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STATE OF MICHIGAN

COURT OF APPEALS

SUE A. WILKS and MATTHEW W. WILKS, Petitioners-Appellees, v DEPARTMENT OF TREASURY, Respondent-Appellant.	FOR PUBLICATION August 14, 2026 2:35 PM No. 375272 Tax Tribunal LC No. 24-000806

Before: KOROBKIN, P.J., and RIORDAN and MARIANI, JJ.

RIORDAN, J. (*dissenting*).

I respectfully dissent. The applicable statute is straightforward and unambiguous, and the Michigan Tax Tribunal has misapplied it in the matter before us.

MCL 211.7cc, which concerns the principal residence exemption (PRE), provides:

> (3) . . . [A] person is not entitled to an exemption under this section in any calendar year in which any of the following conditions occur:
>
> (a) That person has claimed a substantially similar exemption, deduction, or credit, regardless of amount, on property in another state. . . . A claim for a substantially similar exemption, deduction, or credit in another state occurs at the time of the filing or granting of a substantially similar exemption, deduction, or credit in another state. *If the assessor of the local tax collecting unit, the department of treasury, or the county denies an existing claim for exemption under this section, an owner of the property subject to that denial cannot rescind a substantially similar exemption, deduction, or credit claimed in another state in order to qualify for the exemption under this section for any of the years denied*. . . .

* * *

(c) *That person has filed a nonresident Michigan income tax return*, except active duty military personnel stationed in this state with his or her principal residence in this state.[1] [Emphasis added.]

Thus, MCL 211.7cc(3)(c) provides that a person is ineligible for the PRE when "[t]hat person has filed a nonresident Michigan income tax return," which originally occurred here for the tax years in question. Further, there is no language in MCL 211.7cc to provide that a person may amend his or her tax return to change the filing status from nonresident to resident in order to become retroactively eligible for the PRE.

As our Supreme Court recognizes, in 2017, the Legislature added the italicized language in MCL 211.7cc(3)(a) "to preclude property owners from obtaining the benefit of the PRE and a similar out-of-state tax benefit in the same year." *Campbell v Dep't of Treasury*, 509 Mich 230, 243-244; 984 NW2d 13 (2022) (discussing MCL 211.7cc, as amended by 2017 PA 121). The Legislature clearly indicated its reason for adding the anti-rescission language of MCL 211.7cc(3)(a) was " 'to correct any misinterpretation of legislative intent' " regarding an earlier case in which the Tax Tribunal allowed property owners to rescind an out-of-state PRE equivalent to claim a Michigan PRE. *Campbell*, 509 Mich at 243 n 5, quoting 2017 PA 121, enacting § 2.[2]

Petitioners Sue A. and Matthew W. Wilk, who do not dispute that they filed a nonresident tax return in 2021 listing Sue as not being a resident of Michigan, argue that they still qualify for a Michigan PRE for tax years 2020 and 2021 because they amended their 2021 tax return after they learned that they had "mistakenly" only checked the box for Matthew's residency status in Washington. By ruling that the statute now allows petitioners a PRE for tax years 2020 and 2021, Respondent Department of Treasury contends that the Tax Tribunal misapplied MCL 211.7cc(3)(a) and (c) and is endorsing financial gaming by allowing petitioners to potentially claim dual state tax benefits from the states of Washington and Michigan. I agree with the Department of Treasury's contention.

By revising MCL 211.7cc(3)(a), our Legislature specifically sought to prevent taxpayers from amending their taxes to seek the most beneficial combination of exemptions from different states in hindsight. See *Campbell*, 509 Mich at 243-244. While, as the majority correctly points out, petitioner Sue's action of declaring residency in the State of Washington may not have resulted in her gaining an income tax advantage as Washington does not have an income tax on individuals, there still is a very real possibility she and her husband Matthew may have benefited in other ways such as by claiming the Washington Working Families Tax Credit, gaining an avoidance of state taxes on retirement income, by accessing local property tax exemptions, or by achieving some other combination of tax benefits.[3] Regardless, by its language, MCL 211.7cc(3)(c) prohibits

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[1] The record does not reflect that petitioner Sue A. Wilk was an active-duty member of the military, and the parties do not make any argument regarding the military personnel exception.

[2] See *Walczak Trust v Berrien Co*, unpublished opinion of the Michigan Tax Tribunal, issued January 10, 2017 (Docket No. 16-001208).

[3] The record does not show that the Tax Tribunal considered these potentially advantageous alternative reasons for petitioner Sue to declare herself a Michigan nonresident.

petitioners from amending their 2021 return to retroactively change petitioner Sue's residency status from Washington to Michigan and, therefore, the Tax Tribunal erred by reversing respondent's denial of petitioners' PRE claim for tax years 2020 and 2021. By allowing petitioners' amendment to show a 2020 and 2021 residency in Michigan, the Tax Tribunal opened the door for potential gamesmanship resulting in the reaping of financial benefits from two states. See *Campbell*, 509 Mich at 236.

The majority reasons that "just as a litigant is bound by their most recently filed amended pleading, which supersedes the original pleading, an amended return effectively replaces the original return." (Internal citation omitted.) Thus, the majority reasons, petitioners' amended tax return supersedes the original tax return for residency purposes. However, while I do not dispute that amended returns are similar to amended pleadings in certain general respects, I believe that this analogy goes too far. For example, MCL 205.27a(2) provides that a person who, fraudulently or otherwise, fails to notify the Department of Treasury of an upward "modification of federal tax liability" is subject to both the additional state tax owed, as well as penalties and interest, upon proceedings initiated by the Department. In that case, I doubt that an amended return would supersede the original return, thereby allowing the taxpayer to avoid penalties and interest. Presumably, this is why our tax statutes expressly contemplate the filing of amended returns in certain instances and provide for the specific effects of doing so.[4] MCL 211.7cc includes no such language that would allow petitioners to file an amended tax return to retroactively claim the PRE.

Nor does MCL 211.7cc include any other procedure that would allow petitioners to do so. The absence of such a procedure is particularly noteworthy because MCL 211.7cc does provide a procedure for rescinding a PRE claim. See MCL 211.7cc(5) ("[N]ot more than 90 days after exempted property is no longer used as a principal residence by the owner claiming an exemption, that owner shall rescind the claim of exemption by filing with the local tax collecting unit a rescission form prescribed by the department of treasury."). Arguably, the fact that the Legislature included a specific procedure for rescinding a PRE claim, but did not include a comparable procedure for retroactively claiming the PRE, suggests that it did not intend to allow for such retroactive claims. See *People v Lewis*, 503 Mich 162, 165-166; 926 NW2d 796 (2018) ("[W]hen

[4] See, e.g., MCL 205.238(1) ("If the federal authorities increase or decrease the amount of the federal transfer tax, *an amended return shall be filed* with the department showing all changes made in the original return and the amount of increase or decrease in the federal transfer tax within 60 days after a final determination if there is an increase in the amount owed the state, or within 1 year after a final determination if there is a refund owed by the state.") (emphasis added); MCL 205.21 ("If a taxpayer does not satisfy a tax liability or makes an excessive claim for a refund as a result of reliance on erroneous current written information provided by the department, the state treasurer shall waive all criminal and civil penalties provided by law . . . if the taxpayer makes a written request for a waiver, *files a return or an amended return*, and makes full payment of the tax and interest.") (emphasis added). See also *Clarke-Gravely Corp v Dep't of Treasury*, 412 Mich 484, 488; 315 NW2d 517 (1982) (holding the taxpayers' "right to interest on the refunds generated by the 1972 and 1973 amended returns extends only from the time the tax commissioner accepted those amended returns").

the Legislature includes language in one part of a statute that it omits in another, it is assumed that the omission was intentional.").

To summarize, petitioners' PRE for tax years 2020 and 2021 should be denied because petitioner Sue claimed to be a resident of the State of Washington and declared on her 2021 Michigan tax return that she was a nonresident of this state. The plain language of MCL 211.7cc(3)(a) and (c) is directly on point and governs the outcome of the matter before us. The Michigan Tax Tribunal has misapplied the law, and its decision should be reversed.[5]

/s/ Michael J. Riordan

[5] Further, the establishment of a new principal residence requires the abandonment of the intent to return to the former property as a permanent home. See MCL 211.7dd(c). There can be only one principal residence. *Id*. Given the facts of this case, the Tax Tribunal should have determined whether petitioner Sue's Michigan property met the definition of a principal residence under MCL 211.7dd(c). Here, that inquiry requires a determination of the state that Sue intended to return to, and when and if that intent changed. Her occupancy of property in Michigan does not answer the question of whether she established a new principal residence as defined by Michigan property law. See *id*. Nor does it address the Department of Treasury's contention that petitioner Sue failed to "occupy the property as a principal residence." See *Schubert v Dep't of Treasury*, 322 Mich App 439, 453-454; 912 NW2d 569 (2017). The Tax Tribunal's failure to resolve the question of her intent regarding residency further requires reversal.