STATE OF MICHIGAN

COURT OF APPEALS

DAH FAMILY, LLC, Petitioner-Appellee,	UNPUBLISHED June 7, 2012
v	No. 303307 Michigan Tax Tribunal
DEPARTMENT OF TREASURY, Respondent-Appellant.	LC No. 00-359042

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Respondent appeals by right the Michigan Tax Tribunal's grant of summary disposition in favor of petitioner. The Tax Tribunal concluded that petitioner may reduce its Single Business Tax liability by carrying over an Investment Tax Credit originally earned by DAH Company, Inc. We affirm.

The underlying facts are not in dispute and are contained in a joint stipulation. In 2003, DAH Company, Inc. owned 100% of Bloomfield Maple, LLC. That year, DAH claimed an investment tax credit (ITC) based on extensive renovations to Bloomfield's real estate. DAH had no tax liability in 2003 or 2004, and it carried the ITC forward for future use. In 2004, Bloomfield transferred all its assets and liabilities to petitioner. Subsequently, DAH and Bloomfield functioned solely as a holding company for petitioner.

In 2005 and 2006, petitioner filed Single Business Tax returns and used the ITC to offset its tax liability. Respondent disallowed the ITC and billed petitioner for taxes due. The tax bill is the subject of this appeal.

When the parties submit stipulated facts, this Court does not review the lower court's factual findings. See *In re Butterfield Estate*, 405 Mich 702, 715; 275 NW2d 262 (1979). Instead, we review the lower court's judgment solely for errors of law. See *Federal Land Bank of St Paul v Bay Park Place, Inc*, 162 Mich App 1, 6; 412 NW2d 222 (1987).

Respondent maintains that the tax tribunal erred by allowing petitioner to carry forward the ITC. Respondent argues that MCL 208.35a(4) of the now-repealed Single Business Tax Act

precludes petitioner from carrying forward the ITC originally earned by DAH.[1] In particular, respondent contends that the tax tribunal mistakenly applied Revenue Administrative Bulletin (RAB) 1992-3.[2] The RAB allows a transferee to carry over an ITC from its transferor when the transferor "completely discontinues operations and is no longer a taxpayer under the Single Business Tax Act." RAB 1992-3(3)(E).[3] Respondent acknowledges on appeal that DAH (the transferor at issue here) was no longer a taxpayer under the Single Business Tax Act. Respondent argues, however, that DAH has not completely discontinued operations because it continues to exist as a holding company.

This Court gives "respectful consideration" to respondent's policies as stated in RABs. *First Indus, LP v Dep't of Treasury*, 486 Mich 892, 892; 780 NW2d 787 (Per Curiam Order, 2010). However, in general we defer to the Tax Tribunal's interpretation of the statutes it is charged with enforcing. *Inter Co-op Council v Dep't of Treasury*, 257 Mich App 219, 222; 668 NW2d 181 (2003). In this case, the Tax Tribunal and respondent disagree regarding the application of RAB 1992-3 to petitioner. We must determine which application is most consistent with the plain meaning of MCL 208.35a. See *First Industries*, 486 Mich at 892.

MCL 208.35a allowed taxpayers to carry forward unused credit. MCL 208.35a(4). The statute did not, however, address whether a transferee could carry forward a transferor's credit. Through RAB 1992-3, respondent applied the statute to allow transferees to carry forward a transferor's credit, if the transferor had completely discontinued operations and was no longer a Single Business Act taxpayer. RAB 1992-3(3)(E). The Tax Tribunal concluded that DAH had completely discontinued operations and that petitioner could thus carryover the ITC.

The Tax Tribunal's application of the RAB is consistent with MCL 208.35a, pursuant to the principles of statutory construction our Supreme Court approved in *First Industries*, 486 Mich at 892. The issue in *First Industries* was whether the phrase "completely discontinues operations" applied to a transferor that had ceased operations in Michigan but had apparently maintained operations in other states. *First Indus v Dep't of Treasury*, Court of Claims, issued December 13, 2007 (Docket No. 06-04-M) at 6. To interpret the phrase, the Court of Claims noted that although RAB 1992-3 is not a statute, the general canons of statutory construction governed the interpretation of the RAB. *Id.* at 8. The Court of Claims went on to refer to a dictionary definition of "complete." *Id.* On the basis of the dictionary definition, the Court of

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[1] Our Legislature repealed the Single Business Tax as of December 31, 2007. MCL 208.151; *Tyson Foods, Inc v Dep't of Treasury*, 276 Mich App 678, 679 n 1; 741 NW2d 579 (2007).

[2] RABs are bulletins that explain respondent's interpretations of tax statutes. *Uniloy Milacron USA, Inc v Dep't of Treasury*, ___ Mich App ___; ___ NW2d ___ (Docket No. 300749, January 26, 2012), slip op p 4. RABs do not have the force of law. *Id.*, citing *Catalina Mktg Sales Corp v Dep't of Treasury*, 470 Mich 13, 21; 678 NW2d 619 (2004).

[3] RAB 1992-3 actually addresses Capital Acquisition Deductions, but respondent has apparently determined that the RAB also applies to ITCs. See Dep't of Treasury "Frequently Asked Questions Single Business Tax Investment Tax Credit" (Release Date October 24, 2006).

Claims decided that the phrase "completely discontinues operations" meant an absolute and total discontinuation of operations everywhere, i.e., in Michigan and elsewhere. *Id*. This Court reversed, but our Supreme Court reinstated the decision of the Court of Claims. *First Industries*, 486 Mich at 892.

By reinstating the Court of Claims' decision, our Supreme Court approved of the use of a dictionary definition to determine the applicability of the terms used in an RAB. In keeping with that approach, the Tax Tribunal in this case used a dictionary definition of the word "operations" to find that DAH had completely ceased operations. The Tax Tribunal adopted the definition of "operations" stated in *The American Heritage College Dictionary* (2002): "[t]he division of an organization that carries out the major planning and operating functions." The tribunal found that as a holding company, DAH had no major planning or operating functions.

We find no error in the Tax Tribunal's application of the dictionary definition of "operations." Moreover, the Tax Tribunal's conclusion is consistent with our Legislature's directive that undefined terms in the Single Business Tax Act "have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes in effect for the tax year unless a different meaning is clearly required." MCL 208.2(2). At least some federal tax courts have indicated in other contexts that a holding company does not engage in business operations. *See Estate of Ford v Comm'r of Internal Revenue*, 66 TCM (CCH) 1507; 1993 WESTLAW 501917, at *14 (TC 1993), aff'd 53 F3d 924 (CA 8 1995) (noting that the companies at issue were "simply holders of investment property, engaging in no active business operations."); *Kosman v Comm'r of Internal Revenue*, 71 TCM (CCH) 2356; 1996 WESTLAW 104365, at *2 (TC 1996) (noting that one of the corporations involved was formed as a parent holding company, and it "conducted no material business operations and held no assets other than its stock in [its wholly owned subsidiary]."); and *Stankevich v Comm'r of Internal Revenue*, 64 TCM (CCH) 460; 1992 WESTLAW 192461, at *8 (TC 1992) (noting that initially a Texas corporation that had "no business operations," was a shell corporation, had insignificant assets and liability, and its only source of revenue was interest earned on certificates of deposit and short-term interest-bearing notes).

On the basis of the dictionary definition of "operations" and the above-referenced federal cases, we conclude that the Tax Tribunal correctly applied RAB 1992-3 to find that DAH had completely discontinued operations and that petitioner could carryover DAH's unused ITC.

Affirmed.

/s/ Stephen L. Borrello
/s/ Peter D. O'Connell
/s/ Michael J. Talbot