

STATE OF MICHIGAN  
COURT OF APPEALS

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NEWARK MORNING LEDGER COMPANY,

Plaintiff-Appellee,

v

REVENUE DIVISION, DEPARTMENT OF  
TREASURY, STATE OF MICHIGAN,

Defendant-Appellant.

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UNPUBLISHED

May 27, 2004

No. 244733

Court of Claims

LC No. 00-017603-CM

Before: Jansen, P.J., and Markey and Gage, JJ.

PER CURIAM.

This case was remanded to this Court by the Supreme Court to consider as on leave granted. *Newark Morning Ledger Co v Dep't of Treasury*, 467 Mich 898 (2002). The order being appealed is an interlocutory order by the Court of Claims directing defendant to respond to discovery from plaintiff in this tax case.

Plaintiff is a national newspaper chain, owning a number of Michigan papers including the *Grand Rapids Press*. This case involves defendant's treatment of payments plaintiff made to the Associated Press News Gathering Service (AP) for purposes of determining plaintiff's single business tax liability. Plaintiff filed suit in the Court of Claims, alleging that defendant unconstitutionally discriminates in how it taxes media on franchise fees they pay, giving preferential treatment to broadcasters and to Michigan's two largest newspapers, the *Detroit Free Press* and the *Detroit News* (the Detroit papers), which, although separately owned, receive joint business operating services from The Detroit Newspaper Agency. Plaintiff sought discovery from defendant concerning the tax treatment it gives to the Detroit papers for the franchise fees they pay the AP for nationally syndicated news and feature items. Defendant refused, saying to do so would violate a statutory ban on revealing confidential tax information and plaintiff filed a motion to compel. After a hearing, the Court of Claims directed defendant to respond to the requests. Defendant sought emergency leave to file an interlocutory appeal to this Court, which this Court denied. Defendant then applied for leave to the Supreme Court, which, in lieu of granting leave, remanded to this Court to consider as on leave granted, specifically directing this Court to "consider the effect, if any, of MCL 205.28(1)(f)." We affirm and remand with directions to the trial court.

I. Background

Plaintiff contends that defendant discriminates against it in the way defendant taxes the business aspects of obtaining wire news stories, and that for defendant to do so violates plaintiff's federal and state constitutional right to equal protection. Specifically, plaintiff contends that whereas it is required to treat payments it makes to the AP<sup>1</sup> as royalties adding to its tax base, neither broadcast media nor the Detroit papers are required to do so.

Broadcast media are not required to treat payments for programming as royalties, because they have a specific statutory exemption from doing so. MCL 208.9(g)(vi). Newspaper payments for stories and features are, however, taxed as royalties. MCL 208.9(g). Initially, plaintiff did not pay tax on the payments it made to the AP for news and feature items. Defendant discovered this in an audit and demanded that plaintiff make increased tax payments. Plaintiff paid as requested, and then filed a complaint in the Court of Claims seeking a refund of the additional payments, alleging that levying the tax on newspapers and not on broadcast media violates the constitutional right to equal protection.

After filing the complaint, plaintiff heard that the Detroit papers are not taxed for payments they make to the AP. Plaintiff then filed an amended complaint, alleging that the failure to tax the Detroit papers was also an equal protection violation. Plaintiff sought discovery from defendant, seeking to know what were defendant's practices in this regard. Plaintiff served interrogatories, document requests, and requests for admission, asking exactly how the Detroit papers were treated with regard to the tax, whether an audit was conducted on the Detroit papers in connection with their tax payments, and what persons had knowledge of these matters. Specifically, plaintiff's Request to Admit No. 1 and Interrogatory No. 2 state, respectively:

Request to Admit No. 1. Please admit the Defendant has conducted one or more Single Business Tax (SBT) audits of the Detroit Free Press and that, during any such audit, Defendant did not treat payments made by the Detroit Free Press to the Associated Press as royalty expenses for Single Business Tax purposes.

Interrogatory No. 2.

a. Describe in detail the treatment accorded by the Department of amounts paid by the Detroit Free Press to the Associated Press when determining the Single Business Tax (SBT) base of the Detroit Free Press.

Defendant responded that it was prohibited from providing the information under MCL 205.28(1)(f). Plaintiff thereafter filed a motion to compel, and the court conducted a hearing.

At the hearing, plaintiff stated that it was not seeking to know how much the Detroit papers paid in taxes. To stress this point, it specifically disclaimed seeking to know any dollar amounts defendant received from or sought to collect from the Detroit papers. Rather, it said it was interested in knowing only one thing: how defendant treated the payments. In the course of

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<sup>1</sup> The AP is a consortium of newspapers that share their stories with each other. Its overhead expenses are met by royalty payments for the stories from member papers.

this discussion, it emerged that plaintiff's impression was that defendant had sought to tax the Detroit papers for this item, but had backed down when threatened with litigation.

Defendant responded that even the limited information sought by plaintiff would involve disclosure of confidential tax information about the Detroit papers. Defendant argued that complying with the discovery request would require it to reveal the extent to which the Detroit papers' tax payments had been subjected to audit. On the other hand, defendant said, if the tax in question had not been levied on the Detroit papers simply because defendant had overlooked their failure to pay it through an oversight, this would not prove the discrimination plaintiff claimed. Defendant emphasized that it consistently sought payment for this item from all taxpayers liable for it.

The court agreed with plaintiff that it was not seeking any tax information involving the Detroit papers, but only knowledge of defendant's policies, and that the discovery therefore would not violate the statutory prohibition. The court's order specifically noted that defendant was not to supply information as to the monetary amount of the Detroit papers' tax liability, if any.

## II. Standard of Review

A motion to compel discovery is a matter within the trial court's discretion, and the court's decision to grant or deny a discovery motion will be reversed only if there has been abuse of that discretion. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 343; 497 NW2d 585 (1993). We review de novo rulings on questions of statutory interpretation. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

## III. Analysis

MCL 205.28(1)(f), in relevant part, provides:

Except as otherwise provided in this subdivision, an employee, authorized representative, or former employee or authorized representative of the department or anyone connected with the department shall not divulge any facts or information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the department for a tax administered by the department. . . . A person may disclose information described in this subdivision if the disclosure is required for the proper administration of a tax law administered under this act, pursuant to a judicial order sought by an agency charged with the duty of enforcing or investigating support obligations pursuant to an order of a court in a domestic relations matter as that term is defined in section 2 of the friend of the court act, 1982 PA 294, 552.502, or pursuant to a judicial order sought by an agency of the federal, state, or local government charged with the responsibility for the administration or enforcement of criminal law for purposes of investigating or prosecuting criminal matters or for federal or state grand jury proceedings or a judicial order if the taxpayer's liability for a tax administered under this act is to be adjudicated by the court that issued the judicial order . . . .

Defendant argues that to respond to plaintiff's discovery requests would force defendant to reveal confidential tax information that cannot be disclosed. According to defendant, the statute specifically prohibits the disclosure, not just of amounts paid in taxes, but also of any information obtained from a taxpayer in the course of administering the tax laws. Further, argues defendant, while the statute has four enumerated exceptions, none apply in this case.

Under the circumstances thus far in this case, we find the trial court was correct in compelling discovery and in concluding that the information plaintiff sought – whether defendant treated payments to AP made by other newspaper publishers as royalties to be added to their tax bases – falls outside the scope of MCL 205.28(1)(f) because it is not “information obtained in connection with the administration of a tax.” The primary rule of statutory construction is that, where the statutory language is clear and unambiguous, the statute must be applied as written. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002). Here, there is no dispute that the Detroit papers pay AP, and plaintiff is not seeking to learn the amounts paid. Simply put, plaintiff seeks information concerning defendant's practices, not taxpayer data obtained by defendant. Defendant claims that if it were to divulge how it treated the Detroit newspapers' royalty payments, it would have to reveal whether the papers were audited, whether the papers added their royalty payments to their tax base, and what action defendant took in response to their tax returns. We do not necessarily agree that that would be the case. Under these limited circumstances, we find the trial court did not abuse its discretion in granting the motion to compel discovery.<sup>2</sup>

In this case, there is a clash of two strong public policies: one permitting discovery and the other, as plaintiff acknowledges, placing a high value on taxpayer confidentiality rights. We cannot be too quick to assume that it is possible for defendant to comply with all of plaintiff's requests without disclosing proprietary information defendant has learned from the papers. Accordingly, we find it necessary to give some direction to the trial court concerning plaintiff's discovery requests and defendant's responses. We direct the trial court to conduct an in camera review of any discovery responses defendant prepared pursuant to a discovery order before the responses are turned over to plaintiff. If the responses indicate that plaintiff's assumption was correct, and that either nothing of a proprietary nature was revealed or that the responses could be redacted to excise such information, discovery could proceed. If, on the other hand, it becomes apparent that there is no way to understand why the tax laws both allowed and required

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<sup>2</sup> Plaintiff is correct that this result is consistent with *General Motors Corp v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued May 9, 2000 (Docket No. 213186), rev'd on other grounds, 466 Mich 231; 644 NW2d 734 (2002), although that case did not specifically address whether information concerning the Treasury Department's treatment of nonparty taxpayers fell within the scope of MCL 205.28(1)(f). In that case, GM claimed that the Treasury Department gave advantageous tax treatment to other vehicle manufacturers with regard to certain goodwill programs. The trial court dismissed GM's equal protection and uniform taxation claims before the completion of discovery. This Court concluded that GM should have been given the opportunity for discovery regarding the department's treatment of similarly situated manufacturers before granting summary disposition.

the Detroit papers to receive different treatment without revealing proprietary information, then the trial court should reconsider its ruling.

Our conclusion makes it unnecessary to decide whether the court could compel discovery under the two exceptions contained in MCL 205.28(1)(f) for instances where “disclosure is required for the proper administration of a tax law,” and where a court orders production and “the taxpayer’s liability for a tax administered under this act is to be adjudicated by the court that issues the judicial order.”

Affirmed and remanded to the trial court for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Jane E. Markey  
/s/ Hilda R. Gage