

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

WOLVERINE POWER SUPPLY COOPERATIVE,  
INC.,

UNPUBLISHED  
January 7, 2000

Plaintiff-Appellant,

v

No. 209042  
Court of Claims  
LC No. 96-016452-CM

STATE OF MICHIGAN and DEPARTMENT OF  
TREASURY,

Defendants-Appellees.

---

Before: Holbrook, Jr., P.J., and Zahra and J.W. Fitzgerald\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting in part and denying in part plaintiff's request for refund of overpaid single business taxes due to alleged miscalculations of plaintiff's tax base.<sup>1</sup> We affirm.

Plaintiff is a nonprofit rural electric cooperative which is exempted from federal income taxation pursuant to § 501(c)(12) of the Internal Revenue Code of 1986, 26 USC 501(c)(12). Although plaintiff is exempt from federal income tax, plaintiff is not exempt from the Michigan Single Business Tax under § 35(1)(c) of the Single Business Tax Act ("SBTA"), MCL 208.35(1)(c); MSA 7.558(35)(1)(c). The applicable tax base for non-profit entities such as plaintiff is calculated pursuant to § 20 of the SBTA, MCL 208.20; MSA 7.558(20), which states in pertinent part:

The tax base of nonprofit persons not required to pay federal income taxes shall be the sum of the net additions specified in sections 9 [MCL 208.9; MSA 7.558(9)] and 23 [MCL 208.23; MSA 7.558(23)] less the deductions specified in those sections. (Footnote omitted).

All but one of the additions listed in §9 of the SBTA, MCL 208.9; MSA 7.558(9), make reference to "federal taxable income." Subsection (5) of § 9, however, only requires compensation to

---

\* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

be added. MCL 208.9(5); MSA 7.558(9)(5). Plaintiff contends that because it

had no federally taxable income in the tax years in question (because it had no “unrelated business income,” pursuant to 26 USC 501(c)12),<sup>2</sup> its tax base for those years should be calculated with reference to § 9(5) and § 23 only.

The trial court concluded that “[t]he only reasonable interpretation is that any reference to ‘federal taxable income’ refers to calculations that are generally made in calculating federal taxable income.” It therefore held that plaintiff must “use all of the section 9 adjustments in calculating its tax base” regardless of whether it actually had federal taxable income. We agree with the trial court’s interpretation of §§ 9 and 20 of the SBTA. MCL 208.9; MSA 7.558(9); MCL 208.20; MSA 7.558(20).

Questions involving statutory interpretation are reviewed de novo on appeal. *Oakland Co Bd of Rd Comm’rs v Michigan Property & Casualty Guaranty Ass’n*, 456 Mich 590, 610; 575 NW2d 751 (1998). Ascertaining and effectuating the intent of the Legislature is the primary goal of statutory construction. *Frankenmuth Mutual Ins v Marlette Homes, Inc.*, 456 Mich 511, 515; 573 NW2d 611 (1997). The specific language of the statute should be the first source for determining legislative intent, *House Speaker v State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993), and the fair and natural import of the statute should govern. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). In regard to tax laws, if there are ambiguities, they are to be construed most strongly against the government. *Michigan Bell Telephone Co v Dep’t of Treasury*, 445 Mich 470, 477; 518 NW2d 808 (1994). Since the provision under consideration here effectuates an exception to an exemption, thereby increasing the amount of tax imposed, it is construed in favor of the taxpayer. See *Auto-Owners Ins Co v Dep’t of Treasury*, 226 Mich App 618, 621; 575 NW2d 770 (1997).

The trial court’s conclusion regarding the intended effect of § 20 was consistent with the plain language of the statute. We find no ambiguity in the wording of this provision. Section 20 specifically applies to “nonprofit persons *not required to pay federal income taxes*[.]” and it requires that the single business tax base of such persons be “the *sum* of the net *additions* specified in sections 9 and 23 less the deductions specified in those sections.” MCL 208.20; MSA 7.558(20) (emphasis added). If the Legislature had intended that only compensation would be added under subsection (5) of § 9 when nonprofit entities such as plaintiff paid no federal income tax, then it would not have utilized the plural form of the word “addition.” Instead, the Legislature would simply have specified that the single business tax base of such entities would be determined by the addition of compensation specified in § 9(5) and by the adjustments contained in § 23.

Plaintiff urges this Court to interpret the words “persons not required to pay federal income taxes” in § 20 as encompassing two groups of taxpayers: those not required to pay federal income taxes normally, but who are paying them because they have “unrelated business income[.]” 26 USC 501(c)(12), and those who are not required to pay *and* are not actually paying any federal income tax for that tax year. In other words, plaintiff maintains that because it paid no federal income taxes for the tax years in question, it cannot be required to add or subtract from its single business tax base any items specified in the subsections of § 9 that use the term “federal taxable income.” If, on the other hand, plaintiff were required to pay federal income tax in a given tax year because of “unrelated business

income,” then, plaintiff maintains, it would be required to make all the adjustments specified in all the subsections.

We find no merit in plaintiff’s argument. In tax years when plaintiff has unrelated business income, plaintiff would be required to pay federal income taxes, and thus, under the plain language of the statute, §20 would not be applicable to plaintiff’s tax base. In those years, plaintiff’s tax base would be calculated pursuant to §9 using the federal taxable income as the starting point for the tax base, just like any other federally taxable entity. In light of the plain language of the statute, we decline to adopt plaintiff’s interpretation of the statute, which would essentially amend the words “persons not required to pay federal income taxes” in the absence of any indication of legislative intent to so construe them.

Plaintiff also argues its interpretation of the statute is consistent with defendant’s 1977 question and response which stated that only subsection (5) of §9 should be computed in calculating the tax base of a Canadian trucking company that was exempt from federal taxes under a treaty. We disagree. Defendant overruled its 1977 response in a 1983 response involving a similar situation. Since 1983, defendants have consistently ruled that all subsections of §9 must be considered in calculating the tax base of any federally exempt entity. More importantly, the plain language of §20 requiring all the additions and deductions to be considered in the tax base would not have been applicable in the case of the Canadian trucking company, because it is not a nonprofit entity. Therefore, we find that defendant’s 1977 response does not support plaintiff’s interpretation of the statute.

Additionally, we note that the United States Supreme Court has held that the “contemporaneous interpretation of [a] statute by the tax commissioner of the state, the administrative agent charged with its enforcement[,]” is entitled to “respectful consideration . . . .” *Fox v Standard Oil Co*, 294 US 87, 96; 55 S Ct 333; 79 L Ed 780 (1935). Similarly, the Michigan Supreme Court has stated that it “will accord great deference to the ‘construction placed upon statutory provisions by any particular department of government for a long period of time . . . .’” *Ludington Service Corp v Acting Comm’r of Ins*, 444 Mich 481, 491; 511 NW2d 661, modified on other grounds 444 Mich 1240 (1994), quoting *Southfield Police Officers Ass’n v Southfield*, 433 Mich 168, 177, 445 NW2d 98 (1989). The agency must interpret the statute it administers, and its interpretations are entitled to great weight. *Adrian School Dist v Michigan Public School Employees Retirement System*, 458 Mich 326, 336; 582 NW2d 767 (1998). See also *Attorney General v Public Service Comm*, 227 Mich App 148, 153; 575 NW2d 302 (1997) (court will defer to agency interpretation unless clearly wrong); *Little Caesar Enterprises Inc v Dep’t of Treasury*, 226 Mich App 624, 633-634; 575 NW2d 562 (1997).

For these reasons, we cannot find that the trial court erred in upholding defendants’ interpretation of §§ 9 and 20 of the SBTA.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra

/s/ John W. Fitzgerald

<sup>1</sup> In the trial court, plaintiff alleged that the Department of the Treasury made two separate miscalculations in determining its tax base: (1) the recapture provisions in MCL 208.23b; MSA 7.558(23b) were incorrectly added; and (2) certain subsections in MCL 208.9; MSA 7.558(9) were incorrectly added. The trial court granted relief to plaintiff on the first issue and denied relief on the second issue. The sole issue on appeal is whether the trial court erred in finding that MCL 208.20; MSA 7.558(20) requires the addition or deduction of all of the subsections contained in MCL 208.9; MSA 7.558(9), even those that make reference to “federal taxable income.”

<sup>2</sup> Section 501(c)(2) of the Internal Revenue Code would require plaintiff to pay federal income tax if its nonmember income exceeded fifteen percent of its gross revenues or if it engaged in business that was beyond its corporate authority. 26 USC 501(c)(12).