonfarmers do not gain the benefit of that extension of the exemption. [*Eaton Farm Bureau v Eaton Twp (On Remand)*, 231 Mich App 622, 626; 588 NW2d 142 (1998) *(Eaton III*).]

On remand, following a July 20, 1999, evidentiary hearing, the Tax Tribunal found that certain items belonging to petitioner, including the drying and grading equipment that is the subject of this appeal, qualified for exemption from personal property tax. After petitioner moved for reconsideration, the tribunal denied the motion, and gave an expanded rationale for its decision exempting the drying and grading equipment from personal property tax. These appeals followed.

II. Standard of Review

As noted in *Eaton I*, *supra* at 665, we review decisions of the Michigan Tax Tribunal to determine whether the tribunal erred in applying the substantive law or adopted a wrong principle. Factual findings of the tribunal are reviewed to determine whether they are supported by competent, material and substantial evidence on the record. *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994). Failure to base a decision on competent, material and substantial evidence on the record as a whole is an error of law. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993).

According to the doctrine of the law of the case, decisions made in this Court's earlier opinions in this case will, in general, not be reexamined. *C A F Investment Co v Saginaw Twp*, 410 Mich 428, 454; 302 NW2d 164 (1981) This doctrine applies to "issues actually decided, either implicitly or explicitly, in the prior appeal." *Grievance Administrator v Lopatin*, 462 Mich 235, 261; 612 NW2d 120 (2000).

III. Analysis

In *Eaton III*, *supra* at 626, this Court decided that, under MCL 211.9(j),[1] all property directly used in farming operations is exempt from personal property tax, regardless of who owns it, with one distinct exception: property only indirectly used in farming operations, as described in the third sentence of subsection j, is exempt only for farmers. To fall within the purview of the third sentence of subsection j, property must be machinery "used to prepare the crop for market operated incidental to a farming operation that does not substantially alter the

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[1] MCL 211.9(j) reads as follows:

> The following personal property is exempt from taxation:
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> * * *
>
> (j) Property actually being used in agricultural operations and the farm implements held for sale or resale by retail servicing dealers for use in agricultural production. As used in this subdivision, "agricultural operations" means farming in all its branches, including cultivation of the soil, growing and harvesting of an agricultural, horticultural, or floricultural commodity, dairying, raising of livestock, bees, fur-bearing animals, or poultry, turf and tree farming, raising and harvesting of fish, and any practices performed by a farmer or on a farm as an incident to, or in conjunction with, farming operations, but excluding retail sales and food processing operations. Property used in agricultural operations includes machinery used to prepare the crop for market operated incidental to a farming operation that does not substantially alter the form, shape, or substance of the crop and is limited to cleaning, cooling, washing, pitting, grading, sizing, sorting, drying, bagging, boxing, crating, and handling if not less than 33% of the volume of the crops processed in the year ending on the applicable tax day or in at least 3 of the immediately preceding 5 years were grown by the farmer in Michigan who is the owner or user of the crop processing machinery.

form, shape, or substance of the crop and is limited to cleaning, cooling, washing, pitting, grading, sizing, sorting, drying, bagging, boxing, crating, and handling." MCL 211.9(j). If the machinery *does* substantially alter the form, shape, or substance of the crop, or if it performs an operation other than the twelve enumerated operations (cleaning, cooling, etc.), then the third sentence's limitation on exemption does not apply, and, if the machinery is "actually used in agricultural operations," it is tax exempt under the first sentence of MCL 211.9(j).

The rule applied by the Tax Tribunal on remand is different from this Court's interpretation of MCL 211.9(j). Roughly stated, the tribunal concluded that if farmers themselves directly use property in farming operations, that property is tax exempt; if someone other than a farmer uses property in farming operations, it is not tax exempt. For example, at one point in its opinion on remand, the tribunal said (regarding other property of petitioner that is not at issue in this appeal), "[T]he fertilizer equipment was used by Petitioner's employees, not by farmers directly in their farming operations, therefore, the tribunal finds the personal property listed in Petitioner's fertilizer equipment . . . is not directly used in farming operations, and is not tax exempt." *Eaton Farm Bureau Co-op v Eaton Twp (Eaton IV)*, 1999 WL 1400140 (Mich Tax Tribunal, October 27, 1999), p 3. At another point, it said, "[S]ome of the personal property listed in the feed mill equipment grouping on Petitioner's exhibit P-5 was directly used by farmers, . . . and as such [is] tax exempt." *Id.* at 4.

Had the tribunal adhered to this rule, it would have reached the correct result and found that petitioner's drying and grading equipment was not exempt from personal property tax. However, the tribunal made an exception to its rule and concluded that all the drying and grading equipment was "fully exempt," despite the fact that none of it was used by farmers, because it was "needed and directly involved in preparing the crop for market." *Id.* It expanded on this reasoning in its December 9, 1999, order denying reconsideration, saying, "The Tribunal found the dryer and grading equipment . . . did not 'substantially alter the form, shape, or substance of the crop' and was allowed under the exemption for 'grading' and 'drying' as well as being 'held for sale or resale by retail servicing dealers for agricultural production,' therefore, directly being used in farming."

The phrase "preparing the crop for market" mirrors language in the third sentence of MCL 211.9(j) ("prepare the crop for market"). The tribunal's choice of this phrase to explain its conclusion indicates that it found the drying and grading equipment exempt under that third sentence even though we had previously decided (1) that exemption under the third sentence requires ownership by a farmer, and (2) that petitioner is not a farmer. *Eaton I*, *supra* at 625-626. The tribunal's conclusion is thus both a violation of the doctrine of the law of the case and an error in applying the substantive law.

The alternative basis for exemption stated by the tribunal in the order denying reconsideration – that the drying and grading equipment was "'held for sale or resale'" and qualifies for exemption under the first sentence of MCL 211.9(j)—cannot support the tribunal's conclusion because it is not based on competent, material and substantial evidence in the record as a whole and therefore is an error of law. There is nothing in the record that suggests petitioner was holding this equipment for sale or resale.

The tribunal's conclusion that petitioner's drying and grading equipment is tax exempt is without either legal or factual support and qualifies both as an error in applying the substantive law and as adoption of a wrong principle.

Reversed.

/s/ David H. Sawyer
/s/ Michael R. Smolenski