

STATE OF MICHIGAN
COURT OF APPEALS

UAW-FORD NATIONAL EDUCATION
DEVELOPMENT AND TRAINING CENTER,

UNPUBLISHED
March 11, 2004

Petitioner-Appellee,

v

CITY OF DETROIT,

No. 242809
Tax Tribunal
LC No. 00-247572

Respondent-Appellant.

Before: Hoekstra, P.J., and Sawyer and Gage, JJ.

PER CURIAM.

Respondent City of Detroit (the city) appeals as of right from the tax tribunal's opinion and judgment declaring that the real property that petitioner UAW-Ford National Education Development and Training Center (UAW-Ford) leases from the city and UAW-Ford's personal property was not subject to taxation. We affirm.

The city owns the Veterans' Memorial Building and a related parking garage in downtown Detroit and leases the structures to the UAW-Ford, a jointly-run enterprise of the Ford Motor Company and the United Auto Workers union. The city assessed lessee-user taxes¹ on the properties pursuant to MCL 211.181 for tax years 1997, 1998, and 1999, and personal property taxes under MCL 211.8 for tax years 1998 and 1999. UAW-Ford challenged those assessments, contending that it was not subject to taxation under MCL 211.181(1) or, if subject to taxation, was then exempted from taxation under other statutes. Cross-motions for summary disposition were filed under MCR 2.116(C)(10). In a forty-six-page opinion containing findings of fact and conclusions of law, the tax tribunal ruled that (1) UAW-Ford was not subject to the lessee/user tax under MCL 211.181(1) because the real property was not leased in connection with a business operated for profit; (2) the real property was exempt under MCL 211.7z(1) because the property was leased to a nonprofit educational institution and was used primarily for educational purposes; (3) the real property was exempt under MCL 211.7m because it was city property

¹ Before the lease, the land was exempt from taxation as a municipally-owned parcel used for a public purpose under MCL 211.7m.

leased for a public purpose, i.e., education and training; and (4) the personal property was exempt from taxation under MCL 211.9(a) as property of an educational institution.

On appeal, the city challenges all four of the tax tribunal's rulings.

We review whether an agency's decision was supported by competent, material and substantial evidence on the whole record. Const 1963, art 6, § 28. A court must review the entire record and not just the portions that support an agency's findings. *Great Lakes Sales, Inc v State Tax Comm*, 194 Mich App 271, 280; 486 NW2d 367 (1992). Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. *Dignan v Michigan Public School Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002).

When there is sufficient evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). It does not matter that alternative findings also could have been supported by substantial evidence on the record. *In re Payne*, 444 Mich 679, 692 (Boyle, J.), 698 (Riley, J.); 514 NW2d 121 (1994). Deference must be given to an agency's findings of fact. *THM, Ltd v Comm'r of Ins*, 176 Mich App 772, 776; 440 NW2d 85 (1989). Similarly, great deference should be given to an agency's choice between two reasonably differing views as influenced by administrative expertise. *Dignan, supra* at 576; *Traverse Oil Co v Natural Resources Comm Chairman*, 153 Mich App 679, 691; 396 NW2d 498 (1986).

The first statute on which the tribunal's decision was based is MCL 211.181(1), which provides:

Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

The purpose of the statute is to ensure that profit-making companies who lease otherwise tax-exempt government property do not receive an advantage over similar companies operating on fully taxable private land. *Nomads, Inc v Romulus*, 154 Mich App 46, 53; 397 NW2d 210 (1986), citing *Detroit v Nat'l Exposition Co*, 142 Mich App 539, 546; 370 NW2d 397 (1985). The Legislature speaks through its statutes, and if a statute is unambiguous, it is to be applied as written. *Parkwood Limited Dividend Housing Ass'n v State Housing Dev Auth*, 468 Mich 763, 772; 664 NW2d 185 (2003).

Here, the tribunal ruled that the property in question, which would generally be tax-exempt under MCL 211.7m² as property owned by a municipality, was not converted into

² MCL 211.7m states:

(continued...)

taxable property. Specifically, the tribunal rejected the city's contention that the UAW-Ford National Educational Training and Development Center was a "business conducted for profit" pursuant to MCL 211.181(1).

This Court addressed the "profit" issue in *Nomads, supra*. There, a private travel club leased land and built a hangar, office, and maintenance facilities at an airport to house the club's airplane and operations. The city of Romulus assessed taxes against the property under MCL 211.181(1). *Nomads* challenged the assessment, arguing that the property was not used in conjunction with a business conducted for profit. *Nomads, supra* at 49-50. "Business conducted for profit" was not defined in the statute, so the tax tribunal in *Nomads* reviewed various definitions from other contexts and applied a broad interpretation of the phrase, holding that *Nomads* was "a cooperative operation" in which travel cost savings "inure[d] to the direct benefit of [p]etitioner's members. This is, in our opinion, a form of profit which the members individually enjoy by virtue of the operation of this business." *Nomads, supra* at 53-54.

This Court rejected the tribunal's interpretation, holding that the proper rules for statutory interpretation required that any uncertainty in a statute imposing a tax should be resolved in the taxpayer's favor, while any uncertainty in a tax exemption should be liberally construed against the taxpayer. *Id.* at 54-55.³ Because MCL 211.181(1) imposed taxes, any ambiguity is to be construed against the imposition of a tax. *Nomads, supra* at 55. Accordingly, the Court decided that the tribunal applied the wrong standard by interpreting "profit" in a broad sense. This Court held that the property was not being used in connection with a business conducted for profit and, therefore, was not subject to tax. *Id.* at 56.

Applying the rationale of *Nomads*, UAW-Ford is not a business operated for profit. As in *Nomads, Inc*, UAW-Ford was incorporated as a nonprofit company for charitable purposes consistent with § 501(c)(3) of the Internal Revenue Code. It is true that in *Nomads*, the travel club was actually approved as tax exempt by the IRS, *Nomads, supra* at 49, whereas UAW-Ford here has not shown that it has received IRS approval. Nonetheless, MCL 211.181(1) does not define an organization by its IRS approval. Rather, the statute looks to the use of the property and whether it is used in connection with a business conducted for profit. The city has not shown that UAW-Ford is conducting a business for profit. The absence of § 501(c)(3) certification is not a dispositive consideration in the Michigan property tax statute. *American Concrete Inst v State Tax Comm*, 12 Mich App 595, 605-606; 163 NW2d 508 (1968).

Although the city argues that the land is used in connection with a business conducted for profit because one of UAW-Ford's principal benefactors (Ford) is a for-profit corporation, it

(...continued)

Property owned by . . . a county, township, city, village, or school district used for public purposes . . . and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act. Parks shall be open to the public generally. . . .

³ Nonetheless, MCL 211.1 provides that all real and personal property is subject to taxation unless expressly exempted.

does not matter that Ford and Ford Land Development, as owners of UAW-Ford organization, may be for-profit ventures. Indeed, the membership or ownership of Nomads presumably was comprised of for-profit ventures (individuals whose income was not tax-exempt). *Nomads, supra*. The statute focuses on the structure of the organization leasing the property and the use of the property, not the tax-paying characteristics of the shareholders or benefactors. In this regard, respondent is urging this Court to impose an additional test not contained in the statute, which we decline to do. The Legislature intended that UAW-Ford's nonprofit status carry into the tax code via the provision of MCL 211.181(1) addressing "business conducted for profit."⁴

With regard to UAW-Ford's personal property, we conclude that the tribunal did not err in determining that it is exempt from taxation under MCL 211.9(a), which exempts from taxation "[t]he personal property of charitable, educational, and scientific institutions incorporated under the laws of this state. . . ." UAW-Ford submitted into evidence numerous public college course catalogs with comparable vocational training courses, see *David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231, 239-240; 160 NW2d 778 (1968). The tribunal's conclusions are supported by competent, material, and substantial evidence and the city has not shown that the tribunal's decision is not authorized by law.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Hilda R. Gage

⁴ Our analysis makes it unnecessary to reach whether the tax tribunal erred in determining that the real property is subject to a tax exemption. Nonetheless, even if the property were taxable pursuant to MCL 211.181, the tribunal did not err in finding exemptions from real property taxation under MCL 211.7m (public purpose) and MCL 211.7z (nonprofit educational institutions). Also, although both parties argue whether MCL 211.7n was satisfied, the tribunal did not make a finding under that section, so it is not properly before this Court.