

STATE OF MICHIGAN  
COURT OF APPEALS

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JAMES W. ARREMONY, J. W. ARREMONY &  
ASSOCIATES, and ARREMONY  
CONTRACTING, INC.,

UNPUBLISHED  
March 18, 2004

Plaintiffs-Appellees,

v

DEPARTMENT OF TREASURY,

No. 244340  
Court of Claims  
LC No. 01-018066-MT

Defendant-Appellant.

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Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

In this tax collection case, the Department of Treasury appeals by right from an order granting summary disposition to plaintiffs on the ground that plaintiffs' tax debts under the single business act, MCL 208.1 *et seq.*, were barred from collection by the expiration of the statute of limitations. We reverse.

I. Facts and Procedural History

Plaintiffs are two now dissolved corporations and an individual corporate officer responsible for the corporations' single business tax liabilities incurred between the period of 1991 through 1994. The Department of Treasury performed assessments on the uncollected taxes during the years 1992 through 1995. It attempted to collect the tax assessments during the period between 1995 and 1998, during which it filed tax liens against plaintiffs' property and warned plaintiffs that it would bring tax collection actions. In 1998, plaintiffs entered into a payment installment agreement under which plaintiffs would pay a total of \$450 per month on the outstanding tax liability. On June 11, 2001, plaintiffs paid a total of \$400 and simultaneously requested a refund and a release of the liens against plaintiffs' property on the ground that the statute of limitation barred further collection on the tax liability.

When the Department of Treasury refused to release the liens, plaintiffs filed the instant lawsuit. Plaintiffs maintained that the assessments were no longer collectable, whereas the Department of Treasury argued that the circumstances in this case have either tolled, extended, or revived the limitations period.

Plaintiffs moved for summary disposition under MCR 2.116(C)(10) on the basis that the assessments were no longer collectable at the expiration of the six year limitation provided by the statute of limitation, MCL 600.5813. The court of claims concluded that the installment agreement between the parties did not extend the period of limitation, and it granted summary disposition in plaintiffs' favor. The Department of Treasury now appeals. The sole issue on appeal is whether the installment agreement extended the limitations period.

## II. Standard of Review

The trial court did not address all arguments raised below in its opinion. However, almost all of the Department of Treasury's arguments on appeal were raised below, so we may nevertheless review them in the interest of judicial economy.<sup>1</sup> *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). We review motions for summary disposition under MCR 2.116(C)(10) de novo. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). The disputes on this appeal are entirely questions of law, which we also review de novo. *Meredith Corp v City of Flint*, 256 Mich App 703, 711; 671 NW2d 101 (2003).

## III. Analysis

The tax act, MCL 205.1 *et seq.*, empowers the treasury department to "institute an action at law in any county in which the taxpayer resides or transacts business." MCL 205.28(1)(c). Where a "cause of action is created by statute the statutory conditions, including the period of limitation, must be complied with." *Metzen v Dep't of Revenue*, 310 Mich 622, 628; 17 NW2d 860 (1945) (quotation omitted). Importantly, "[i]t has been universally held that statutes of limitation sought to be applied to bar rights of the government must receive a strict construction in favor of the government." *Livingstone v Dep't of Treasury*, 434 Mich 771, 785-786; 456 NW2d 684 (1990).

The Michigan tax act does not provide any statutes of limitation for tax collection actions. Therefore, the trial court correctly determined that the general statute of limitations, MCL 600.5813, applies. See *City of Detroit v Walker*, 445 Mich 682, 705; 520 NW2d 135 (1994). MCL 600.5813 provides that actions "shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes." MCL 205.27a(3), of the tax act, provides a suspension of the running of the statute of limitations for

(a) The period pending a final determination of tax, including audit, conference, hearing, and litigation of liability for federal income tax or a tax administered by the department and for 1 year after that period.

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<sup>1</sup> The Department of Treasury did not brief and argue below its claim that the installment agreement was an independently enforceable contract. Accordingly, we decline to address this issue.

(b) The period for which the taxpayer and the commissioner have consented to in writing that the period be extended.

A strict construction of the language of subsection (b) in favor of the government leads to the conclusion that the installment agreement under which plaintiffs agreed to pay the taxes overdue contains an implied waiver to extend the period of limitations. Although the installment agreement does not contain an express waiver to extend the period of limitations, the agreement's subject relates to the payment of plaintiffs' tax liabilities. Our Supreme Court has recently held that a payment "is not a contract; it is not in itself even a promise; but it furnishes ground for implying a promise in renewal from its date, of any right of action which before may have existed." *Yeiter v Knights of St Casimir Aid Society*, 461 Mich 493, 498; 607 NW2d 68 (2000). Although that case dealt with a loan debt, not a tax debt, our Supreme Court adopted the summary provided in 20 Michigan Law & Practice, Statute of Limitations, § 12, pp 560-564. *Id.* at 497, n 6. That section does not limit the type of debts. It does not, for example, refer to "contract debt" or "judgment debt" or "tax debt," but rather to "a part payment on a debt or obligation." 20 Michigan Law & Practice, Statute of Limitations, § 12, p 560. Our Supreme Court referred to part payment of a *debt*, not of any particular *kind* of debt. Therefore, whether the debt is a contract debt or a tax debt,

[a] voluntary and unqualified payment subsequent to the bar [of the statute of limitations] is the best evidence that the debtor does not claim his legal rights, but, on the contrary, intends to waive them and to perform his moral obligation to pay the whole of the just debt. [*Yeiter, supra* at 498, quoting *Hiscock v Hiscock*, 257 Mich 16, 25; 240 NW 50 (1932).]

Further, "[i]n the absence of any showing that payment was not intended by the parties to imply a new promise to pay, the statute was tolled by the payment and the note was not outlawed when suit was begun." *Yeiter, supra* at 499, quoting *Beaupre v Holzbaugh*, 327 Mich 101, 107-108; 41 NW2d 338 (1950). See also, *Wayne Co Social Services Director v Yates*, published opinion of the Court of Appeals (Docket No. 244191, filed March 9, 2004) (partial payment of a debt, whether within or without the limitations period applicable to enforcement of repayment of debt, constitutes a renewed promise to pay the debt).

Two types of payments are at issue. Plaintiffs' final payments made allegedly outside of the limitations period, were accompanied by a request for a refund due to overpayment. These payments did not serve to show plaintiffs' intent to imply a new promise to pay because the request for a refund stating overpayment is logically inconsistent with a promise to pay more on the same ostensibly overpaid debt. *Yeiter, supra* at 497-498, n 6.

With respect to the second type of payments, the previous payments that were made under the installment agreement within the statute of limitations, plaintiffs argue that the payments were made involuntarily because of the threats of collection action by the Department of Treasury. We disagree. In *Alpena FOC v Durecki*, 195 Mich App 635; 491 NW2d 864 (1992), the defendant maintained that his payments for the child support arrearage were involuntary because they were made to avoid being held in contempt. This Court held that the defendant's claim that the payments were made under duress was "without both record and legal support." *Id.* at 638-639. See also *Wayne Co Social Services Director, supra* (rejecting the same argument). Because there is nothing to show that plaintiffs did not intend to imply a new

promise to pay their tax liabilities when they entered into the installment agreement, the payments extended the statute of limitations. Therefore, the trial court incorrectly granted summary disposition on the ground that the limitations period had expired.

Reversed and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot