STATE OF MICHIGAN

COURT OF APPEALS

DAVID P. ANDERSON, Petitioner-Appellant,	UNPUBLISHED August 9, 2012
v	No. 303470 Michigan Tax Tribunal
DEPARTMENT OF TREASURY, Respondent-Appellee.	LC No. 00-410952

DAVID P. ANDERSON, Petitioner-Appellant,	
v	No. 305074 Michigan Tax Tribunal
DEPARTMENT OF TREASURY, Respondent-Appellee.	LC No. 00-412862

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

PER CURIAM.

In these consolidated appeals, in Docket No. 303470, petitioner David P. Anderson appeals as of right a March 16, 2011, order of the Michigan Tax Tribunal (Tribunal) granting respondent Michigan Department of Treasury's (Department's), motion for summary disposition pursuant to MCR 2.116(C)(4) for lack of subject-matter jurisdiction, and MCR 2.116(C)(8) for failure to state a claim on which relief could be granted, and dismissing petitioner's appeal of final assessments for unpaid income tax in tax years' ending 2006, 2007, 2008, and 2009. In Docket No. 305074, petitioner appeals as of right a June 22, 2011, order of the Tribunal granting the Department's motion for summary disposition pursuant to MCR 2.116(C)(4) for lack of subject-matter jurisdiction and dismissing petitioner's appeal of final assessments for unpaid income tax in tax years' ending 2001, 2002, 2003, 2004, and 2005. For the reasons set forth in this opinion, we affirm.

I. FACTS & PROCEDURAL HISTORY

On December 10, 2010, the Department issued assessments to petitioner for unpaid income tax for the tax years ending December 31, 2006, 2007, 2008 and 2009; not including interest and penalties, petitioner owed $43,903 in unpaid income tax. In addition to the unpaid income tax, the Department assessed $10,975.75 in penalties.

On January 19, 2011, petitioner appealed the assessments to the Tribunal and challenged the penalties. Petitioner did not contest the tax liabilities; instead, he limited his petition to challenging the penalties imposed for non-payment. Petitioner acknowledged that he had not yet paid the tax liabilities, but stated that he was working with the Department to arrange an installment agreement. Petitioner alleged that he was not liable for the penalties because his spouse failed to file state tax returns, that his spouse had been the subject of a criminal investigation for such failure, and that the Michigan State Police had determined that petitioner had no knowledge of his spouse's failure to file the returns. Petitioner indicated that his spouse "handled all financial matters, both business and personal, while Petitioner simply provided dental care to his patients." Petitioner acknowledged that the statute governing appeals of tax assessments to the Tribunal, MCL 205.22(1), requires that the "uncontested portion of an assessment . . . shall be paid as a prerequisite to appeal," but he maintained that this requirement deprived him of due process.

On February 9, 2011, the Department moved for summary disposition, arguing that the Tribunal lacked subject-matter jurisdiction to hear petitioner's appeal. The Department cited MCL 205.22(1), which provides in relevant part as follows:

> A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal . . . *The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal*. [Emphasis added.]

The Department argued that, pursuant to MCL 205.22(1), in order to invoke the Tribunal's jurisdiction, petitioner was required to first pay the uncontested portion of the assessment, (i.e. the unpaid income tax), before filing his appeal. The Department also argued that petitioner's failure to pay the uncontested portion of the assessments warranted summary disposition under MCR 2.116(C)(8) for failure to state a claim on which relief could be granted. The Department argued that petitioner's due process challenge lacked merit.

On March 16, 2011, the Tribunal granted the Department's motion for summary disposition pursuant to MCR 2.116(C)(4) and MCR 2.116(C)(8). The Tribunal held that it lacked subject-matter jurisdiction under MCL 205.22(1) because petitioner failed to pay the uncontested portion of the assessments before he filed his appeal. On April 6, 2011, petitioner appealed the Tribunal's order as of right in Docket No. 303470.

Meanwhile, before the Tribunal entered its March 16, 2011 order, the Department issued additional assessments to petitioner for unpaid income tax for the tax years ending December 31, 2001, 2002, 2003, 2004, and 2005; not including interest and penalties, petitioner owed additional unpaid income tax in the amount of $37,455. In addition, the Department assessed $9,363.75 in penalties.

On March 23, 2011, petitioner appealed the 2001-2005 assessments to the Tribunal and challenged the penalties imposed for the tax years ending in 2001-2005. Petitioner did not contest the unpaid income tax, and he raised the same due process argument that he raised in his initial appeal. The Department moved for summary disposition pursuant to MCR 2.116(C)(4) and MCR 2.116(C)(8), on the same grounds set forth in its first motion.

On June 22, 2011, the Tribunal granted the Department's second motion for summary disposition pursuant to MCR 2.116(C)(4) for lack of subject-matter jurisdiction. The Tribunal held that petitioner failed to pay the uncontested portion of the assessment before he filed his appeal with the Tribunal as required under MCL 205.22(1). On July 11, 2011, petitioner appealed the Tribunal's order as of right in Docket No. 305074, and this Court consolidated petitioner's appeals.[1]

II. STANDARD OF REVIEW

"This Court's review of Tax Tribunal decisions in nonproperty tax cases is limited to determining whether the decision is authorized by law and whether any factual findings are supported by competent, material, and substantial evidence on the whole record." *Toaz v Dep't of Treasury*, 280 Mich App 457, 459; 760 NW2d 325 (2008) (quotation omitted). "Issues involving the interpretation and application of statutes are reviewed de novo as questions of law." *Id*. Similarly, "whether constitutional due process applies and, if so, has been satisfied are legal questions reviewed de novo." *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

"This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A party is entitled to summary disposition under MCR 2.116(C)(4) if the lower court "lacks jurisdiction of the subject matter." "Jurisdictional questions are reviewed de novo, but this Court must determine whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence demonstrate . . . [a lack of] subject matter jurisdiction." *Toaz*, 280 Mich App at 459 (quotation omitted). A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of a claim based upon the pleadings alone. *Maiden*, 461 Mich at 119. The motion should be granted when a plaintiff's claims are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id*. (quotation omitted).

III. ANALYSIS

[1] *Anderson v Dep't of Treasury*, unpublished order of the Court of Appeals, entered August 5, 2011 (Docket No. 303470); *Anderson v Dep't of Treasury*, unpublished order of the Court of Appeals, entered August 5, 2011 (Docket No. 305074).

Pursuant to the Revenue Act, MCL 205.1, *et seq*., the Department is responsible for the collection of state taxes and the issuance of final assessments for unpaid income tax. See MCL 205.1(1). Tax deficiencies are subject to mandatory interest and penalties pursuant to MCL 205.23(3)-(5). However, a taxpayer is afforded the opportunity to contest tax assessments and orders. Specifically, before entering an order or assessment for the non-payment of taxes, the Department must submit a letter of inquiry or notice of intent to assess and must inform the taxpayer, *inter alia*, that the taxpayer has a right to an informal conference where he or she can challenge the contested amounts of the assessment or order. MCL 205.21(2)(a) (b). A taxpayer must first pay the uncontested liability in order to secure the right to an informal conference. MCL 205.21(2)(c). In addition, a taxpayer has the right to appeal a final assessment to the Tribunal or court of claims, as follows:

> A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision, or order. *The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal*. [MCL 205.22(1) (emphasis added).]

MCL 205.22(1)'s requirement that an aggrieved taxpayer pay the uncontested portion of an assessment before appealing the contested portion is mandatory and neither a promise to pay the debt nor partial payment is sufficient to satisfy the statute. *Toaz*, 280 Mich App at 461-463. Such strict adherence is necessary to invoke the Tribunal's subject-matter jurisdiction. *Id*. at 462; see also, MCL 205.735(3).

In this case, petitioner did not challenge the tax liabilities for the tax years at issue. Rather, petitioner only challenged the penalties imposed by the Department for the tax deficiency. Petitioner also acknowledges that he did not pay or enter into an installment plan to pay the uncontested portion of the final assessments before he filed an appeal with the Tribunal. Petitioner agrees that he does not have a right to an appeal under MCL 205.22(1) because he did not first pay the uncontested portion of the assessment, but he contends that the pre-payment provision violates the state and federal Due Process Clause in that it deprives him of property without an opportunity to be heard.

"Both the Michigan Constitution and the United States Constitution preclude the government from depriving a person of life, liberty, or property without due process of law." *By Lo Oil Co v Dep't of Treasury*, 267 Mich App 19, 28-29; 703 NW2d 822 (2005), citing US Const, Am XIV; Const 1963, art 1, § 17. "The principle of fundamental fairness is the essence of due process." *By Lo Oil Co*, 267 Mich App at 28-29. "Due process is a flexible concept, however, and determining what process is due in a particular case depends on the nature of the proceeding, the risks and costs involved, and the private and governmental interests that might be affected." *Id*. "Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Hinky Dinky Supermarket, Inc. v Dep't of Community Health*, 261 Mich App 604, 606; 683 NW2d 759 (2004) (quotation omitted). "Because the collection of a tax constitutes a deprivation of property, a state must provide sufficient procedural safeguards to

satisfy due process requirements." *By Lo Oil Co*, 267 Mich App at 29; citing *McKesson Corp v Div of Alcoholic Beverages & Tobacco*, 496 US 18, 36; 110 S Ct 2238; 110 L Ed 2d 17 (1990).

In this case, we conclude that the tax scheme at issue satisfies the Due Process Clause because it affords taxpayers a meaningful opportunity to be heard and because the state has a legitimate interest in the prompt payment of taxes such that it can condition a hearing on the prepayment of uncontested taxes.

Petitioner was afforded the opportunity to be heard and had two opportunities to contest the challenged portion of the assessment. As noted above, before the Department issues a final assessment, it must submit a letter of inquiry or notice of intent to assess, and it must inform the taxpayer, *inter alia*, of the taxpayer's right to an informal conference where he or she can challenge the contested amounts of the assessment. MCL 205.21(a) (b). Petitioner does not indicate whether he requested an informal conference before the Department issued the final assessments. Regardless of whether petitioner sought an informal conference, he had an opportunity to be heard after the Department issued the final assessments. Specifically, petitioner had the opportunity to contest the assessment before the Tribunal or before the court of claims in accord with MCL 205.22(1). Thus, the tax scheme at issue in this case provides taxpayers such as petitioner a meaningful opportunity to be heard both before and after the Department enters a final assessment, and it therefore satisfies the "'fundamental requirement of due process.'" *English v Blue Cross Blue Shield*, 263 Mich App 449, 459; 688 NW2d 523 (2004), quoting *Matthews v Eldridge*, 424 US 319, 333; 96 S Ct 893; 47 L Ed 2d 18 (1976).

Moreover, MCL 205.22(1)'s requirement that "[t]he uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal" does not violate the state or federal Due Process Clause. The United States Supreme Court has articulated that a state can condition the right to a hearing on a taxpayer's pre-payment of taxes. *McKesson*, 496 US at 36-37. Given that due process is similarly defined in both the state and federal constitution, *In re CR*, 250 Mich App 185, 204; 646 NW2d 506 (2001), *McKesson* is instructive as to the pre-payment provision in MCL 205.22(1).

In *McKesson*, in a case that involved the appropriate remedy for an illegally-imposed state liquor tax, the United States Supreme Court discussed the procedures a state should employ when exacting taxes in order to satisfy the Due Process Clause. *McKesson*, 496 US at 23-24, 36-37. The Court noted that, in the context of exaction of taxes, an opportunity to be heard can take two separate forms. *Id*. A state can provide a form of "pre-deprivation process" where, for example, the state "authorizes taxpayers to bring suit to enjoin imposition of a tax prior to payment, or by allowing taxpayers to withhold payment and then interpose their objections as defenses in a tax enforcement proceeding initiated by the State." *Id*. However, the Court noted that due process does not mandate a pre-deprivation opportunity to be heard. *Id*. at 37. Instead, a state can provide a form of "post-deprivation" process where the state requires a taxpayer to "make timely payments prior to resolution of any dispute over the validity of the tax assessment." *Id*. The *McKesson* Court explained that post-deprivation process satisfies the Due Process Clause even though the individual taxpayer is not given an opportunity for a hearing *before* he is deprived of property because of the significant interest states have in their own financial stability. *Id*. The *McKesson* Court referenced longstanding Supreme Court precedent that recognized the substantial governmental interest in the prompt and efficient collection of

taxes, see *id*. at 37 n 18, citing *Bob Jones Univ v Simon*, 416 US 725; 94 S Ct 2038; 40 L Ed 2d 496 (1974), *id*. at 37 n 19, citing *Dows v City of Chicago*, 78 US 108; 20 L Ed 65 (1871), and stated:

> Allowing taxpayers to litigate their tax liabilities prior to payment might threaten a government's financial security, both by creating unpredictable interim revenue shortfalls against which the State cannot easily prepare, and by making the ultimate collection of validly imposed taxes more difficult. *To protect government's exceedingly strong interest in financial stability in this context, we have long held that a State may employ various financial sanctions and summary remedies* such as distress sales *in order to encourage taxpayers to make timely payments prior to resolution* of any dispute over the validity of the tax assessment. [*McKesson*, 496 US at 37 (quotations and footnotes omitted) (emphasis added).]

In this case, Michigan has an "exceedingly strong" interest in its own financial stability such that it can require taxpayers to pay the uncontested portion of an assessment, order, or decision by the Department as a condition-precedent to securing the right to a hearing. *McKesson*, 496 US at 37. The pre-payment provision helps to ensure that the state can collect taxes in a timely manner and promotes the financial stability of the state. *Id*. Absent the prepayment provision, the state would be required to adjudicate challenged portions of assessments whenever a taxpayer alleged that he or she could not afford to pay the uncontested portion of the assessment. This would not be feasible and would invite taxpayers to withhold payment of taxes that they admittedly owe. Requiring prepayment serves to motivate taxpayers to promptly pay such taxes and furthers the state's substantial interest in its own financial well-being. See *id*.

Moreover, to reemphasize, MCL 205.22(1) does not deprive taxpayers such as petitioner an opportunity to be heard and the tax scheme is not fundamentally unfair. See *By Lo Oil Co*, 267 Mich App at 28-29 ("[t]he principle of fundamental fairness is the essence of due process"). Petitioner does not contend that the statute subjects him to an illegal tax or that it contains an illegal penalty scheme.[2] Instead, the statute simply requires petitioner to pay taxes that he admittedly owes as a prerequisite to a hearing. Such requirement is not fundamentally unfair and, as noted above, it advances the state's substantial interest in its own financial well-being. To the extent petitioner contends that the pre-payment provision encourages taxpayers to contest the entire assessment in order to secure the right to a hearing, whether the existential affects of a statute constitute sound public policy is a matter for the Legislature. See *Tyler v Livonia Pub Schs*, 459 Mich 382, 393 n 10; 590 NW2d 560 (1999) ("Our role as members of the judiciary is not to determine whether there is a 'more proper way,' . . . but is rather to determine the way that

[2] Even if petitioner were challenging the legality of the tax, the state could still require that petitioner first pay the tax before affording him the opportunity to be heard and remain in compliance with the Due Process Clause. See *McKesson*, 496 US at 36-37.

was in fact chosen by the Legislature. It is the Legislature, not we, who are the people's representatives and authorized to decide public policy matters. . .").

In summary, MCL 205.22(1) does not violate the state or federal Due Process Clause because it affords taxpayers the opportunity to be heard; the statute's pre-payment provision complies with due process where the state's significant interest in its own financial well-being is such that it can require the prompt payment of taxes as a condition-precedent to a hearing. Therefore, when petitioner failed to first pay the uncontested portion of the tax assessments at issue in this case, he failed to invoke the Tribunal's subject-matter jurisdiction to hear his appeal. *Toaz*, 280 Mich App at 461-463; MCL 205.735(3). Accordingly, the Tribunal properly granted respondent's motions for summary disposition pursuant to MCR 2.116(C)(4) for lack of subject-matter jurisdiction.[3] *Toaz*, 280 Mich App at 459, 461-463.

Affirmed. No costs awarded to either party. MCR 7.219.

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

[3] Given that the Tribunal did not have subject-matter jurisdiction in either proceeding, to the extent it concluded in the first proceeding that summary disposition was appropriate under MCR 2.116(C)(8) for petitioner's "failure to allege facts entitling him to relief," it erred in doing so. See *EDS Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW2d 215 (2002) ("having determined that is has no jurisdiction, a court should not proceed further except to dismiss the action"). Nevertheless, the Tribunal reached the correct result. See *Klooster v City of Charlevoix*, 488 Mich 289, 310; 795 NW2d 578 (2011) "([A]n appellate court may uphold a lower tribunal's decision that reached the correct result, even if for an incorrect reason").