

STATE OF MICHIGAN
COURT OF APPEALS

DONALD A. FEGERT and BARBARA A.
FEGERT,

UNPUBLISHED
December 19, 2006

Petitioners-Appellants,

v

No. 270236
Michigan Tax Tribunal
No. 00-313942

DEPARTMENT OF TREASURY,

Respondent-Appellee.

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Petitioners appeal as of right from an order of the Michigan Tax Tribunal (“MTT”) denying their motion for summary disposition, and granting summary disposition to respondent, on petitioners’ challenge to respondent’s denial of their claim for an income tax refund. We vacate the order and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

The facts are undisputed. On October 15, 1998, petitioners timely filed their 1997 Michigan income tax return after having been granted an extension. On August 12, 2001, petitioners filed a federal income tax refund claim for tax years 1994 through 1997, arguing that *Gilitz, et al v Comm’n of Internal Revenue*, 531 US 206; 121 S Ct 701; 148 L Ed 2d 613 (2001), entitled them to an additional basis in stock that they sold in 1997, thereby reducing their tax obligation. On October 8, 2001, 57 days after petitioners filed their claim, the Internal Revenue Service granted their claim for a federal tax refund. On March 20, 2003, petitioners filed a Michigan income tax refund claim in the form of an amended Michigan income tax return. Respondent denied petitioners’ income tax refund claim, finding that it was untimely filed under MCL 205.27a(2).

Petitioners sought relief before the MTT, which upheld respondent’s denial, reasoning as follows:

Notwithstanding the tolling provision’s applicability, Petitioners failed to timely file their Michigan income tax refund claim within the general four year statute of limitations under MCL 205.27a(2).

In this case, the four year statute of limitations for filing a Michigan tax refund claim began on October 15, 1998, the date Petitioners' 1997 Michigan income tax return was due based on a filed and granted extension by Respondent. Under MCL 205.27a(2), Petitioners had until October 15, 2002 to file a refund claim.

However, on August 12, 2001, Petitioners filed a federal income tax refund claim with the IRS. As discussed above, MCL 205.27a(3) became applicable. The IRS granted Petitioners' federal income tax refund claim on October 8, 2001. Under MCL 205.27a(3), Petitioners had one year from October 8, 2001, or until October 8, 2002, in which to file their Michigan income tax refund claim with Respondent.

Again, MCL 205.27a(2) allows a taxpayer to request a Michigan tax refund within four years of the date the applicable tax return was due, or within one year following the final determination of tax, whichever is later.

Unfortunately, Petitioners filed their Michigan income tax refund claim in the form of an amended return on March 20, 2003, well after either the general four year statute of limitations under MCL 205.27a(2) or the tolling provisions of MCL 205.27a(3). (Emphasis added.)

Petitioners appeal by right and we vacate and remand.

II. Analysis

Petitioners argue that the MTT misinterpreted the tolling provisions in MCL 205.27a. Resolution of this issue requires application of the undisputed facts to the relevant provisions of MCL 205.27a. Consequently, our review is de novo. *Cruz v State Farm Mut Ins Co.*, 466 Mich 588, 594; 648 NW2d 591 (2002). In addition, we review de novo the grant or a denial of a motion for summary disposition. *Spiek v Dept of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

MCL 205.27a(2) provides in relevant part:

The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return.

However, this four year limitations period may be "suspended" or tolled. MCL 205.27a(3)(a) provides:

(3) The running of the statute of limitations is suspended for the following:

(a) The period pending a final determination of tax, including audit, conference, hearing, and litigation of liability for federal income tax or a tax administered by the department and for 1 year after that period.

Petitioners contend that the MTT, in determining the time periods for timely filing petitioners' claim for a refund, improperly interpreted these two provisions. We agree. The

primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). “Each word of a statute is presumed to be used for a purpose, and, as far as possible, effect must be given to every clause and sentence.” *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). If the statutory language is clear and unambiguous, the court must apply the statute as written, and judicial construction is neither necessary nor permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Although in general, a court will defer to the interpretation of statutes by the MTT that the MTT is delegated to administer, *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 221; 713 NW2d 734 (2006), when the language is clear, there is no need for interpretation and the statute must be applied as written.

Petitioners filed their tax return on October 15, 1998. Accordingly, MCL 205.27a(2) permitted them to file a claim for a tax refund until October 15, 2002. However, MCL 205.27a(3)(a) provides that this four-year limitation period is suspended “pending a final determination of tax” and “for one year after that period.”

During the four-year limitation period, from October 15, 1998, to October 15, 2002, petitioners filed a claim for a refund of their federal taxes on August 12, 2001. On the date of filing, 1,031 days of the 1,461 days of the four-year limitation period had run. The IRS granted the refund 57 days later on October 8, 2001. The four year limitations period was suspended during those 57 days, as well as “for 1 year after that period,” until October 8, 2002. MCL205.27a(3)(a). The limitation period then ran for the 430-day balance of the 1,461-day limitation period, ending on December 12, 2003. Thus, pursuant to the plain language of the statute, petitioners’ claim for a state refund was timely filed on March 20, 2003.

MTT's interpretation in its summary disposition order violates the plain language of the statute. In essence, the MTT inserts an “or” between subsections (2) and (3). However, subsection (2) and (3) are not alternative provisions; they are consecutive provisions if a taxpayer pursues a final determination of tax liability. Further, the MTT inserts the phrase “whichever is later” to determine which provision to apply. As written, subsection (3) simply suspends the four-year limitation period pending a final determination of tax liability and for an additional year thereafter.

We vacate the order of the MTT denying petitioners’ claim for their Michigan income tax refund and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly