

STATE OF MICHIGAN
COURT OF APPEALS

ROY CRACCHIOLO,

Plaintiff–Appellant,

v

DEPARTMENT OF TREASURY,

Defendant–Appellee.

UNPUBLISHED

August 30, 1996

No. 183955

LC No. 215668

Before: Michael J. Kelly, P.J., and Reilly and J.L. Martlew,* JJ.

PER CURIAM.

Plaintiff appeals as of right the Michigan Tax Tribunal’s order dismissing plaintiff’s case because plaintiff failed to timely appeal the final assessments. We reverse.

Plaintiff’s argument that the “Determination of Liability” was an appealable decision need not be addressed because plaintiff’s second argument is dispositive.

Plaintiff did not appeal the final assessments against him until after the statutory thirty-five day appeal period. MCL 205.22; MSA 7.657(22). Plaintiff, however, argues that his thirty-five day appeal period was tolled as a result of his ongoing settlement negotiations with defendant. In response to the intent to assess, plaintiff sent defendant a detailed letter explaining why he was not responsible for the taxes along with supporting documents. A month later, defendant sent plaintiff final assessments without acknowledging receipt of plaintiff’s correspondence. Plaintiff sent another letter to defendant reiterating his position and re-sending his previous correspondence and documentation. Defendant then did not respond to plaintiff’s correspondence until after the thirty-five day appeal period. In its correspondence, defendant maintained that there was insufficient evidence and that plaintiff should provide it with additional information. Since defendant sent the letter after the appeal period and requested more information, showing a willingness to reconsider its position, defendant was continuing negotiations. Therefore, the thirty-five day appeal period was tolled. *Curis Big Boy v Dep’t of Treasury*, 206 Mich App 139, 141-142; 520 NW2d 369 (1994).

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

Reversed.

Michael J. Kelly
Jeffrey L. Martlew