STATE OF MICHIGAN

COURT OF APPEALS

MY AUTO IMPORT CENTER,

Petitioner-Appellant,

v

TOWNSHIP OF FRUITPORT,

Respondent-Appellee.

UNPUBLISHED
October 9, 2012

No. 305653
Michigan Tax Tribunal
LC No. 00-329242

Before: SHAPIRO, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Petitioner appeals as of right the June 10, 2011 order of the Michigan Tax Tribunal that granted partial relief to petitioner regarding its 2005 personal property tax, but denied other relief. Petitioner contends that the Tribunal erred as a matter of law by requiring petitioner to satisfy a burden of proof despite respondent's default. Petitioner further contends that the Tribunal erred in concluding that petitioner had failed to meet that burden of proof as to some items of property and that the Tribunal failed to make an independent determination of the property's true cash value. We affirm because the rules governing the Tax Tribunal do not mandate judgment for the petitioner where the respondent does not answer and the Tribunal made independent determinations regarding the property that were supported by competent evidence on the whole record.

In early 2005, petitioner filed a personal property statement, which respondent used to assess the true cash value (TCV) and taxable value (TV) of petitioner's property for the 2005 tax year. Petitioner thereafter filed an appeal with the Michigan State Tax Commission (STC), asserting that it had incorrectly reported numerous items on its personal property statement. After the STC denied petitioner's appeal, petitioner filed a petition with the Michigan Tax Tribunal in 2006, appealing the STC's denial of petitioner's initial appeal. The tribunal entered a default order against respondent for failing to reply to petitioner's petition and held a default hearing in 2008, at which petitioner argued that its 2005 personal property statement incorrectly reported real property, inventory, and items that were tax exempt as special tools. In 2011, the tribunal issued an opinion and entered judgment removing from petitioner's 2005 statement some, but not all, of the challenged items.

"We review a final agency determination on the basis of the entire record, not just portions that support the agency's findings." *Stege v Dep't of Treasury*, 252 Mich App 183, 188;

651 NW2d 164 (2002). "This Court's ability to review decisions of the Tax Tribunal is very limited." *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 630; 806 NW2d 342 (2011). "In the absence of an allegation of fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. The tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record." *Mich Milk Producers, Ass'n v Dep't of Treasury*, 242 Mich App 486, 490-491; 618 NW2d 917 (2000) (citations omitted). "The burden of proof in an appeal from an assessment, decision, or order of the Tax Tribunal is on the appellant." *Dow Chem Co v Dep't of Treasury*, 185 Mich App 458, 463; 462 NW2d 765 (1990).

Petitioner first argues that the tribunal committed an error of law and adopted a wrong legal principle by requiring petitioner to meet a burden of proof despite respondent's failure to contest petitioner's petition. Petitioner contends that the tribunal should have deemed its allegations admitted under MCR 2.111(E) and, thus, relieved petitioner of its burden of proof. However, the tax tribunal rules, AC R 205.1111 *et seq*., "govern the practice and procedure in all cases and proceedings before the tribunal." AC R 205.1111(1). The Michigan Rules of Court govern "[i]f an applicable [TTR] does not exist[.] AC R 205.1111(4). TTR 245 and TTR 247 govern where a party fails to respond to the petition and, thus, MCR 2.111(E) does not govern. Under TTR 245, a respondent's "[f]ailure to file an answer within 28 days may result in the scheduling of a default hearing as provided in [AC R] 205.1247." AC R 205.1245(1) (alteration added). TTR 247 (AC R 205.1247) provides, in relevant part:

> (1) If a party has failed to plead, appear, or otherwise proceed as provided by these rules or as required by the tribunal, then the party may be held in default by the tribunal on motion of another party or on the initiative of the tribunal. A party placed in default shall cure the default as provided by the order placing the party in default and file a motion to set aside the default accompanied by the appropriate fee within 21 days of the entry of the order placing the party in default or as otherwise ordered by the tribunal. Failure to comply with an order of default may result in the dismissal of the case or the scheduling of a default hearing as provided in this rule.
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> (2) For purposes of this rule, "default hearing" means a hearing at which the defaulted party is precluded from presenting any testimony or submitting any evidence not submitted to the tribunal before the entry of the order placing the party in default and may not, unless otherwise ordered by the tribunal, examine the other party's witnesses. [AC R 205.1247(1) and (2).]

Here, the tribunal held respondent in default for failing to respond and held a default hearing, at which only petitioner testified without cross-examination and presented evidence. In doing so, the tribunal complied with the applicable tax tribunal rules, AC R 205.1245(1) and 1247(1) and (2). It did not commit an error of law or adopt a wrong principle by placing the burden of proof on petitioner. *President Inn Props, LLC*, 291 Mich App at 631; *Mich Milk Producers, Ass'n*, 242 Mich App at 490-491.

Petitioner next asserts that the tribunal erred in its conclusion that petitioner did not meet its burden of proof on its claim that the tools in question were "special tools" as opposed to "standard tools," a distinction that makes a significant difference as "special tools" are not subject to the personal property tax. MCL 211.9b. Where the petitioner asserts the right to a tax exemption, the petitioner bears the burden of establishing its entitlement to such an exemption. *Guardian Indus Corp v Dep't of Treasury*, 243 Mich App 244, 249-250; 621 NW2d 450 (2000). As the tribunal opinion notes, petitioner offered no proofs that the tools fell within the definition set out in the exemption, relying only on a list of the tools that lacked a description of what the tools are actually used for and why such uses render them special tools. We find no error in the tribunal's conclusion that this did not establish entitlement to the exemption sought.

Lastly, petitioner argues that the tribunal failed to undertake an independent assessment of the property's true cash value. "[T]he tribunal may not automatically accept the taxing authority's assessment because the Tax Tribunal has a duty to make its own, independent determination of true cash value." *President Inn Props, LLC*, 291 Mich App at 640 (quotation and alteration omitted). We find no error. Although petitioner argues that the tribunal did not make an independent determination of the property's TCV, but merely "rubber stamped" respondent's assessment, the record clearly indicates that the tribunal deviated from respondent's assessment and removed multiple items from petitioner's 2005 statement. The tribunal did not accept in full the TCV assessment of either petitioner or respondent, but instead made an independent determination regarding the property's TCV. *Id.* at 631 (quotation omitted) (holding that the tribunal is "under no obligation to accept the valuation figures or the approach to valuation advanced by either petitioner or respondent. The tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.").[1]

Affirmed.

/s/ Douglas B. Shapiro
/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause

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[1] Petitioner's brief appears to also suggest that the Tribunal should have made additional determinations of the tools' value as standard tools. However, at the default hearing, petitioner did not request this relief nor identify any specific errors by the Commission in these valuations and we cannot find any identified elsewhere in the record. In addition, when petitioner filed its Notice of Property Incorrectly Reported or Omitted from Assessment Role the reasons set forth for filing the notice were, "Personal property located in an automobile dealership, which on the original rendition the taxpayer included real property (such a furnaces), special tools (such as specific automotive tools for specific manufacturer's models) and software (for its standard computer system)." It did not contain any reference to incorrect valuations of the tools other than that they should have been classified as special tools. Accordingly, to the degree that petitioner is making a claim as to the dollar value of the tools as standard tools, we find no error.