

STATE OF MICHIGAN
COURT OF APPEALS

BEECH AIR, INC.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

August 12, 2010

No. 290520

Michigan Tax Tribunal

LC No. 00-357791

Before: M.J. KELLY, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Petitioner appeals by right the Michigan Tax Tribunal's (MTT) order dismissing, for lack of jurisdiction, petitioner's appeal of a use tax assessment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Petitioner purchased a used Beech aircraft located in West Virginia. The plane was hangared in Michigan while repairs were made. Respondent assessed use tax on the plane. In a letter dated April 7, 2008, petitioner asserted that under Michigan law, the plane was exempt from use tax. Petitioner maintained that the plane had been brought to Michigan to be upgraded and repaired, and that when that work was finished, the plane would be based in Ohio.

In a notice of use tax due, dated April 8, 2008, respondent stated that it had "reviewed the documentation" submitted by petitioner and had determined that petitioner still owed use tax. The notice indicated that petitioner had until May 13, 2008, to pay the total tax due, \$10,080.00, and avoid penalties and interest.

By letter dated May 6, 2008, and directed to the attention of Darius Reynnet of the Discovery and Tax Enforcement Division, petitioner indicated that respondent's letter of April 8, 2008, gave no guidance on what type of documentation was necessary to establish that the plane was exempt from use tax, and sought advice as to what type of documentation respondent wished to receive from petitioner to resolve the dispute. Thereafter, on an unspecified date, Reynnet contacted petitioner and asked what documentation petitioner had available to establish the exemption. Petitioner sent all available documentation to Reynnet.

By letter dated July 21, 2008, petitioner indicated that it had received no response after it sent documentation to Reynnet as he had requested. Petitioner requested that respondent review the documentation and inform petitioner if any further submission was necessary.

On August 15, 2008, respondent issued its final bill for taxes due (final assessment). The total amount due, including penalty and interest, was \$12,234.90. The bill indicated that all or part of the bill could be appealed directly to the MTT within 35 days of the date on the bill, or the taxpayer could pay the entire amount due and claim a refund in the Court of Claims within 90 days of the date on the bill.

Petitioner indicates that on or about August 27, 2008, it received a telephone call from Reynnet, who indicated that petitioner's claimed exemption had been denied because the plane had been registered in Michigan. Petitioner informed Reynnet that the plane had not been registered in Michigan; Reynnet informed petitioner that petitioner could respond in writing after receiving respondent final letter explaining the basis for the denial of the claimed exemption.

On September 29, 2008, petitioner filed a petition for exemption from taxation. Respondent moved to dismiss petitioner's appeal on the ground that the MTT lacked jurisdiction to hear the appeal because it was filed more than 35 days after the issuance of the assessment.

The MTT dismissed petitioner's appeal with prejudice on the ground the MTT lacked jurisdiction over the matter because the appeal was untimely, and thereafter denied petitioner's motion for reconsideration.

On appeal, petitioner argues that the MTT erred in concluding that it did not have jurisdiction to hear petitioner's appeal. The 35-day statute of limitations did not begin to run because respondent failed to comply with the due process requirements of MCL 205.21(2)(c). Respondent never informed petitioner what documentation petitioner was required to submit to establish the claimed exemption. Moreover, respondent never took the position that a final assessment had been issued, because Reynnet contacted petitioner after the August 15, 2008, bill had been sent and indicated that a letter of explanation would be forthcoming. We disagree.

"The existence of jurisdiction is a question of law that this Court reviews de novo." *Trostel, Ltd v Dep't of Treasury*, 269 Mich App 433, 440; 713 NW2d 279 (2006).

Our review of a decision of the MTT, in the absence of fraud, is limited to whether the MTT made an error of law or adopted an erroneous legal principle. The MTT's findings of fact "are accepted as final if they are supported by competent, material, and substantial evidence on the whole record." *Speaker-Hines & Thomas, Inc v Dep't of Treasury*, 207 Mich App 84, 87; 523 NW2d 826 (1994).

The MTT's jurisdiction to hear an appeal is governed by statute. MCL 205.22(1) provides in pertinent part:

A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision, or order. The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal.

MCL 205.735a(6) provides in pertinent part:

. . . In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination.

Respondent notified petitioner that use tax was due on petitioner's plane. Petitioner disputed that it owed the tax, and provided respondent with an explanation of its reasoning. Petitioner was entitled to an informal conference on the question of its liability. MCL 205.21(2)(c). Respondent notes that the initial notice of tax due contained information on the procedure for requesting an informal conference; however, petitioner never requested such a conference. Petitioner seems to maintain that respondent was required to sua sponte convene a conference, but petitioner points to no authority that supports that position. A party may not simply announce its position and then leave it to this Court to search for authority to sustain or reject that position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Petitioner has not supported its assertion that respondent's failure to convene an informal conference denied petitioner due process.

Respondent issued its final bill for taxes due (final assessment) on August 15, 2008. Pursuant to MCL 205.22(1) and MCL 205.735a(6), if petitioner wished to contest the assessment, it was required to file a petition with the MTT within 35 days, or no later than September 19, 2008. Petitioner did not file its petition until September 29, 2008. Petitioner asserts that because Reynnet contacted petitioner after the final bill was issued and said that a letter of explanation would be forthcoming,¹ respondent did not consider the August 15, 2008, notice to be a final bill. We conclude that this assertion is without merit. Petitioner does not contend that Reynnet indicated that petitioner could disregard any final assessment while the parties continued to review the matter. Cf. *Trostel*, 269 Mich App at 440-441.

Petitioner has failed to establish that any event tolled the 35-day appeal period, and it is undisputed that petitioner did not file its petition within that period. The MTT properly dismissed the petition for lack of jurisdiction.

We affirm.

/s/ Michael J. Kelly
/s/ Jane E. Markey
/s/ Donald S. Owens

¹ Petitioner provides no documentation to establish that this contact occurred; however, respondent does not deny that it occurred.