

STATE OF MICHIGAN
COURT OF APPEALS

RUTH MAGEN,

Plaintiff-Appellee,

v

DEPARTMENT OF TREASURY,

Defendant-Appellant.

FOR PUBLICATION
February 21, 2013

No. 302771
Court of Claims
LC No. 09-000015-MT

Advance Sheets Version

Before: M. J. KELLY, P.J., and WILDER and SHAPIRO, JJ.

WILDER, J. (*dissenting*).

I respectfully dissent. I would reverse and remand for entry of summary disposition in favor of defendant because plaintiff was not entitled to deduct from her income any funds distributed from her traditional IRA.

A trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(10) is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). The motion is properly granted if the evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Michalski v Bar-Levav*, 463 Mich 723, 730; 625 NW2d 754 (2001). This issue also involves the interpretation of a statute, which is a question of law that this Court reviews de novo. *O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 493; 791 NW2d 853 (2010).

The primary goal of judicial interpretation is to ascertain and give effect to the intent of the legislative body that created the language. See *Kessler v Kessler*, 295 Mich App 54, 60; 811 NW2d 39 (2011). The first factor in determining legislative intent is the specific language of the legislation. *Capitol Props Group, LLC v 1247 Center Street, LLC*, 283 Mich App 422, 434; 770 NW2d 105 (2009). "The language of a statute must be accorded its plain and ordinary meaning." *Kessler*, 295 Mich App at 59-60. Furthermore, "[w]hen a statute's language is clear and unambiguous, judicial construction or interpretation is not necessary or permissible." *PIC Maintenance, Inc v Dep't of Treasury*, 293 Mich App 403, 408; 809 NW2d 669 (2011).

Generally, Michigan's income tax liability is derived from a taxpayer's federal adjusted gross income. However, during the tax years relevant in the instant case, Michigan tax law

provided: “Deduct the following to the extent included in adjusted gross income: (i) Retirement or pension benefits received from a federal public retirement system or from a public retirement system of or created by this state or a political subdivision of this state.” MCL 206.30(1)(f)(i).¹ Further, during the relevant tax years, MCL 206.30(8) defined “retirement or pension benefits” as “distributions from all of the following:”

(a) Except as provided in subdivision (d), qualified pension trusts and annuity plans that qualify under section 401(a) of the internal revenue code, including all of the following:

* * *

(iii) Employee annuities or tax-sheltered annuities purchased under section 403(b) of the internal revenue code by organizations exempt under section 501(c)(3) of the internal revenue code, or by public school systems.

* * *

(d) Retirement and pension benefits do not include:

(i) Amounts received from a plan that allows the employee to set the amount of compensation to be deferred and does not prescribe retirement age or years of service. These plans include, but are not limited to, all of the following:

(A) Deferred compensation plans under section 457 of the internal revenue code.

(B) Distributions from plans under section 401(k) of the internal revenue code other than plans described in subdivision (a)(iv).

(C) Distributions from plans under section 403(b) of the internal revenue code other than plans described in subdivision (a)(iii).

In ruling in favor of plaintiff, the trial court concluded that “[b]y moving his retirement account, [Magen] did nothing to change [the monies’] character as ‘benefits.’ They were still ‘benefits’ realized from his retirement plan because of his MSU employment.” The trial court further stated:

Treasury’s mistake is its focus on the word “distribution.” The statute does not use the word “distribution”—but rather uses the word “benefits.” Presumably, the legislature used the word “benefit” for a purpose. It appears that their intention was to permit public employees, such as Dr. Magen, to receive a full deduction for retirement “benefits” as long as such benefits were accrued and

¹ This provision has since been amended. See 2011 PA 38.

received because of their public service. It is inconsistent with that policy to impose a tax on such benefits simply because the retiree decides, after retirement, to move his/her account to a private IRA.

The trial court's view that the statute does not use the word "distribution"—but rather uses the word "benefits"—was plainly incorrect. The statute precisely defines "retirement or pension benefits" as "distributions" from certain sources. MCL 206.30(8). Thus, contrary to the trial court's interpretation, the benefits at issue are defined *exclusively as distributions*.

There is no dispute that the distributions at issue were from a private IRA. Distributions from private IRAs are not one of the enumerated distributions eligible as deductions to taxable income. While plaintiff argues, and the majority agrees, that there is no public-policy basis to treat as taxable income funds distributed from a private IRA that originated in a tax-free 403(b) account, the plain language of the statute demonstrates clearly the Legislature's intent to distinguish between distributions from "public" retirement accounts and "private" retirement accounts. Moreover, the statutory scheme makes no room for inquiry into the original source of the funds being distributed. Thus, while plaintiff, the trial court, and the majority may disagree with this policy, the Legislature has clearly chosen to give preferential treatment to distributions from public retirement accounts by limiting the designation of funds eligible for deduction to public rather than private accounts.

In support of its analysis affirming the result reached by the trial court, the majority notes that 403(b) funds deposited into, and then distributed from, a bank account or an ordinary investment account would not be taxable when distributed, and then argues by analogy that 403(b) funds deposited into an IRA should similarly not be taxable when those funds are later distributed from the IRA. However, the reason withdrawals from a bank account or an investment account are not subject to income tax upon distribution is that the distribution of funds from these types of accounts would not be considered income. As noted previously, for state income tax purposes, a taxpayer's income is derived from the taxpayer's federal adjusted gross income. The IRS defines "gross income" as "all income from whatever source derived." 26 USC 61(a); see also *Knight v Internal Revenue Comm'r*, 552 US 181, 184; 128 S Ct 782; 169 L Ed 2d 652 (2008). "Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets . . ." *Eisner v Macomber*, 252 US 189, 207; 40 S Ct 189; 64 L Ed 521 (1920) (citations and quotation marks omitted). A person withdrawing money from an investment account or bank account is moving assets already earned and not necessarily deriving "gain" or "wealth" by the withdrawal of those assets.²

In contrast, withdrawals and disbursements from traditional IRAs are specifically considered income subject to taxation under the Internal Revenue Code. See 26 USC 408(d)(1) ("[A]ny amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee . . ."); *Taproot Admin Servs, Inc v Internal Revenue*

² Interest earned on funds held in an investment account or a bank account constitutes an addition to wealth and, as such, *is* considered income. 26 USC 61(a)(4).

Comm'r, 679 F3d 1109, 1112 n 4 (CA 9, 2012) (noting that one of the hallmark traits of a traditional IRA is “the inclusion of distributions in gross income”). Hence, there is no question that the disbursements from the IRA are to be included in the taxpayer’s gross income.

The majority concedes that IRA withdrawals are generally taxable, but it concludes that such withdrawals are taxable only on the basis that funds deposited into an IRA become “tax deferred” until such time as the funds are withdrawn. The majority then reasons that the monies at issue here, which were unquestionably distributed from plaintiff’s IRA, should not be taxed because the monies deposited into plaintiff’s traditional IRA were regarded as state-nontaxable income in the first instance. I disagree with this analysis. While the deposits of funds into traditional IRAs may have a certain “tax deferral” *effect*, the statutory scheme actually refers, not to tax *deferral*, but to *contributions* and *deductions* instead. Thus, taxpayers can deduct *contributions* to a traditional IRA from their income, *Rousey v Jacoway*, 544 US 320, 323; 125 S Ct 1561; 161 L Ed 2d 563 (2005), citing 26 USC 219(a), and upon *distribution* from the IRA, these same funds are then taxable as income.³

As is clear from the language of MCL 206.30(1)(f), the Legislature recognized that public retirement monies, such as those from 403(b) accounts, are treated as part of annual gross income under the Internal Revenue Code, but it then allowed for the distribution of these monies to be *deducted* from annual gross income, thereby creating a nontaxable *effect*. Because the Legislature provided no such deduction for distributions from a traditional IRA, the majority here sanctions a deductible event not contemplated by the plain language of the statute, for the reason that it perceives a contrary result to be absurd. It is not for this Court to judge the wisdom or desirability of legislative policy; instead, our role simply is to interpret and give effect to the words in the statute. *Calovecchi v Michigan*, 461 Mich 616, 624; 611 NW2d 300 (2000). In any event, I perceive no absurd result in a legislative determination to treat retirement accounts available only to public employees more favorably than private, traditional retirement accounts. For one thing, the investment risk associated with public retirement accounts could plausibly be much less than the level of risk associated with private, traditional IRAs. Given the variable levels of risk that might be available under each vehicle, a private IRA might render a higher investment return, even after tax, than would a less risky public retirement account, and it would not be irrational, and is certainly within its prerogative, for the Legislature to provide more favorable tax treatment to the less lucrative retirement vehicle available to public employees.

For the above reasons, I respectfully dissent.

/s/ Kurtis T. Wilder

³ Note also that a taxpayer can contribute previously taxed income into a Roth IRA, and deduct income distributions from the Roth. See *Taproot Admin Servs*, 679 F3d at 1112 n 4.