STATE OF MICHIGAN

COURT OF APPEALS

DAVID S. BELL and MARY E. BELL, Petitioners-Appellants,	UNPUBLISHED February 9, 2012
v	No. 300148 Tax Tribunal
COUNTY OF BERRIEN, Respondent-Appellee.	LC No. 00-382473

Before: MURPHY, P.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Petitioners appeal as of right from the Michigan Tax Tribunal's order dismissing petitioners' appeal as untimely. We affirm.

Petitioners own two parcels of real property located in Berrien County. On June 8, 2009, petitioners received two letters from the Berrien County Treasurer's Office regarding their principal residence exemptions (PREs) for the years 2006, 2007, and 2008.[1] The letters stated that "[t]he Berrien County Treasurer's office had been asked to assist the Michigan Department of Treasury in reviewing homestead properties within Berrien County. . . ." The letters further provided that "[b]ased upon the information received, we believe that the homestead exemption . . . for the years 2006, 2007, and 2008 should be denied."

Included with the letters was a "Notice of Denial of Homeowner's Principal Residence Exemption" for each parcel of property for the years 2006, 2007, and 2008. The notices indicated that the principal residence exemption was denied because "the owner is not a Michigan resident." The notices were sent on Treasury form 4075 and provided: "With this notice, you are notified that the *Principal Residence Exemption* on the property identified below has been denied. If you have questions about the denial, you may contact your local government or follow the appeal procedures specified below." (Emphasis in original). The bottom portion of the notices, under the heading, "Homeowner's Right to Appeal," stated, "If you disagree with

[1] The PRE is also known as the homestead exemption and is governed by MCL 211.7cc and MCL 211.7dd, which are provisions contained in the General Property Tax Act, MCL 211.1 *et seq.*; *Eldenbrady v City of Albion*, ___ Mich App ___; ___ NW2d ___ (2011), slip op p 3.

this denial, you may request an appeal. Explain your reasons in writing within 35 days of the date of this notice." Appeals were to be sent to the Michigan Tax Tribunal Residential Small Claims Division.

At some point after receiving the notices, petitioners allege that they contacted the Berrien County Treasurer's Office.[2] According to petitioners, the county asked petitioners to supply additional information regarding petitioners' residency status.[3] In correspondence dated August 17, 2009, petitioners' counsel provided documentation to the county, including petitioner Mary Bell's driver's license, voter registration card, Michigan tax return, and various other items such as banking statements. Additional documentation relating to petitioner David Bell was provided to the county by way of correspondence dated August 31, 2009. It appears from correspondence from petitioner's counsel to the county that the county verbally informed petitioners on September 10, 2009, that it had not changed its decision to deny the principal residence exemption. Berrien County sent petitioners tax invoices dated September 11, 2009, for the years 2006, 2007, and 2008, as a result of the denial of the exemption.

Petitioners filed an appeal with the Tax Tribunal on October 13, 2009. On August 20, 2010, the Tax Tribunal issued an order of dismissal; concluding that the petition was untimely because "it was not received within 35 days of the receipt of actual notice of an assessment change as required by MCL 211.27b." Petitioners moved for reinstatement and/or reconsideration, arguing that their appeal was not untimely because it "was filed on October 13, 2009, which was less than 35 days after the Invoice and Denial of Homestead, which was dated September 11, 2009." Further, petitioners argued that any delay in filing their appeal after receiving the June 8, 2009, notices of denial was caused by Berrien County's multiple requests for documentation and, therefore, that the appeal period should have been tolled. The county did not file a response to the motion for reinstatement. On November 16, 2010, the Tax Tribunal denied petitioners' motion for reinstatement.[4]

"The existence of jurisdiction is a question of law that this Court reviews de novo." *Trostel, Ltd v Dep't of Treasury*, 269 Mich App 433, 440; 713 NW2d 279 (2006). "Absent an allegation of fraud, this Court's review of a tax tribunal decision is limited to determining whether the tribunal committed an error of law or applied the wrong legal principles." *AERC of Michigan, LLC v Grand Rapids*, 266 Mich App 717, 722; 702 NW2d 692 (2005). The Tax Tribunal's findings of fact "are accepted as final if they are supported by competent, material, and substantial evidence on the whole record." *Speaker-Hines & Thomas, Inc v Dep't of*

[2] The exact date on which petitioners contacted the county treasurer's office is not clear from the record. The record reveals that an attorney contacted the county treasurer's office on behalf of petitioners by way of correspondence dated August 17, 2009.

[3] The record does not contain any written correspondence from the county requesting additional information.

[4] The Tax Tribunal found that it had erred in its August 20, 2010, dismissal order to the extent that it relied on MCL 211.27b; however, the error was de minimis because the Tax Tribunal did not have authority to hear the appeal under MCL 211.7cc and MCL 205.735a.

Treasury, 207 Mich App 84, 87; 523 NW2d 826 (1994). This Court reviews de novo the interpretation of statutes, which is a question of law. *AERC of Michigan*, 266 Mich App at 722.

MCL 211.1 provides "[t]hat all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.7cc(1) provides a homestead exemption if the property owner claims a principle residence exemption. MCL 211.7cc(6) provides in pertinent part:

> (6) Except as otherwise provided in subsection (5), if the assessor of the local tax collecting unit believes that the property for which an exemption is claimed is not the principal residence of the owner claiming the exemption, the assessor may deny a new or existing claim by notifying the owner and the department of treasury in writing of the reason for the denial and advising the owner that the denial may be appealed to the residential and small claims division of the Michigan tax tribunal within 35 days after the date of the notice. . . . If the assessor denies an existing claim for exemption, the assessor shall remove the exemption of the property and, if the tax roll is in the local tax collecting unit's possession, amend the tax roll to reflect the denial and the local treasurer shall within 30 days of the date of the denial issue a corrected tax bill for any additional taxes. . . .

The Tax Tribunal's jurisdiction to hear an appeal from the denial of an exemption under MCL 211.7cc(6) is governed by MCL 205.735a(6). MCL 205.735a(6) provides in relevant part: "the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination."

Petitioners concede that their appeal was filed more than 35 days after receiving the June 8, 2009, notices of denial. However, petitioners contend that the September 11, 2009, tax invoices constituted the "final decision, ruling, or determination" with regard to the denial of the exemption and, therefore, their October 13, 2009, appeal was timely. We disagree.

"MCL 205.735[a] is a jurisdictional statute and the time requirements for filing an appeal are jurisdictional in nature." *W A Foote Mem'l Hosp v City of Jackson*, 262 Mich App 333, 338; 686 NW2d 9 (2004). The plain language of MCL 205.735a(6) requires that all petitions be submitted to the Tax Tribunal "within 35 days after the final decision, ruling, or determination." An untimely filing deprives the Tax Tribunal of jurisdiction to hear the petition. *W A Foote Mem'l Hosp*, 262 Mich App at 338.

Petitioners received a notice of denial for each parcel of property on June 8, 2009. Each notice provided: "With this notice, you are notified that the *Principal Residence Exemption* on the property identified below has been denied." Additionally, each notice explained that petitioners' exemptions were being denied because the owner was not a Michigan resident. Finally, the notices informed petitioners of their right to appeal the decision to the Tax Tribunal within 35 days after the date of the notice. Both notices complied with the requirement of MCL

211.7cc(6) and clearly stated that petitioners' PREs had been denied. The 35-day appeal period began to run at this point.[5] Petitioners did not file their petition until October 13, 2009, well beyond the 35-day period. Therefore, the petition was untimely.

In *PIC Maint, Inc v Dep't of Treasury*, ___Mich App ___; ___NW2d ___ (2011), the petitioner argued the statutory appeal period should have been tolled while he was communicating with the Department of Treasury. In support, the petitioner cited *Curis Big Boy, Inc, v Dep't of Treasury*, 206 Mich App 139; 520 NW2d 369 (1994). The *PIC Maint* Court; however, rejected the petitioner's argument, stating:

> Contrary to [the] petitioner's argument, *Curis Big Boy, Inc*, did not explicitly hold that evidence of negotiation with the respondent would have tolled the statutory appeal period. [The] Petitioner in this case does not cite any authority for its argument that the statutory appeal period is tolled if the parties are negotiating. [*PIC Maint*, slip op at 5.]

Like the petitioner in *PIC Maint*, petitioners here have cited no authority to support their argument that the statutory appeal period was tolled while they communicated with the county. The Tax Tribunal's subject matter jurisdiction is governed by MCL 205.735a(6), and nothing in the plain language of MCL 205.735a(6) provides for tolling the 35-day appeal period.[6]

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

---

[5] Petitioner's counsel noted at oral arguments that it would have been prudent to file an appeal with the Tax Tribunal within the 35-day time period even though petitioner was attempting to negotiate with Berrien County.

[6] We acknowledge that the county has stipulated that it has no objection to reinstatement of the appeal, and we are sympathetic to petitioners' position. However, we cannot rewrite the plain terms of the jurisdictional statute here involved. The June 8, 2009, notice clearly stated that the exemption was denied. The dissent places much significance on the fact that the county executed a stipulation that it presented to the Tax Tribunal that provided that the county "did not make a determination as to the residency status of Petitioners until either September 10, 2009, or September 11, 2009[.]" The record contains no correspondence *from* the county to petitioners between the June 8, 2009, notice and the issuance of the tax invoices. The stipulation appears to be an attempt to confer jurisdiction on the Tax Tribunal as petitioners failed to timely appeal from the June 8, 2009, notice.

STATE OF MICHIGAN

COURT OF APPEALS

DAVID S. BELL and MARY E. BELL, Petitioners-Appellants,	UNPUBLISHED February 9, 2012
v	No. 300148 Tax Tribunal
COUNTY OF BERRIEN, Respondent-Appellee.	LC No. 00-382473

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

MURPHY, C.J. (*dissenting*).

Because I find that petitioners' appeal to the Michigan Tax Tribunal (MTT) regarding their entitlement to a principal residence exemption (PRE)[1] was timely under MCL 211.7cc(6) and MCL 205.735a(6) and that the MTT therefore had jurisdiction, I respectfully dissent. I would reverse the MTT's ruling and remand the case for further proceedings.

In the absence of fraud, our review of a decision issued by the MTT is limited to determining whether it erred in applying the law or adopted a wrong principle, and the MTT's factual findings are conclusive if, on the whole record, they are supported by competent, material, and substantial evidence. *Klooster v City of Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011); *Mich Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994); *Eldenbrady v City of Albion*, __ Mich App __; __ NW2d __ (2011), slip op at 2.

The MTT found that it lacked authority to hear petitioners' appeal under MCL 211.7cc and MCL 205.735a because the petition was not filed within the requisite 35-day appeal period. An untimely filing deprives the MTT of jurisdiction to consider a petition, necessitating dismissal. *Leahy v Orion Twp*, 269 Mich App 527, 532; 711 NW2d 438 (2006). The MTT "is at liberty to raise and decide the question of its own jurisdiction on its own motion and at any time." *Id.*

[1] The PRE is also known as the homestead exemption and is governed by MCL 211.7cc and MCL 211.7dd, which are provisions contained in the General Property Tax Act (GPTA), MCL 211.1 *et seq.* *Eldenbrady v City of Albion*, __ Mich App __; __ NW2d __ (2011), slip op at 3.

MCL 211.7cc(6) provides, in part, that "the assessor may deny a new or existing [PRE] claim by notifying the owner and the department of treasury in writing of the reason for the denial and advising the owner that the denial may be appealed to the residential and small claims division of the Michigan tax tribunal within 35 days after the date of the notice." MCL 205.735a(6) provides, in part, that in matters not involving assessments, "the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination." Reading these provisions together in harmonious fashion,[2] a taxpayer has 35 days to file an MTT appeal by way of petition commencing from the date of a notice which reflected that a final decision or determination to deny a PRE had been made.

I have reviewed the Michigan Department of Treasury forms (Notice of Denial of Homeowner's PRE) dated June 8, 2009, which were mailed to petitioners. These forms provided that the PRE "has been denied," "was denied," and that an appeal filed within 35 days of the notice date could be pursued if there was disagreement with "this denial." Accordingly, the notice in the standard treasury forms reflected that a final decision or determination to deny a PRE had been made. However, the cover letters sent by the Berrien County Treasurer that accompanied the standard treasury notice forms stated that "we *believe* the homestead exemption . . . *should be* denied" and that petitioners could call the treasurer's office if they had "any questions or concerns." (Emphasis added.) This language arguably suggests that a *final* decision or determination to deny a PRE had yet to be made and that petitioners could have some input on any final resolution. That said, if all that we had were these documents, the standard treasury notice forms and the respondent county's cover letters, I would agree with the majority's holding.[3] However, petitioners and the county itself executed a stipulation that was submitted to the MTT and which provided that respondent county "did not make the determination as to the residency status of Petitioners until either September 10, 2009, or September 11, 2009[.]" This concession by the county effectively indicated that it had not made a final decision or determination to deny a PRE back on June 8, 2009, or that, if a preliminary decision or determination had been made on June 8, 2009, the county contemplated reassessing its position, accepted further documentation and information on the matter, and then waited until September 10 or 11, 2009, to make a final decision or determination to deny a PRE.

---

[2] Statutes that share a common purpose or relate to the same subject are *in pari materia* and must be read together as one law, even if the statutes contain no reference to one another and were enacted on different dates. *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998). If two statutory provisions lend themselves to a construction that is harmonious and avoids conflict, such a construction controls. *In re Project Cost & Special Assessment Roll for Chappel Dam*, 282 Mich App 142, 148; 762 NW2d 192 (2009); *Walters v Leech*, 279 Mich App 707, 710; 761 NW2d 143 (2008). "The object of the *in pari materia* rule is to effectuate the legislative purpose as found in harmonious statutes." *Id.*

[3] I recognize that the cover letters also provided, "An invoice for the non-homestead tax, interest, and penalty will be generated for each year denied 35 days from the date of this letter."

I acknowledge that with respect to subject-matter jurisdiction, i.e., the power to hear a case, a party may not stipulate to, waive, or consent to jurisdiction. *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011). However, respondent county stipulated not to jurisdiction but to the date on which it made a final decision or determination regarding a PRE, which certainly is a matter within the province of the county's authority. Who would know better than the county itself regarding when it made a final decision or determination on the PRE. The fact that the stipulation impacts resolution of the jurisdictional question is of no consequence. Moreover, given that the county disagrees substantively with petitioners on whether a PRE is available and that the county would not benefit by a finding that the MTT has jurisdiction, I cannot view the county's stipulation as constituting a questionable and improper maneuver in an attempt to circumvent the statutory scheme. There is no dispute that if September 10 or 11, 2009, was the date on which the 35-day period commenced running, the appeal was timely, where the petition was filed on October 13, 2009.

Finally, I note the following language in MCL 211.7cc(6):

> If the assessor denies an existing claim for exemption, the assessor shall remove the exemption of the property and, if the tax roll is in the local tax collecting unit's possession, amend the tax roll to reflect the denial and the *local treasurer shall within 30 days of the date of the denial issue a corrected tax bill* for any additional taxes with interest at the rate of 1.25% per month or fraction of a month and penalties computed from the date the taxes were last payable without interest or penalty. If the tax roll is in the county treasurer's possession, the tax roll shall be amended to reflect the denial and the *county treasurer shall within 30 days of the date of the denial prepare and submit a supplemental tax bill for any additional taxes*, together with interest at the rate of 1.25% per month or fraction of a month and penalties computed from the date the taxes were last payable without interest or penalty. [Emphasis added.]

If June 8, 2009, was indeed the definitive date on which the county made a final decision or determination to deny a PRE, the county would have been required to issue and submit corrected or supplemental tax bills to petitioners on or about July 8, 2009. This did not occur. The record contains corrected or supplemental tax bills for the years 2006 through 2008, and they are all dated September 11, 2009. This further supports the conclusion that a final decision or determination to deny a PRE did not actually occur on June 8, 2009, but instead occurred on September 10 or 11, 2009, as the county itself so stipulated.[4]

[4] I note that in petitioners' appellate brief, they state that they contacted the county shortly after receiving the June 2009 documents to discuss the matter "and commenced an ongoing dialogue regarding the residency status of Petitioners." Although petitioners did not submit an affidavit to that effect, the presence of ongoing communications and discussions between the parties would explain why the county did not issue corrected or supplemental tax bills in July 2009. Moreover, in an August 2009 letter from petitioners' counsel to the county treasurer, which was more than a year before the stipulation was signed, counsel wrote, "*Per your request*, please find enclosed the

For the reasons stated above, I would reverse the MTT's ruling and remand for further proceedings considering that the MTT erred in applying the law with respect to its jurisdiction. Accordingly, I respectfully dissent.

/s/ William B. Murphy

---

following information relating to David and Mary Bell's [PRE][.]" (Emphasis added.) In an October 2009 letter from petitioners' counsel to the county, counsel stated, "The purpose of this letter is to confirm our discussion which took place on September 10, 2009, wherein you indicated that our discussions and additional evidence . . . had not changed the . . . decision to deny the [PRE]." In my opinion, there were clearly communications, discussions, and negotiations between the county and petitioners between June and September 2009 and that it was not until September 2009 that a *final* decision was made to deny the PRE.