

STATE OF MICHIGAN
COURT OF APPEALS

KALMAN G. GOREN,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee.

UNPUBLISHED

September 20, 2002

No. 227728

Tax Tribunal

LC No. 00-273508

Before: Smolenski, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

Petitioner appeals as of right from an order of the Tax Tribunal dismissing as untimely his petition to appeal a final tax assessment. We reverse and remand.

The tribunal determined that the petition was not timely filed under MCL 205.735(2) because it was not actually received until the 36th day after the Department of Treasury issued its final assessments. Petitioner argues that his petition was timely because it was sent by certified mail within the statutory thirty-five day period prescribed by MCL 205.22(1). Issues concerning the interpretation of tax statutes are questions of law to be reviewed de novo on appeal. *Danse Corp v Madison Heights*, 466 Mich 175, 177-178; 644 NW2d 721 (2002).

This Court recently decided this precise issue in *Florida Leasco, LLC v Dept of Treasury*, 250 Mich App 506; ___ NW2d ___ (2002). In that case, the panel found that MCL 205.735(2) was ambiguous because it was unclear whether the Legislature intended to address all petitions, or only those involving property tax disputes. *Id.* at 508. In addressing whether “the Legislature intended, through this ambiguously drafted section, that a filing would be effective, in *any* case, upon a certified mailing (the more stringent of the mailing options), rather than only upon an actual delivery[.]” this Court stated:

In amending the statute [in 1985] to allow these “filing by mailing” alternatives, the Legislature specifically stated that its intent was to “codif[y] the petition filing provisions of Rule 201 . . . of the Michigan tax tribunal.” 1985 PA 95, § 2. Rule 201, as in effect in 1985, provided in relevant part that “[a] petition shall be considered filed when mailed by certified mail . . . or when delivered in person,” for *all* matters, not just property tax matters. 1979 AC, R 205.1201. Appellee concedes that the 1985 amendments of the statute were enacted in response to *General Motors Corp v Detroit*, 141 Mich App 630, 634; 368 NW2d

739 (1985), where our Court concluded that, in the absence of a statutory definition otherwise, “filing” occurs upon delivery rather than upon mailing.¹

Because the statute is ambiguous, we may consider this enacted statement of legislative intent and this legislative history in its interpretation. *Joe Panian Chevrolet, Inc v Young*, 239 Mich App 227, 234; 608 NW2d 89 (2000). We conclude that, in contrast to the decision in *General Motors, supra*, and consistent with the referenced Rule 201, the Legislature intended that filing would be effective, in any event, upon either a certified mailing or actual delivery of a petition to the Tribunal. Because appellant sent its petition by certified mail within the thirty-five-day deadline applicable here, the Tax Tribunal had jurisdiction over the appeal. [*Florida Leasco, supra* at 508-509 (footnote added, footnote omitted).]

We are bound by the decision in *Florida Leasco*. MCR 7.215(I)(1). Accordingly, because the petition here was sent by certified mail within the thirty-five day period prescribed by MCL 205.22(1), it was sufficient to perfect an appeal and invoke the Tax tribunal’s jurisdiction.

In light of our decision, we need not consider petitioner’s alternative argument that inclement weather prevented the timely filing of the petition.

Lastly, petitioner argues that, under MCL 205.27a(5), he was not liable for the law firm’s taxes. Because the Tax Tribunal did not reach the merits of the petition, we decline to consider this issue on appeal.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder

¹ *GMC* held that, where the statute did not provide that a petition was considered filed upon mailing, the tribunal could not rely upon an administrative rule -- the version of Rule 201 then in effect -- to hold that petitions were timely filed if mailed, but not received, by the statutory deadline. *GMC, supra* at 632-636.