

MSC Opinion: Collection of an unlawful millage is not a mistake of fact that allows 3 years (instead of 30 days) to file claims under MCL § 211.53a

31. March 2010

Yesterday, the Michigan Supreme Court issued a unanimous opinion in the consolidated appeal of *Briggs Tax Service, LLC v. Detroit Public Schools*, Nos. 138168, 138179, 138182, reversing the Court of Appeals and reinstating the decision of the Tax Tribunal dismissing the petitioner's claims. Briggs claimed that the defendants had collected property taxes from it for three years for a millage that was not in effect. The Supreme Court agreed with the Tax Tribunal that the 3-year window in MCL § 211.53a for recovering excess taxes paid because of a mutual mistake of fact by the assessor and taxpayer did not apply. Instead, the claims had to be filed within 30 days of issuance of the tax bills. Briggs' claims were therefore untimely.

After a voter-approved operating millage for Detroit Public Schools ("DPS") expired on June 30, 2002, DPS continued to levy an unauthorized 18-mill tax for tax years 2002, 2003, and 2004. DPS apparently believed that a proposal approved by voters in 1994 meant that it no longer needed voter approval for a tax rate of 18 mills. In 2005, DPS acknowledged that it was mistaken and that the revenue from those taxes might have to be refunded.

Briggs filed a claim with the Tax Tribunal which was initially dismissed as untimely under MCL § 205.735(2), but then was allowed on reconsideration to amend to state a claim under MCL § 211.53a. Briggs claimed it paid excess taxes because of a mutual mistake of fact. DPS and the county treasurer moved for summary disposition, arguing that MCL § 211.53a did not apply.

The Tax Tribunal dismissed Briggs' claim. It reasoned that MCL § 211.53a required the mutual mistake of fact to be between the assessing officer and the taxpayer, but that assessor, who was employed by the City of Detroit, had no role in determining the millage and therefore made no mistake as to its expiration. That mistake was made by DPS, who certified the tax.

The Court of Appeals reversed. It reasoned that the taxes were collected because of a mutual mistake of fact, in that Briggs and the defendants all erroneously believed Briggs was required to pay the disputed taxes from 2002, 2003, and 2004. They were also mistaken in believing that the school electors had authorized the taxes for those years. The Michigan Supreme Court granted leave to appeal to determine whether a mutual mistake of fact occurred, allowing Briggs to bring its claims under the 3-year statute of limitations in MCL § 211.53a, rather than the typical 30-day filing deadline.

The Michigan Supreme Court held that there was no “mutual mistake of fact” between the assessor and taxpayer in this case for two reasons. First, the mistake was not “mutual” because the assessor made no mistake. Second, it was a mistake of law, not fact.

The mistake was not mutual because it was made by DPS, who certified the tax levied against Briggs, not the assessor. The assessor made no mistake in spreading and assessing the tax—it was required by statute to do so. Assessors have no authority to review or alter certified tax rates. Because DPS, not the assessor, erroneously certified the tax, there is no mutual mistake between the assessor and the taxpayer as required under MCL § 211.53a. (The court states “no mutual mistake between DPS and the assessor,” but it likely meant between the taxpayer Briggs and the assessor, since that is what the language of MCL § 211.53a requires.) The Supreme Court rejected the Court of Appeals’ theory that the assessor was an agent of DPS, as DPS could exercise no control over the assessor.

The mistake was also one of law and not fact because an unauthorized tax levy is a mistake of law according to this state’s jurisprudence. The Court, after discussing the pertinent case law, reaffirmed that the collection of an unauthorized tax constitutes a mistake of law, not a mistake of fact. The court distinguished the case law relied upon by the Court of Appeals because it involved mistakes about the numerical value of the taxable property and the date on which title passed from a tax-exempt owner to a nonexempt owner.