

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UNPUBLISHED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.

O'CONNELL, J. (*dissenting*).

I am not persuaded that the Tax Tribunal made an error of law or adopted an incorrect legal principle to the extent that its determination should be disturbed on appeal. *Meijer, Inc v*

Midland, 240 Mich App 1, 5; 610 NW2d 242 (2000). At issue in the present case is the Tax Tribunal's application of MCL 211.9(j), which provides in pertinent part:

The following personal property is exempt from taxation:

* * *

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.

On appeal, respondent and intervenor-respondent contend that because the grain and drying equipment is only used indirectly in farming operations, it is not exempt because petitioner is not a farmer. In *Eaton Farm Bureau v Eaton Twp (On Remand)*, 231 Mich App 622, 626; 588 NW2d 142 (1998) (*Eaton III*), this Court held that pursuant to MCL 211.9(j), all property directly used in farming operations is exempt from personal property tax, regardless of whether or not it is owned by a farmer. However, this Court also recognized that the third sentence of subsection (j) acts as a limitation on the exemption to the extent that property only indirectly used in farming operations is exempt only when owned by a farmer. *Id.* at 625.

The Tax Tribunal, after hearing testimony from petitioner's general manager Buddy Day, and Christopher Peterson, a professor of agricultural economics at Michigan State University, concluded that petitioner's grading and drying equipment was directly used in farming operations, and was therefore exempt from personal property tax.¹ Absent a showing of fraud, this Court is bound by this factual determination on appeal because it is supported by competent, material, and substantial evidence. *Meijer, supra* at 5. I am not persuaded by respondent and intervening-respondent's assertions that because the Tax Tribunal quoted the language set forth in the third sentence of subsection (j), it necessarily found that the grading and drying equipment was only indirectly used in farming operations. A review of the Tax Tribunal's eight-page written judgment reveals that it found property indirectly used in farming operation not to be

¹ The Tribunal also heard testimony from William Crittenden, the assessor for Eaton Township and a member shareholder of the cooperative, and Dan Keller, manager of the Ottawa Lake Co-op.

exempt from personal property tax. However, it found the drying and grading equipment, along with other items of petitioner's personal property, exempt from tax. Although awkwardly worded, it is clear to me from the Tax Tribunal's written ruling that it found that the challenged property was directly used in farming operations, and was therefore exempt from personal property tax pursuant to MCL 211.9(j).

It is worthy of note that the Tax Tribunal clarified the substance of its ruling in its subsequent order denying reconsideration, holding specifically that the grading and drying equipment was "directly being used in farming." This conclusion accords with this Court's decision in *Eaton III, supra*. Because I am not persuaded that the Tax Tribunal made an error of law or adopted an incorrect legal principal, I see no reason to disturb its determination on appeal. *Meijer, supra* at 5. Therefore, I would affirm in both cases.

/s/ Peter D. O'Connell