

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN FILM COALITION,

Plaintiff-Appellee,

UNPUBLISHED
August 21, 2012

v

STATE OF MICHIGAN, DEPARTMENT OF
TREASURY, and ROBERT J. KLEINE,
TREASURER,

No. 304000
Oakland Circuit Court
LC No. 2010-115635-CZ

Defendants-Appellants.

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

Defendants appeal by right from the trial court's order which, in effect, declared that any Michigan-created commercial could be eligible for the Michigan film production tax credit under MCL 208.1455. We reverse, because we conclude that the plain and unambiguous language of MCL 208.1455(13)(k)(xi) limits the tax credit to commercials that promote or market other state certified qualified productions defined in MCL 208.1455(13)(k).

This case arose from a dispute concerning the availability of the Michigan Film Tax Credit for commercials produced in Michigan. An eligible film production company may qualify for the tax credit by complying with all of the statutory requirements listed in MCL 208.1455.¹ At issue in this case is the requirement in subsection 13(k)(xi), which defines the type of productions that are eligible for the tax credit. The subsection reads, in pertinent part:

(13) As used in this section:

* * *

¹ The Act defines "eligible production company" as "an entity in the business of producing qualified productions, but does not include an entity that is more than 30% owned, affiliated, or controlled by an entity or individual who is in default on a loan made by this state, a loan guaranteed by this state, or a loan made or guaranteed by any other state." MCL 208.1455(13)(d).

(k) “State certified qualified production” or “qualified production” means single media or multimedia entertainment content created in whole or in part in this state for distribution or exhibition to the general public in 2 or more states by any means and media in any digital media format, film, or video tape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, *commercials*, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website. Qualified production also includes any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in a production. *Qualified production does not include any of the following:*

* * *

(xi) A production that primarily markets a product or service other than a state certified qualified production. [MCL 208.1455(13)(k)(xi) (emphasis added).]

In 2009, the Department of Treasury sent plaintiff’s counsel a letter explaining that this subsection excluded commercials from eligibility for the tax credit, unless those commercials promoted or marketed state certified qualified productions.² Plaintiff sought a declaratory judgment to extend the eligibility for the credit to commercials that market or promote other products or services. The trial court apparently agreed with plaintiff and determined that the pertinent subsection is “nonsensical and does not serve to limit or narrow the definition of state certified qualified productions.”³

On appeal, defendants first argue that the circuit court lacked subject-matter jurisdiction over plaintiff’s claim because the claim involved interpretation of MCL 208.1455, which, according to defendants, is a tax law. Defendants contend that exclusive jurisdiction over this case lies in the Michigan Tax Tribunal, and alternatively, the Court of Claims. We review defendant’s contention de novo. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 98; 693 NW2d 170 (2005).⁴

² The Michigan Department of Treasury oversees the film production credit with the Michigan Film Office. MCL 208.1455(1).

³ The trial court cited the pertinent subsection as “MCL 208.1455(12)(k)(xi).” It appears the court was referring to the subsection numbering in a prior version of the statute. In 2010, our Legislature added new section (7) to the statute. 2010 PA 312. The addition of the new section required that subsequent sections be renumbered; subsection (12) became subsection (13). 2010 PA 312. The language of the subsection at issue in this case remained the same.

⁴ We disagree with plaintiff’s contention that defendants waived the subject-matter jurisdiction issue. “Jurisdiction of the subject matter of a judicial proceeding is an absolute requirement. It

We conclude that the circuit court had proper subject-matter jurisdiction in this case. To invoke exclusive jurisdiction over a claim in the Tax Tribunal, the case must involve a taxpayer that has been “aggrieved by an assessment, decision, or order” of the Department of Treasury. MCL 205.22(1). Plaintiff, an unincorporated voluntary association of commercial producers, is not a “taxpayer” within the meaning of MCL 205.22(1).⁵ Moreover, the Treasury’s letter to plaintiff’s counsel did not constitute an appealable “assessment, decision, or order” to invoke exclusive jurisdiction under MCL 205.22(1). Therefore, jurisdiction was proper in the circuit court under MCL 600.605. “Circuit courts are courts of general jurisdiction with original jurisdiction over all civil claims and remedies, except when the constitution or a statute confers exclusive jurisdiction on another court.” *Ammex, Inc v Dep’t of Treasury*, 272 Mich App 486, 494; 726 NW2d 755 (2006) citing MCL 600.601; MCL 600.605.

Defendants next argue that the trial court erred as a matter of law by rendering MCL 208.1455(k)(13)(xi) meaningless. We agree. Courts must apply the plain language of a statute. See *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005). In addition, courts must construe a statute to give effect to the statute as a whole, and should not construe one part of the statute to render another part ineffective. *Fluor Enters v Dept of Treasury*, 477 Mich 170, 189; 730 NW2d 722 (2007), cert den 552 US 950 (2007).

The trial court’s interpretation of the statute rendered subsection (13)(k)(xi) ineffective. The statute lists the type of productions that may be eligible for the tax credit and also lists the type of productions that are excluded from eligibility for the credit. Specifically, MCL 208.1455(13)(k) includes commercials among the type of productions that may qualify for the tax credit. Significantly for this case, however, subsection (13)(k)(xi) excludes commercials from eligibility for the credit, unless those commercials market a state certified qualified production. For example, if a movie production company made a movie that was eligible for the tax credit and the Michigan Film Office certified the movie as a “state certified qualified production,” then a commercial production company could make a commercial for the movie and could be eligible to apply for the tax credit. In contrast, a commercial production company that produced a commercial that advertised some other product or service would not be eligible for the tax credit. In sum, MCL 208.1455(13)(k) indicates that a commercial can qualify for the Michigan film production tax credit, but only to the extent the commercial markets a state certified qualified production.

cannot be conferred by consent, by conduct or by waiver or by estoppel. Subject-matter jurisdiction is so critical to a court’s authority that a court has an independent obligation to take notice when it lacks such jurisdiction, even when the parties do not raise the issue.” *In re AMB*, 248 Mich App 144, 166-167; 640 NW2d 262 (2001) (internal quotation and citation omitted).

⁵ The Michigan Business Tax Act defines “taxpayer” as a “person or unitary business group liable for a tax, interest or penalty” or as a person who “has been approved to receive, has received, or has been assigned a certificated credit . . .” MCL 208.1117(5).

Reversed and remanded for proceedings consistent with this decision. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Michael J. Riordan