STATE OF MICHIGAN

COURT OF APPEALS

STANDARD FEDERAL BANK, Petitioner-Appellee,	UNPUBLISHED August 27, 2002
v	No. 230407 Tax Tribunal
DEPARTMENT OF TREASURY, Respondent-Appellant.	LC No. 00-247306

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Respondent appeals as of right from a judgment of the Michigan Tax Tribunal, in response to the parties' cross motions for summary disposition, that granted petitioner's claim of refund under the Intangibles Tax Act (ITA), MCL 205.131 *et seq.*,[1] for intangibles tax paid on its checking accounts for the tax years 1989, 1990, and 1991. We affirm.

Respondent argues on appeal that the tribunal erred in concluding that petitioner is not subject to intangibles tax on its demand deposit (checking) accounts. According to respondent, petitioner is a bank and therefore is subject to the provision in the ITA that imposes the tax on "the moneys on deposit in the bank," MCL 205.132(b). Respondent further argues that legislative history of the ITA demonstrates that the Legislature intended to tax deposits and savings liabilities equally, regardless of whether held in a savings and loan association, a bank, or a savings bank.

Although we generally review the grant or denial of summary disposition de novo, *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998), "review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994), citing Const 1963, art 6, § 28. While provisions that exempt a taxpayer from a taxing statute must be construed in favor of the taxing body, "imposition provisions of a taxing statute should be construed in favor of the taxpayer." *Evanston YMCA Camp v State Tax Comm*, 369 Mich 1, 7; 118 NW2d 818 (1962).

[1] Since repealed by 1995 PA 5, effective January 1, 1998.

Initially, to the extent that respondent contends that petitioner is a bank, rather than a savings and loan association, we find its argument without merit. Originally, petitioner clearly was a savings and loan association, but over the years and with changes in the law, the distinction between bank and savings and loan association has been blurred. However, contrary to respondent's assertion, the stipulated facts do not characterize petitioner as a bank. Rather, as respondent acknowledges, the parties stipulated that petitioner is a federal savings bank, and it is chartered and operated pursuant to the Home Owners' Loan Act (HOLA), 12 USC 1461 *et seq.* Both federal and Michigan statutes define "federal savings associations" as associations organized under HOLA. See 12 USC 1462(5); 12 USC 1464(a)(1); 12 USC 1813(b); MCL 487.305; MCL 491.124. "Federal savings banks" are included in the definition of federal savings associations. 12 USC 1462(5). Further, the stipulations stated that during the relevant tax years, petitioner was regulated by the Office of Thrift Supervision, and "savings and loan associations" is synonymous with "thrift institution." Blacks Law Dictionary (7th ed). Moreover, as the tribunal noted, respondent often referred to and considered petitioner as a savings and loan association. Respondent's argument is without merit.

Next, we turn to respondent's argument that the Legislature intended to tax deposits and savings liabilities equally. In granting petitioner's claim of a tax refund, the tribunal found merit in petitioner's position that demand deposit (checking) account monies "were proper to be *excluded* from computations of *its own* intangibles tax base for each subject year." The tribunal began with the language of the relevant statute in effect at that time, MCL 205.132. That provision established the intangibles tax rate, MCL 205.132(a), and, in relevant part, imposed the tax on financial institutions in the following manner:

> For the calendar year 1976 and for each year thereafter or portion thereof there is hereby levied upon each bank doing business in this state and upon each building and loan or savings and loan association doing business in this state an annual tax on the moneys on deposit in the bank or the savings in a building and loan or savings and loan association . . . The tax shall be at the rate of 20 cents per $1,000.00 of the face value of the deposits in the bank and at the rate of 20 cents per $1,000.00 of the paid-in value of the share in the building and loan or savings and loan association. [MCL 205.132(b).]

The tribunal noted that at the time subsection 2(b) was enacted, "savings associations, the parties agree, did **not** have authority to offer its customers demand deposit (checking) accounts." The tribunal further explained:

> "Savings," therefore, was the equivalent of "shares," as clearly specified in the statute. "Deposit," on the other hand, had, and has, the following, more inclusive, meaning:
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> > 'Deposit' according to its commonly accepted and generally understood meaning among bankers and by the public, includes not only *deposits* payable on demand and *subject to check*, but deposits not subject to check, for which certificates, whether interest-bearing or not, may be issued, payable on demand, or on certain notice, or at a fixed future time.
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> (Emphasis added.) *Black's Law Dictionary,* Revised Fourth Edition, p 527.

The tribunal continued:

> Subsection 2(b) of the [ITA] remained without amendment from its inception in 1975 and for its duration, until the Intangibles Tax Act was repealed effective January 1, 1998. During the life of the subsection, savings associations acquired the authority to offer customers a broad array of products, including demand deposit (checking) accounts. Notwithstanding the expansion of financial authority garnered by savings associations, subsection 2(b) of the act, to repeat, was not amended thereafter. As [petitioner] observes, where the legislature intended to treat banks and savings associations alike for taxation purposes it has known how to do so. As an example, it references subsection 10(4) of the Single Business Tax Act, 1975 PA 228, which, at subsection 10(4), defines a "financial organization" as including "a bank, * * * building and loan or savings and loan association," and the like, MCL 208.10(4); MSA 7.558(10)(4). [Petitioner] observes that the legislature could have done the same type of thing with subsection 2(b) of the [ITA] had it intended to make the tax levied upon savings associations all-encompassing. Thus, the legislature could have amended the subsection to impose tax, for example, upon "monies on deposit in banks and savings associations" or "deposits in financial organizations" or "deposits in financial institutions," or the like. Again, no such amendment was enacted at any time.
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> [Petitioner] relies upon what the appellate courts have held for time immemorial: that the legislature's intent, when expressed in clear and unambiguous language, must be honored with no statutory construction required or permitted; and that, in addition, in the absence of defined terms in a statute, their "plain and ordinary meaning[s]" are to be employed. For the above propositions, [petitioner] appropriately relies upon *Western Michigan University Board of Control* [*v Michigan*], 455 Mich 531, 538[-539]; 565 NW2d 828 (1997), and cases cited therein. Applying these time-tested principles to the case at hand, it is clear that the words "deposit" and "savings" in subsection 2(b) had distinctive definitions. Try as it may, [respondent] cannot make the terms synonymous so as to reach [petitioner's] demand deposit (checking) account monies with the intangibles tax. Because "savings" is synonymous with "share" as clearly spelled out in the subsection, while "moneys on deposit" is a more all-inclusive phrase, IT IS CONCLUDED that the legislature did not intend to reach, by use of the intangibles tax, monies in [petitioner's] possession which represented customer demand deposit (checking) account sums. To hold otherwise would render the language "savings in a * * * savings and loan association" and "share," as contained in subsection 2(b) of the [ITA], surplusage. Accordingly, IT IS FURTHER CONCLUDED that, as [respondent's] referee-in-conference initially had recommended to the commissioner of revenue in a concise, yet thoughtful, inter office memorandum . . . after having presided over an informal conference, [petitioner's] position must prevail.

We agree with the tribunal's analysis, and thus adopt it as our own. Because we find no error in the tribunal's application of the law, we affirm its decision.[2]

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell

[2] We decline respondent's invitation to rely on the legislative history of the intangibles tax, which respondent claims shows that banks and savings and loans both ought to pay intangibles tax on all their deposits, because the statute is unambiguous, *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) ("If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted."); *Joe Panian Chevrolet, Inc v Young*, 239 Mich App 227, 234; 608 NW2d 89 (2000), and, further, because "[t]he Legislature is presumed to legislate with 'knowledge of and regard to existing laws upon the same subject,'" *Nummer v Dep't of Treasury*, 448 Mich 534, 553, n 23; 533 NW2d 250 (1995), quoting *Lenawee Co Gas & Electric Co v City of Adrian*, 209 Mich 52, 64; 176 NW 590 (1920).