

STATE OF MICHIGAN
COURT OF APPEALS

H & H TUBING, INC.,

UNPUBLISHED
April 22, 1997

Plaintiff-Appellant,

v

No. 192402
Michigan Tax Tribunal
LC No. 00163073

CITY OF TROY,

Defendant-Appellee.

Before: Doctoroff, P.J., and MJ Kelly and Young, JJ.

PER CURIAM.

Plaintiff appeals as of right from a Michigan Tax Tribunal order dismissing its claim for a refund of personal property taxes paid to defendant. We affirm.

Plaintiff corporation disputed defendant city's assessment of plaintiff's property for the 1991 tax year. Plaintiff contented that some of its assets had been moved to another jurisdiction and thus should not have been included in the assessment by the City of Troy. Defendant's board of review denied plaintiff's claim, and plaintiff appealed to the Michigan Tax Tribunal. At a prehearing conference before the tax tribunal, the parties stipulated that the value of plaintiff's property in defendant city at the end of the 1991 tax year was \$153,134. They also stipulated that plaintiff would provide proof that \$378,000 of additional assets had been moved to, and assessed by, another jurisdiction in that tax year. The parties agreed that, upon receipt of such proofs, defendant would stipulate to an appropriate refund to plaintiff.

Plaintiff submitted numerous pages of financial information, but defendant refused to sign a stipulation, claiming that plaintiff had failed to show that any transferred assets had been assessed by another taxing authority. Defendant brought a motion to dismiss plaintiff's claim, and the tax tribunal granted the motion. Plaintiff then brought this appeal, arguing that dismissal was improper because it had submitted evidence as required by the prehearing conference agreement. We disagree.

MCL 205.737(3); MSA 7.650(37)(3) provides, in pertinent part, that "[t]he petitioner has the burden of proof in establishing the true cash value of the property" in dispute. Plaintiff submitted

inventory lists, worksheets, summaries of tax return filings, and a notice of change of assessment by another taxing jurisdiction. This evidence, however, did not establish that assets transferred by plaintiff out of defendant's jurisdiction were in fact taxed in the other jurisdiction. Consequently, defendant's obligation to stipulate to a refund under the terms of the prehearing conference agreement was never triggered. Plaintiff's claim thus fails.

Plaintiff also contends that it will be prejudiced if it is bound by the stipulated valuation from the prehearing conference. Plaintiff argues that it should be allowed to contest defendant's 1991 valuation of plaintiff's property because defendant breached its obligation to stipulate to a refund under the agreement. However, as set forth above, plaintiff failed to submit the required materials, and, thus, defendant's obligation to stipulate to a refund was not triggered. Accordingly, plaintiff's argument is without merit.

Affirmed. Defendant being the prevailing party, it may tax costs pursuant to MCR 7.219.

/s/ Martin M. Doctoroff

/s/ Michael J. Kelly

/s/ Robert P. Young, Jr.