

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

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WILLIAM ROWE, JR.,

Plaintiff-Appellant,

V

THE CITY OF DETROIT,

Defendant-Appellee.

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UNPUBLISHED

July 19, 2002

No. 228507

Wayne Circuit Court

LC No. 00-014523-CP

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WILLIAM ROWE, JR.,

Plaintiff-Appellant,

V

THE CITY OF DETROIT,

Defendant-Appellee.

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No. 232878

MTT

LC No. 00-279122

Before: Zahra, P.J., and Neff and Saad, JJ.

PER CURIAM.

In these consolidated cases, plaintiff appeals as of right from a circuit court order of summary disposition in favor of defendant, the City of Detroit, in Docket No. 228507, and from a *sua sponte* order by the Michigan Tax Tribunal wherein it summarily dismissed plaintiff's case in Docket No. 232878. We reverse the Tax Tribunal's order, affirm the circuit court's order, and remand this matter to the Tax Tribunal for further proceedings.

I. Facts and Procedural History

Plaintiff, an owner of property in the City of Detroit (the City), alleges that the City maintains property tax "accounts" for each parcel of property in the City that is subject to

property tax.<sup>1</sup> According to plaintiff, thousands of these accounts show credited amounts reflecting overpayments made by taxpayers. Plaintiff filed a complaint in the circuit court, asked for class certification and sought to compel the City to return these property tax “overpayments” to the taxpayers under theories of conversion and unjust enrichment. In lieu of filing an answer, the City filed a motion asking the trial court to summarily dismiss plaintiff’s suit because the trial court lacked subject matter jurisdiction.<sup>2</sup> The circuit court granted the City’s motion and dismissed the case because it ruled that plaintiff’s requested refund “is in the nature of a tax refund and [is within] the exclusive jurisdiction of the tax tribunal.”

Therefore, plaintiff filed a petition in the Tax Tribunal and again requested the return of his property tax overpayments and the City sought to stay the proceedings in the Tax Tribunal pending the outcome of plaintiff’s appeal to this Court regarding the circuit court’s order of dismissal. The Tax Tribunal declined to grant the stay and, instead, *sua sponte* dismissed the case for lack of subject matter jurisdiction because plaintiff’s claim is for a refund of overpayments and does not “challenge to the assessments underlying the payment of property taxes . . . .”

Plaintiff filed applications for leave to appeal the orders of both forums and this Court consolidated the appeals to determine whether the circuit court or Tax Tribunal has subject matter jurisdiction over plaintiff’s action.

## II. Analysis

Plaintiff argues that the circuit court has subject matter jurisdiction over his case because he seeks the equitable return of an overpayment of monies remitted in excess of the property taxes owed. Because he does not seek to compel a refund or redistribution of a tax and does not seek review of the validity of the tax or the valuation of the property, plaintiff says this case does not fall under the scope of the Tax Tribunal’s limited exclusive jurisdiction. In contrast, the City asserts that this action is for the refund of property taxes and that, by couching his claims in equitable theories, plaintiff merely attempts to circumvent the original and exclusive jurisdiction of the Tax Tribunal.

Jurisdictional questions under MCR 2.116(C)(4) are questions of law that we review *de novo*. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). In the absence of fraud, this Court reviews the tribunal’s decisions to determine “whether the tribunal committed an error of law or adopted a wrong legal principle.” *Michigan Milk Producers Ass’n v Dep’t of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000).

“Circuit courts are courts of general jurisdiction, and have original jurisdiction over all civil claims and remedies ‘except where exclusive jurisdiction is given by the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution

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<sup>1</sup> In his complaint, plaintiff indicates that he plans to seek class certification with himself as the named representative. For simplicity, and because no class was certified below, we refer to “plaintiff” in the singular.

<sup>2</sup> MCR 2.116(C)(4).

or statutes of this state.” *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241, 602 NW2d 588 (1999), quoting MCL 600.605. The jurisdiction of the Tax Tribunal is granted by statute. *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239; 477 NW2d 492 (1991). The Tax Tribunal’s jurisdiction is set forth in MCL 205.731, which provides:

The tribunal’s exclusive and original jurisdiction shall be:

(a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.

(b) A proceeding for refund or redetermination of a tax under the property tax laws.

“The tribunal’s jurisdiction is based either on the subject matter of the proceeding (e.g., a direct review of a final decision of an agency relating to special assessments under property tax laws) or the type of relief requested (i.e., a refund or redetermination of a tax under the property tax laws).” *Wikman v Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982). It is the “longstanding policy” of this state to allow the Tax Tribunal, with its specific expertise, to decide nonconstitutional issues regarding tax bases and assessments. *Jackson Community College v Dep’t of Treasury*, 241 Mich App 673, 682; 621 NW2d 707 (2000). If a claim implicates whether the taxing authority followed statutory procedures, and requires factual determinations concerning the bases for the assessment, the Tax Tribunal is the appropriate forum. *Meadowbrook Village Associates v Auburn Hills*, 226 Mich App 594, 597; 574 NW2d 924 (1997).

Here, plaintiff insists that he merely requests the “return” of his “overpayments” and that this “refund” is not in the nature of a “tax refund” as contemplated in MCL 205.731(b). We disagree.

The “type of relief requested” by plaintiff is a *refund* of property taxes paid in excess of the billed amount because of taxpayer error. *Wikman, supra* at 631. Proceedings for the refund of a tax under the property tax laws are within the exclusive jurisdiction of the Tax Tribunal. MCL 205.731(b). The word “refund” is not defined under the Tax Tribunal Act and it is well-established that this Court “give[s] undefined statutory terms their plain and ordinary meanings.” *State Farm Fire & Cas v Old Republic Ins Co*, \_\_\_ Mich \_\_\_; 644 NW2d 715 (2002); MCL 8.3a. However, while “[w]e construe words and phrases in statutes according to the common usage of the language, [we] give technical words and phrases their ‘peculiar and appropriate’ meaning.” *Consumers Power Co v PSC*, 460 Mich 148, 163; 596 NW2d 126 (1999); MCL 8.3a. Black’s Law Dictionary, 7th ed., p 1285 (1999) defines “refund” as:

1. The return of money to a person *who overpaid*, such as a taxpayer who overestimated tax liability or whose employer withheld too much tax from earnings. 2. The money returned to a person who overpaid. [Emphasis added.]

Plaintiff admits that he remitted the alleged “overpayments” when he paid his property taxes and he now seeks the “return” of that money. This clearly constitutes a “refund” within the

customary meaning of the word. Therefore, and notwithstanding plaintiff's attempt to characterize his claims as unrelated to property taxes, a plain reading of the statute compels the conclusion that plaintiff's claims fall squarely within the Tax Tribunal's exclusive jurisdiction to conduct proceedings for property tax refunds.

However, plaintiff argues that Michigan case law requires a different result because plaintiff does not request that the circuit court or Tax Tribunal declare the underlying property tax unlawful or invalid. The Tax Tribunal appears to have agreed by dismissing the case because plaintiff did not challenge the underlying property tax assessments. We are not persuaded that the case law cited by plaintiff and the Tax Tribunal permits circuit court review of plaintiff's requested tax refund.

Plaintiff relies primarily on *Joy Management Co v City of Detroit*, 176 Mich App 722; 440 NW2d 654 (1989), overruled on other grounds, *Detroit v Walker*, 445 Mich 682; 520 NW2d 135 (1994), to support his claim that the circuit court has jurisdiction to rule on the return of his property tax overpayments. Joy Management owned a building in Detroit which was destroyed by fire. *Id.* at 724. Detroit claimed a lien on the insurance proceeds to cover unpaid property taxes and the insurance company issued a check naming both Joy Management and Detroit as payees. *Id.* at 725. Plaintiff filed a class action lawsuit against Detroit for the improper seizure of the insurance proceeds. *Id.* Detroit filed a motion under MCR 2.116(C)(4) and argued that the Tax Tribunal has exclusive jurisdiction because Joy Management was seeking a tax refund. *Id.* at 725-726. This Court disagreed and held that:

Plaintiff has challenged the legality of the *method* used by defendant to enforce collection of the property taxes. Resolution of this issue depends not on findings of fact, but on conclusions of law based upon the construction of §47 [MCL 211.47] [*Id.* at 728.]

*Joy Management* is clearly distinguishable from this case. While plaintiff questions the propriety of the City's failure to remit his refund, the underlying question remains whether and to what amount he is entitled in a refund, not the methods used to enforce collection.

Plaintiff and the Tax Tribunal also relied on *Romulus City Treasurer v Wayne County Drain Comm'r*, 413 Mich 728, 746; 322 NW2d 152 (1982). In *Romulus*, township and city treasurers and landowners sued the county drain commissioner for constructive fraud and alleged that the commissioner improperly used taxes specially assessed for the Revolving Drain Fund for administrative expenses. *Id.* at 733. Plaintiffs also claimed that several hundred thousand dollars in special assessment drain taxes, held in escrow, were earmarked for administrative expenses. *Id.* at 733-734. The landowners demanded a refund of the taxes paid and the city treasurers refused to release the funds to the defendant county. *Id.* at 734.

In deciding the appropriate forum for the landowners to seek a return of their taxes, the Supreme Court first considered whether the treasurers had standing in the suit on the basis of their refusal to turn over further tax money to the county. *Id.* at 739-740. The Court ruled that the treasurers had standing and that, under "extraordinary circumstances," such as the fraudulent collection or blatant misuse of public funds, a city treasurer may be relieved of his statutory duty to turn over the money to the county. *Id.* at 742-744. Under "the rule that equity will grant complete relief," the Court further held that, if such "extraordinary circumstances" conferred a

right on the treasurers to withhold the escrowed taxes from the county based on constructive fraud, the *circuit court* could decide whether the money should be returned to the taxpayers. *Id.* at 746. The Court further reasoned that, if the return of escrowed money were characterized as a traditional tax refund, after the circuit court determined a fraud occurred, the circuit court “would be in an intractable position” of having to then turn the case over to the Tax Tribunal to decide issues related to taxpayer refunds. *Id.* at 746-747. The Court concluded, however, that the record was insufficient to decide whether the treasurers properly withheld the funds from the county, so it declined to resolve whether the taxpayers’ request for their money back constitutes a refund within the Tax Tribunal’s jurisdiction under 205.731(b). *Id.*

Here, unlike *Romulus*, plaintiff asserts no allegation of fraud or other “extraordinary circumstances” that must be decided by the circuit court as a court in equity. Rather, while plaintiff couches his claim in tort theories, this case presents a straightforward request for a tax refund based on taxpayers remitting amounts in excess of their tax liabilities. Whether plaintiff is entitled to a refund of those payments under the General Property Tax Act is contemplated within the Act and is within the exclusive jurisdiction of the Tax Tribunal. MCL 205.731(b); MCL 205.774; MCL 211.53a; MCL 211.53b. Simply because the validity of the underlying tax is not in issue does not mean that the Tax Tribunal is deprived of its exclusive jurisdiction. This is particularly true where, as here, the statute specifically contemplates the Tax Tribunal’s authority to review refunds.<sup>3</sup>

Moreover, plaintiff’s speculation about the causes of the overpayments underscores the propriety of a Tax Tribunal review of this matter. Plaintiff suggests two potential causes for the overpayments, including taxpayer error and mortgage company error, but offers no specific facts regarding the circumstances surrounding the alleged overpayments and whether, as the City suggests, changes in millage, tax levies or Tax Tribunal decisions have contributed to the alleged overpayments. Any determination of the “factual underpinnings” of the cause and nature of the requested property tax refunds are clearly within the unique expertise, and within the original and exclusive jurisdiction of the Tax Tribunal. *Joy Management, supra* at 728.<sup>4</sup>

The circuit court’s order is affirmed, the Tax Tribunal’s order is reversed, and we remand this matter to the circuit court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra  
/s/ Janet T. Neff  
/s/ Henry William Saad

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<sup>3</sup> We also find the Tax Tribunal’s reliance on *Market Place v Ann Arbor*, 134 Mich App 567; 351 NW2d 607 (1984) unavailing. *Market Place* addresses the circuit court’s jurisdiction to determine questions regarding the validity of excise taxes, not property taxes.

<sup>4</sup> Because the circuit court and the Tax Tribunal dismissed plaintiff’s claims on the basis of lack of subject matter jurisdiction only, we express no opinion whether a refund is actually due plaintiff and on what grounds or, as the City argues, whether plaintiff’s claim is untimely.