

Order

Michigan Supreme Court
Lansing, Michigan

June 14, 2024

Elizabeth T. Clement,
Chief Justice

166549

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

PROQUEST, LLC,
Petitioner-Appellant,

v

SC: 166549
COA: 362977
Tax Tribunal: 22-001726

TOWNSHIP OF YPSILANTI,
Respondent-Appellee.

On order of the Court, the application for leave to appeal the November 30, 2023 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

WELCH, J. (*concurring*).

Plaintiff attempted to claim a tax exemption for eligible manufacturing personal property (EMPP) by timely mailing the required paperwork to the local assessor through the United States Postal Service (USPS) on February 19, 2022. This was before the statutory deadline of February 22, 2022.¹ As the result of what appear to have been errors on the part of the USPS, the parcel was never delivered to the assessor and was instead returned to the sender on March 29, 2022—38 days later. At this point, it was too late for plaintiff to file a late request for an EMPP exemption under MCL 211.9m(2)(c) because the March board of review had already adjourned.

At issue in this case is whether service of the appeal to the local assessor was properly executed. MCL 211.9m(2)(c) provides, in relevant part, as follows for requesting an EMPP tax exemption and appealing the denial of such a request:

For purposes of a combined document delivered by the United States Postal Service, the delivery is timely if the postmark date is on or before the delivery deadline prescribed in this subdivision. If the combined document prescribed in this section is not timely delivered to the assessor of the township or city, a

¹ While the general statutory deadline is February 20, that date fell on a Sunday in 2022, and the following day was a legal holiday. See MCL 211.9m(2)(c).

late application may be filed directly with the March board of review before its final adjournment by submitting the combined document prescribed in this section. The board of review shall not accept a filing after adjournment of its March meeting. An appeal of a denial by the March board of review may be made by filing a petition with the Michigan tax tribunal within 35 days of the denial notice. [Emphasis added.]

After plaintiff's request for a tax exemption was returned by the post office, plaintiff filed a petition with the Michigan Tax Tribunal (MTT) regarding the EMPP claim. The MTT dismissed the petition after determining that it lacked jurisdiction because of plaintiff's failure to comply with MCL 211.9m(2)(c). On appeal, the Court of Appeals affirmed the MTT's ruling and held that although MCL 211.9m(2)(c) allows a late-received request for a EMPP tax exemption to be considered timely if postmarked before the applicable deadline, the documents must also actually be delivered by the USPS to the relevant assessor. If the parcel is never delivered or received, then it cannot be deemed timely under MCL 211.9m(2)(c). The Court of Appeals therefore held that the MTT had correctly dismissed plaintiff's petition.

I find no error in the Court of Appeals' interpretation or application of MCL 211.9m(2)(c) as the statute clearly dictates the outcome in this matter. I write simply to point out the inequities of this situation. Plaintiff appears to have made a good faith effort to comply with the statutory requirements by timely mailing a request of an EMPP exemption several days before the statutory deadline. Plaintiff was then deprived of the ability to invoke the statutory back-up option of filing a late request with the March board of review because of unforeseen errors and delays on the part of the USPS, which resulted in plaintiff's parcel remaining in postal limbo for 38 days. While MCL 211.9m(2)(c) allows for late appeals to the March board of review, the statute also provides that no appeals can occur after the board has adjourned. Thus, the late appeal provision provides no help to plaintiff given the short time period between the filing deadline and the adjournment of the March board of review. In short, plaintiff has no statutory remedy and the MTT lacks equitable authority to account for plaintiff's unique circumstances.

I invite the Legislature to consider amending MCL 211.9m(2)(c) and to work with the MTT and local assessor offices to avoid this type of inequitable result in the future. Options might include giving taxpayers more statutory options for delivery than the USPS, authorizing the digital submission of tax exemption requests, or providing the March board of review or the MTT with some level of discretion or equitable authority to consider delayed tax filings under unique circumstances.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 14, 2024

Clerk