

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

---

RHONDA FERRERO,  
Petitioner-Appellant,

v

WALTON TOWNSHIP,  
Respondent-Appellee.

FOR PUBLICATION  
February 23, 2012  
9:00 a.m.

No. 302221  
Michigan Tax Tribunal  
LC No. 377055

Advance Sheets Version

---

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

SHAPIRO, J.

The single issue presented in this case is whether monies petitioner received in 2009 pursuant to MCL 206.520 should be counted as income for the purposes of her qualification for an exemption under MCL 211.7u for property taxes in 2009. Petitioner appeals as of right the decision of the Michigan Tax Tribunal (MTT) that the monies received should be treated as income for purposes of MCL 211.7u. We reverse and remand because monies received pursuant to MCL 206.520 are a rebate of property taxes paid and not income for purposes of MCL 211.7u.

**I. BACKGROUND**

Petitioner, 63 years old, has been permanently disabled since 1998. She owns a home and in 2008 paid property taxes. When filing her 2008 state income tax return in early 2009, petitioner claimed a homestead property tax credit pursuant to MCL 206.520. It is not disputed that her 2008 property taxes were paid and that she qualified to receive the homestead tax credit for 2008 pursuant to MCL 206.520. Because petitioner had no state income tax liability, the amount of the credit against her property taxes paid could not be returned to her as a reduction in her income tax. Pursuant to the mandates of subsection (3) of MCL 206.520, therefore, the sum, after examination and review, was paid to her, without interest, after she filed her 2008 income tax return in 2009.<sup>1</sup>

---

<sup>1</sup> MCL 206.520(3) provides that

[i]f the credit claimed under this section . . . exceeds the tax liability for the tax year or if there is no tax liability for the tax year, the amount of the claim not used

In 2009, petitioner requested an exemption from property taxes under MCL 211.7u, which provides that persons with income below a defined poverty level during the relevant year are exempt from having to pay that year's property taxes. In order to qualify for the exemption for respondent Walton Township, the property owner's income must have been no more than \$10,400.

For the 2009 tax year, petitioner received \$9,732 in social security disability income. Thus, if her other income exceeded \$668, she would be ineligible for the exemption. If it did not exceed \$668, she would qualify for the exemption.<sup>2</sup> The Walton Township Board of Review (the Board) denied her application for the exemption because it considered her 2008 homestead property tax credit as income that, when added to her social security disability income, placed her above the \$10,400 limit. Petitioner appealed the denial in the Michigan Tax Tribunal, Small Claims Division, which affirmed the Board's denial.

## II. STANDARD OF REVIEW

“In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record.” *Mich Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994).

Issues of statutory interpretation are questions of law that are reviewed de novo. *Brown v Detroit Mayor*, 478 Mich 589, 593; 734 NW2d 514 (2007). The primary goal of statutory interpretation is to give effect to the Legislature's intent, focusing first on the statute's plain language. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). “The words of a statute provide ‘the most reliable evidence of its intent . . . .’” *Id.*, quoting *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981). When construing a statute, a court must read it as a whole. *People v Jackson*, 487 Mich 783, 791; 790 NW2d 340 (2010). [*Klooster v City of Charlevoix*, 488 Mich 289, 295-296; 795 NW2d 578 (2011).]

## III. ANALYSIS

The homestead property tax exemption for persons unable to pay because of poverty is governed by MCL 211.7u, which provides, in pertinent part:

---

as an offset against the tax liability shall, after examination and review, be approved for payment, without interest, to the claimant. In determining the amount of the payment under this subsection, withholdings and other credits shall be used first to offset any tax liabilities.

<sup>2</sup> Plaintiff also received \$564 in food-stamp assistance. However, it is not disputed that food-stamp assistance does not qualify as income for purposes of the exemption.

(1) The principal residence of persons who, in the judgment of the supervisor and board of review, by reason of poverty, are unable to contribute toward the public charges is eligible for exemption in whole or in part from taxation under this act. This section does not apply to the property of a corporation.

While State Tax Commission (STC) bulletins are not binding,<sup>3</sup> the STC has defined income as including wages and salaries, net receipts from self-employment, regular payments from social security or public assistance, alimony, pensions, scholarships, and dividends and interest. STC Bulletin No. 5 of 1995, Poverty Exemptions Under MCL 211.7U, New Requirements, January 23, 1995.<sup>4</sup>

A tax refund is not income because a refund returns money to the taxpayer that need not have been paid; it is not an independent payment to the taxpayer. Although there is a distinction between a tax refund and a tax credit, a tax credit can function like a tax refund in some cases. *Universal Oil Prod Co v Campbell*, 181 F2d 451, 478 (CA 7, 1950) (concluding that “tax credits . . . do amount to refunds of the taxes . . . paid”).<sup>5</sup>

The tax credit involved here plainly functions as a refund. As held in *Butcher v Dep’t of Treasury*, 425 Mich 262, 275; 389 NW2d 412 (1986), “[u]nlike the federal government, the state is not exempting certain property taxes from the base of the tax; rather, it is refunding them.” The *Butcher* Court further explained that “[t]he property tax ‘credit,’ . . . is in effect a *property tax rebate* that employs the income tax as a vehicle for its reconciliation. Therefore, art 9, § 7, which is concerned only with income taxes, is inapplicable to what is *clearly a property tax rebate*.” *Id.* at 276 (emphasis added); see also *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 344; 806 NW2d 683 (2011).

The homestead property tax credit does not confer income, nor is it a program to transfer new monies to individuals; rather, as *Butcher* makes clear, it functions to rebate a portion of the property taxes a person has already paid. This is easily seen in the context of a taxpayer whose income tax liability exceeds the amount of the homestead credit for which the taxpayer qualifies. In such a case, the taxpayer does not receive a refund check; rather the taxpayer receives a rebate in the form of an equivalent reduction in the amount of income tax due. The amount of money

---

<sup>3</sup> *Moshier v Whitewater Twp*, 277 Mich App 403, 408 n 2; 745 NW2d 523 (2007).

<sup>4</sup> A new bulletin on this topic was released in 2010. STC Bulletin No. 7 of 2010, Poverty Exemption, May 24, 2010. Its definition of income is consistent with the 1995 bulletin.

<sup>5</sup> The hearing referee’s proposed opinion cites page 5 of Bulletin No. 5 of 1995 as the sole authority for its holding that “Petitioner’s homestead property *tax refund* credit shall be counted as available income.” (Emphasis added.) Page 5 of the bulletin contains no such statement, however. Indeed, the bulletin actually states, on page 6, that “[i]ncome does not include . . . [t]ax refunds . . .”

received and the basis on which it is received is identical whether it is received as a reduction in the income taxes due or a payment of the amount of the rebate that exceeds the individual's income tax liability.

Because the \$1,093 received by petitioner through the property tax credit was in fact a tax refund and refunds are not considered income, the MTT should not have counted this money toward petitioner's income.<sup>6</sup> When petitioner's income is properly calculated, it falls below the threshold amount that would make her ineligible for the poverty exemption.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro  
/s/ Jane M. Beckering

---

<sup>6</sup> The hearing referee's proposed opinion and judgment (which the MTT adopted) noted that there was evidence that petitioner had other unreported income. However, that evidence was disputed, and the findings of fact set forth by the referee plainly do not include any finding that petitioner actually received unreported income or, if so, how much. The MTT's final opinion bases its ruling solely on its conclusion that "when adding Petitioner's 2008 property tax credit to Petitioner's 2009 Social Security income, Petitioner's annual household income exceeds the \$10,400 threshold established by Respondent." MTT Final Opinion and Judgment, ¶ 4, p 3. We decline to uphold the MTT's ruling on the basis of disputed allegations, the evidence of which the MTT itself did not find convincing enough to include in its official findings of fact.