

STATE OF MICHIGAN
COURT OF APPEALS

JOHN T. STONE and PHILLIP M. STEVENS, for
Themselves and All Others Similarly Situated,

Plaintiffs-Appellees,

v

STATE OF MICHIGAN and DEPARTMENT OF
TREASURY,

Defendants-Appellants.

FOR PUBLICATION
September 21, 2001
9:05 a.m.

No. 217485
Court of Claims
LC No. 98-016939-CM

Updated Copy
December 7, 2001

Before: M.J. Kelly, P.J., and Whitbeck and Collins, JJ.

COLLINS, J. (*dissenting*).

I respectfully dissent. As I read the plain language of MCL 38.19f(3), that subsection constitutes a condition that retirement system members accept if they accept the state's offer of early retirement under the SERA. I do not agree that the requirement in MCL 38.19f(3) that payment for accrued sick leave be made in monthly installments, rather than in a lump sum as would normally occur under the Michigan Civil Service Commission (MCSC) compensation plan and MCSC rules, converted the payments for accumulated sick leave into a tax-exempt retirement benefit under MCL 38.40(1).

While I acknowledge that the word "any" is broad, the phrase "any other right" in MCL 38.40(1) is limited by the phrase "accrued or accruing to any person under the provisions of this act." In the plain language of MCL 38.19f(3), "any amount that a member retiring under this section *would otherwise be entitled to receive* in a lump sum at retirement on account of accumulated sick leave shall be paid in sixty consecutive monthly installments" (emphasis added), the Legislature specifically recognized that the right to receive payment for accumulated sick leave "accrued" under something other than the SERA. It is undisputed that the amount that a retirant "would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave" referenced in MCL 38.19f(3) is provided for in the MCSC compensation plan and MCSC rules. While it is true, as the majority states, that "[n]owhere in MCL 38.40(1) did the Legislature indicate that the SERA must be the exclusive source of a right for that right to be tax-exempt," *ante* at ___, the fact remains that if plaintiffs had not accumulated any sick leave under the MCSC compensation plan, they would not be entitled to any monthly installment payments under MCL 38.19f(3). The only right that accrued under

MCL 38.19f(3) is the right to receive in monthly installments income to which the retirants were already entitled. Defendants are collecting tax on that income, not plaintiffs' "right" to receive it in monthly installments. MCL 38.19f(3) did not alter or augment the source of plaintiffs' right to receive payment for sick leave, but only altered the manner of payment. In my view, payment for accumulated sick leave, whatever the form, is not a right accruing under the SERA.

Although I find the language of MCL 38.19f(3) and MCL 38.40(1) to be plain, in light of my disagreement with the majority's interpretation of the statutory language, it may be appropriate to turn to rules of statutory construction to resolve the apparent ambiguity in meaning. See *Adrian School Dist v Michigan Public School Employees' Retirement System*, 458 Mich 326, 332; 582 NW2d 767 (1998). MCL 38.40(1) is clearly a tax-exemption provision within the SERA. Tax exemptions are the antithesis of tax equality. *Advo-Systems, Inc v Dep't of Treasury*, 186 Mich App 419, 423; 465 NW2d 349 (1990). Therefore, exemptions from taxation generally are not favored and are construed strictly against the taxpayer. *Perry Drug Stores, Inc v Dep't of Treasury*, 229 Mich App 453, 461; 582 NW2d 533 (1998); *Advo Systems, supra*. Accordingly, an exemption from tax must be expressed in unambiguous terms:

Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. [*Howard v Clinton Charter Twp*, 230 Mich App 692, 696; 584 NW2d 644 (1998), citing *Detroit v Detroit Commercial College*, 322 Mich 142, 148-149; 33 NW2d 737 (1948).]

The Legislature is presumed to be familiar with rules of statutory construction. *Alma Piston Co v Dep't of Treasury*, 236 Mich App 365, 370; 600 NW2d 144 (1999). Accordingly, I conclude that had the Legislature intended that those retiring under the SERA be exempt from paying tax on income that had always been taxable, while those retiring under normal circumstances and those otherwise separating from state employment¹ pay taxes on the income, it would have done so in an unambiguous manner. In my reading of the statute, the language of the SERA does not clearly and unambiguously exempt the monthly installment payments for accumulated sick leave from taxation. Accordingly, I conclude that those payments are taxable.

The majority contends that if the Legislature intended that the monthly installment payments for sick leave be taxable, it would have explicitly excluded those monthly payments from the tax-exemption provision of MCL 38.40(1) or enacted legislation distinct from the

¹ Retirees who were hired before October 1, 1980, are not the only state employees entitled to payment for accumulated sick leave. Under Section IV of the MCSC compensation plan, those employees hired before October 1, 1980 who separate by reason of death or who simply leave state employment also are entitled to payment for accumulated sick leave under the terms of the compensation plan.

SERA to govern the early retirement program. Because I do not agree that plaintiffs' right to payment for accumulated sick leave, whatever the form, constitutes a right that accrued under the SERA, however, I see no need for the Legislature to have explicitly excluded the monthly installment payments of that accumulated leave from MCL 38.40(1) or to have enacted legislation separate from the SERA to take those payments outside the provisions of MCL 38.40(1).

I conclude that MCL 38.19f(3) does not constitute a retirement benefit falling within the tax exemption provided for in MCL 38.40(1). Rather, it is a condition retirants accept if they accept the state's offer of early retirement. Accordingly, I would find that the monthly installment payments made on account of accumulated sick leave are taxable income. Further, because I conclude that MCL 38.19f(3) does not constitute a financial benefit accruing under the SERA, I would find that defendants' taxation of the monthly installment payments for accumulated sick leave does not constitute a diminishment of a contractual benefit in violation of Const 1963, art 9, § 24.

In light of my conclusions regarding the issues discussed above, I do not address defendants' remaining issues on appeal.

I would reverse and remand for entry of summary disposition in favor of defendants.

/s/ Jeffrey G. Collins