# STATE OF MICHIGAN

# COURT OF APPEALS

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HELMUT F. STERN,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED
May 21, 1996

No. 175933
LC No. 166103

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

PER CURIAM.

Petitioner appeals as of right from a Tax Tribunal judgment affirming final assessment E529686 in the amount of $54,408 plus interest for 1989 Michigan personal income taxes. We affirm.

The facts are undisputed. Petitioner was the sole shareholder of Industrial Techtonics, Inc. In 1983, he sold a large block of his shares in the corporation and agreed to indemnify the purchaser from specified losses. Petitioner correctly reported his capital gains resulting from the transaction on his 1983 federal and state personal income tax returns.

In 1989, petitioner made a substantial repayment to the stock purchaser pursuant to their indemnification agreement. On his 1989 federal income tax return, he made a "below the line" adjustment reducing his tax liability as allowed under 26 USC 1341 (Internal Revenue Code § 1341) to reflect this repayment, and the IRS accepted the adjustment. Petitioner also made a corresponding adjustment for the repayment on his 1989 Michigan return. Respondent disallowed the § 1341 adjustment on the basis that it was not authorized by the provisions of the state income tax act, MCL 206.1 *et seq.*; MSA 7.557(101) *et seq.* The Tax Tribunal affirmed.

On appeal, petitioner claims that the Tax Tribunal should have recognized his § 1341 adjustment in the Michigan income tax setting. We disagree.

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

The absence of a state income tax act provision paralleling that of the federal Internal Revenue Code § 1341 was recognized and addressed by the Legislature in 1993 in response to the identical problem faced by petitioner in this case, that is, that:

> . . .the Income Tax Act has no provision to allow taxpayers to recoup taxes paid on income that they then had to return or repay, while this is allowed for Federal income taxes. . . .[Senate Fiscal Agency Bill Analysis, SB 663, June 14, 1993.]

Thus, the Legislature amended the state income tax act to add § 265(1), MCL 206.265(1); MSA 7.557(1265)(1), effective July 22, 1993. That section provides:

> *For the 1991 tax year and each tax year after 1991*, a taxpayer may credit against the tax imposed by this act for the tax year an amount equal to the tax paid in any prior tax year attributable to income received by the taxpayer in any prior tax year and repaid by the taxpayer during the tax year if the taxpayer is eligible for a deduction or credit against his or her federal tax liability pursuant to section 1341 of the Internal Revenue Code based on the repayment for the tax year. A credit under this section for a tax year is allowed only if the repayment for which a deduction or credit was taken pursuant to section 1341 of the Internal Revenue Code is not deducted in calculating the taxpayer's adjusted gross income for the tax year. [Emphasis added.]

This section authorizes the relief petitioner seeks by adding to the Michigan income tax act a provision paralleling that of § 1341. However, the Legislature, in enacting § 265, expressly limited its retroactivity to tax years 1991 forward. Petitioner's 1989 tax return is therefore not qualified to include the credit as authorized by the amendment.

Petitioner contends that the limited retroactivity of § 265 violates his due process and equal protection rights by treating taxpayers differently solely on the basis of the timing of a repayment. These claims are without merit. Due process is violated only when legislation impairs vested rights. *Taxpayers United for the Michigan Constitution, Inc v Detroit,* 196 Mich App 463, 467; 493 NW2d 463 (1992). Taxpayers have no vested rights in a tax statute. *Detroit v Walker,* 445 Mich 682, 699; 520 NW2d 135 (1994); *United States v Carlton,* 512 US ___; 114 S Ct 2018; 129 L Ed 2d 22, 30 (1994). Furthermore, the denial of retroactive application to a newly created statutory right is not a denial of equal protection. *Bowen v Recorder's Court Judge,* 384 Mich 55; 179 NW2d 377 (1970).

We also reject petitioner's suggestion that the relief found in § 265 is provided elsewhere in the state income tax act. MCL 206.2(3); MSA 7.557(102)(3) states:

> It is the intention of this act that the income subject to tax be the same as taxable income as defined and applicable to the subject taxpayer in the internal revenue code, except as otherwise provided in this act.

MCL 206.30(1); MSA 7.557(130)(1) provides that taxable income means adjusted gross income as defined in the Internal Revenue Code, subject to specified adjustments not at issue here. However, § 1341(a)(5) – the IRC section petitioner applied – is not an "above the line" subtraction used in the computation of adjusted gross income; it is a reduction of the taxpayer's tax liability. Because the reduction provided by § 1341(a)(5) would not be made in determining adjusted gross income, and hence taxable income, it has no application to Michigan income taxes in the absence of § 265 of the income tax act. Compare *Preston v Dep't of Treasury,* 190 Mich App 491, 495; 476 NW2d 455 (1991) (federal net operating loss deduction applies to Michigan tax computation because the deduction *was* included in adjusted gross income calculation.).

In the absence of fraud, this Court's review of Tax Tribunal decisions is limited to whether the Tax Tribunal made an error of law or adopted an improper legal principle. *Skybolt Partnership v Flint,* 205 Mich App 597, 599-600; 517 NW2d 838 (1994). Because the Tribunal did not err in its conclusion that, as it pertains to the 1989 tax year, Michigan's income tax act has no provision to allow the § 1341 adjustment petitioner claimed, we affirm.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Henry William Saad
/s/ Carole F. Youngblood