

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT C. LELAND, JR., DONNA D. LELAND,
LEONARD G. MILLER, SHIRLEY E. MILLER,
JAMES N. OWENS, CONSTANCE C. OWENS,
ESTATE OF JAMES S. OWENS, JOHN N.
OWENS, CHRISTOPHER C. OWENS, THOMAS
G. JOHNS, THOMAS E. DABBS, MICHAEL E.
HERWIG, and BARRY A. KEMPA,

Plaintiffs-Appellants,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee.

UNPUBLISHED
November 15, 1996

No. 174046
LC No. 93-14976-CM

Before: MacKenzie, P.J., and Saad and C.F. Youngblood*, JJ.

PER CURIAM.

The Department of Treasury assessed plaintiffs, shareholders of Molmec, Inc., intangibles tax after plaintiffs received a distribution pursuant to a partial liquidation of Molmec. This action seeking a combined refund of \$332,027.99 in taxes, interest, and penalties followed. The Court of Claims granted summary disposition in favor of the Department pursuant to MCR 2.116(C)(8) on the ground that the entire distribution was taxable under the intangibles tax act, MCL 205.131 *et seq.*; MSA 7.556(1) *et seq.*¹ Plaintiffs appeal as of right. We affirm.

Molmec is a Michigan corporation engaged in the manufacture of molded plastic parts for sale to the automotive industry. Molmec established a fan division in 1981, when it entered into a business agreement with Airflow Research & Manufacturing, a corporation engaged in the development of automotive quiet fan technology. Together, the two corporations designed, manufactured, and sold quiet fan products.

* Circuit judge, sitting on the Court of Appeals by assignment.

In 1990, Molmec and Airflow agreed to sell their quiet fan operations to the Robert Bosch Corporation. In so doing, Airflow liquidated all of its assets and distributed \$13,000,000 to its stockholders. Molmec sold its fan division pursuant to a partial liquidation plan, and distributed \$10,000,000 to plaintiffs, Molmec stockholders. According to plaintiffs, at the date of the closing, the fan division represented more than forty percent of Molmec's overall business.

This case involves the Department's determination that the \$10,000,000 distribution to plaintiffs pursuant to the partial liquidation was includible as income for purposes of the calculation of the intangibles tax. The intangibles tax is a specific tax on the privilege of ownership of intangible personal property. *Rosenbalm v Dep't of Treasury*, 164 Mich App 99, 103; 416 NW2d 343 (1987); *Davis v Dep't of Treasury*, 124 Mich App 222, 225; 333 NW2d 521 (1983). Shares of stock in corporations are considered intangible personal property for purposes of the tax. MCL 205.131(b); MSA 7.556(1)(b). Under MCL 205.132; MSA 7.556(2), the amount of tax owed under the intangibles tax act is measured by the amount of income generated by the intangible personal property owned. *Rosenbalm, supra*, pp 104-105. MCL 205.131(d); MSA 7.556(1)(d) defines "income" as follows:

"Income" includes (1) interest received upon intangible personal property; (2) *dividends and other distributions*, whether in the form of cash or other property, *to the extent that they represent the yield of intangible personal property...* and (3) all other earnings or yield of intangible personal property regardless of the name by which designated. [Emphasis added.]

1979 AC, R 205.219(8), or Rule 19(8), provides:

A dividend paid in cash is income except to the extent it represents a return of capital in liquidation. A dividend paid on common stock in shares of a like kind and character and of the same corporation is not income. A dividend paid in the share of stock of a different kind and character or of another corporation, or in notes, debentures or bonds of the same or of another corporation (except in liquidation), is income which shall be measured by the fair market value of such securities at the time of the payment of such dividend. A dividend paid in other property, e.g., sugar, oil, etc., (except in liquidation), is likewise income which shall be measured by the fair market value of such property at the time of payment of such dividend. [Emphasis added.]

The dispute in this case centers upon whether the distribution to plaintiff shareholders pursuant to Molmec's partial liquidation is "income," that is, whether it should be characterized as "yield" under MCL 205.131(d); MSA 7.556(1)(d), or as a return of capital under Rule 19(8). The Department determined that the proceeds of the partial distribution were "yield," includible as income for the calculation of the intangibles tax, based on its long-standing policy, set forth in Letter Ruling 88-102:

You request a letter ruling regarding the taxability of earnings or yield derived from the liquidation of a portion of a business.

The facts in your letter indicate that you are the sole shareholder of a corporation consisting of two divisions. One of the divisions is to be liquidated and the proceeds distributed to you as the shareholder. The basic corporate structure will be the same before and after the partial liquidation. You inquire whether the distribution of cash to you in this partial liquidation is exempt from intangibles tax under the Department's Intangible Tax Rules.

As a general rule, all distributions on stock of a corporation are subject to the intangible tax. The definition of "income" under the Act [MCL 205.131(d)(2)] provides that income includes "dividends and other distributions, whether in the form of cash or property, to the extent that they represent the yield of intangible personal property...." The Department of Treasury Intangible Tax Rules provide an exception to this general rule for distributions in liquidation. Department Rule 1979 AC, R 205.219 states that "[a] dividend paid in cash is income except to the extent it represents a RETURN OF CAPITAL IN LIQUIDATION." (emphasis added). *The Department interprets the term "liquidation" to mean a complete liquidation only. Therefore, for a corporate distribution on stock to be exempt from the intangible tax under this Rule, it must be made pursuant to a complete corporate liquidation and must represent return of capital to the shareholder.*

Because the liquidation you propose is NOT a complete liquidation of the corporation, you are not entitled to exclude the distribution on a partial liquidation under the Department's Rule. [Emphasis added.]

Plaintiffs argue that the policy set forth in Rule 19(8) as interpreted by LR 88-102 is erroneous because it fails to recognize that, like a distribution made in a complete liquidation (which is not included as income in the calculation of the intangibles tax), a distribution made pursuant to a partial liquidation can represent a return of capital, as well as yield or earnings. The Department's position, on the other hand, is that it is neither practical nor possible to trace the amount of a partial distribution attributable to capital versus earnings, especially where a corporation undergoes a series of partial liquidations; the complexity of these transactions demands a bright-line rule such as that set forth in LR 88-102.

Both arguments are reasonable and compelling. Given the closeness of the question, however, in the final analysis we agree with the trial court that deference must be given to the Department's interpretation of the intangibles tax act. It is well-established that administrative interpretations of a statute by the agency responsible for the statute's execution are to be accorded deference and reviewed with respectful consideration. *ADVO-Systems, Inc v Dep't of Treasury*, 186 Mich App 419, 426; 465 NW2d 349 (1990); *Bd of Education of Oakland Schools v Superintendent of Public Instruction*, 401 Mich 37, 41; 257 NW2d 73 (1977), quoting *United States v Moore*, 95 US 760, 763; 24 L Ed 588, 589 (1877). This principle should be afforded at least equal, if not greater, weight in the context of administrative interpretations of departmental rules. *Golonka v Dep't of Education*, 106 Mich App 28, 34; 308 NW2d 425 (1981). See also *Tercheck v Dep't of Treasury*, 171 Mich App 508, 512; 431 NW2d 208 (1988); *Webster v Secretary of State*, 147 Mich App 762; 382

NW2d 745 (1985). Applying these principles, we decline to set aside the Department's policy regarding liquidations in the intangibles tax context, as articulated in Rule 19(8) and LR 88-102. Accordingly, we affirm the Court of Claims' order granting summary disposition in favor of the Department.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Henry William Saad

/s/ Carole F. Youngblood

¹ The intangibles tax act was repealed under the provisions of 1995 PA No. 5, § 1, effective January 1, 1998.