STATE OF MICHIGAN

COURT OF APPEALS

SLADE DEVELOPMENT, LLC, Petitioner-Appellant,	UNPUBLISHED February 11, 2014
v	No. 312207 Michigan Tax Tribunal
TOWNSHIP OF SPRINGFIELD, Respondent-Appellee.	LC No. 0355005

Before: BOONSTRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Petitioner appeals by right from the Final Opinion and Judgment issued by the Michigan Tax Tribunal (the "Tribunal") on August 14, 2012, which recalculated the taxable values for the subject property for tax years 2004 through 2007 for purposes of assessing taxes in subsequent years, but which did not issue a tax refund for tax years 2004 through 2007. Because we conclude that the Tribunal correctly determined that it lacked the jurisdiction to order a refund to be issued for tax years 2004 through 2007, we affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Petitioner is the owner of the subject parcels of vacant real property, classified as residential and subdivided for site condominium development, located within respondent's boundaries. Petitioner made improvements to the property, including drainage, roads, and utilities, which were completed in the fall of 2003. Respondent reassessed the subject property in 2004 and included these improvements in its assessment, increasing the assessed value of each parcel by $14,150. Petitioner protested the 2008 assessments and taxable values of the subject property to the 2008 March Board of Review, which, although it altered the assessed value of certain parcels of petitioner's property, did not alter the taxable value. Petitioner appealed the assessed values and taxable values of the parcels to the Tribunal in 2008, arguing that the increase in value to the subject property in 2003 was due to public improvements that could not increase the taxable value of property under the rule of *Toll Northville, LTD v Twp of Northville*, 480 Mich 6, 16; 743 NW2d 902 (2008). In an order dated May 20, 2011, the Tribunal determined that it lacked jurisdiction over petitioner's appeal for the tax years of 2003 through

2008.[1] A hearing was held before the Tribunal in 2011; no record was made of the hearing. The Tribunal issued a Final Opinion and Judgment on August 14, 2012, recalculating the taxable values of the subject properties for tax years 2008 through 2012. The judgment incorporated an order of the Tribunal partially vacating its May 20, 2011 order with regard to issues not pertinent to this appeal, but upholding the portion of the order concluding that the Tribunal lacked jurisdiction with respect to the 2003 through 2007 tax years. The judgment held in pertinent part that the assessed and taxable values of the property for the tax years of 2008 onward should be corrected to remove the increase in value from the public improvements, and that if appropriate a refund should issue to petitioner for those tax years.

This appeal followed.

II. STANDARD OF REVIEW

> Review of decisions by the Tax Tribunal is limited. "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Const. 1963, art. 6, § 28. The Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record. If the facts are not disputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted the wrong principle. [*Michigan Properties, LLC v Meridian Twp*, 491 Mich 518, 527-528; 817 NW2d 548 (2012) (citations omitted).]

We review issues of statutory interpretation de novo. *Wexford Med Group v City of Cadillac*, 474 Mich 192, 202; 713 NW2d 734 (2006). Whether the Tribunal has jurisdiction over an appeal is a question of law which we also review de novo. *Kasberg v Ypsilanti Twp*, 287 Mich App 563, 566; 792 NW2d 1 (2010).

III. ANALYSIS

On appeal, petitioner argues that, in addition to recalculating the taxable value for the 2004 through 2007 tax years in order to correctly recalculate the values for the tax years of 2008 through 2012, the Tribunal should have ordered that excess funds collected for 2004 through 2007 (as a result of the improper assessment) be refunded to petitioner. We disagree.

The Tribunal has exclusive and original jurisdiction over direct review of a final decision of an agency related to valuation and assessments, as well as proceedings for a refund or redetermination of a property tax levied under the law of this state. MCL 205.731(a)-(b). This jurisdiction is invoked by the party in interest filing a written petition. MCL 205.735(3). For an

[1] Subsequently, on March 21, 2012, the Tribunal issued a Corrected Order of Dismissal, concluding that the Tribunal erred in excluding petitioner's appeal of the 2008 taxable value of the properties. Consequently, the tax years at issue on appeal are 2003 through 2007.

appeal from a final decision of an assessing agency, "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, determination, or order that the petitioner seeks to review." *Id*. If a petition is not timely filed, the Tribunal is deprived of jurisdiction to consider the petition other than to dismiss it. *Electronic Data Systems Corp v Flint Twp,* 253 Mich App 538, 544; 656 NW2d 215 (2002).

Under this general rule, it is clear that petitioner did not timely file an appeal with the Tribunal for tax years prior to 2008. However, petitioner argues that our Supreme Court's decisions in *Toll Northville* and *Michigan Properties* grant the Tribunal the authority to adjust the taxable value for these years and to order a corresponding refund.

In *Toll Northville,* 480 Mich at 15, our Supreme Court considered the constitutionality of MCL 211.34d(1)(b)(*viii*) in light of a constitutional amendment that capped general property tax increases but that permitted additional taxation based on increases in value arising from "additions" in the year they added value to the property. MCL 211.34d(1)(b)(*viii*) defined "additions" to include in relevant part that

> [f]or purposes of determining the taxable value of real property . . . the value of public services is the amount of increase in true cash value of the property attributable to the available public services multiplied by 0.50 and shall be added in the calendar year following the calendar year when those public services are initially available.

Our Supreme Court held that the installation of public-service improvements in the form of "infrastructure improvements made to land destined to become a residential subdivision" was not a taxable "addition" to the property as the term was understood when the Michigan Constitution was amended. *Id*. at 12-15; see also 1963 Const, art. 9, § 3.

The parties agree that the improvements to the subject property were "public service improvements." The parties also agree that the Tribunal was correct in modifying the taxable values of the subject property for the tax years of 2008 through 2012 pursuant to *Toll Northville*. The parties disagree, however, as to whether the Tribunal was authorized to also modify the taxable values of the subject property for prior tax years, and to order a corresponding refund of excess taxes for those years. We agree with respondent that the Tribunal had no such authority.

Subsequent to our Supreme Court's decision in *Toll Northville,* the Tribunal reopened proceedings in that matter and concluded that it lacked the jurisdiction to retroactively apply *Toll Northville* to amend the taxable value of the property for tax year 2000, because that tax year's assessment had not been timely appealed; however, the Tribunal removed the value of the public service additions from the property's taxable value for 2001 and onward. *Michigan Properties*, 491 Mich at 539.[2] Our Supreme Court affirmed the Tribunal, explicitly holding that "the Tax Tribunal does have the authority to reduce an unconstitutional previous increase in taxable value

[2] *Toll Northville* was one of two consolidated cases considered by our Supreme Court in *Michigan Properties*, 491 Mich at 523-525.

for the purposes of adjusting a taxable value that was timely challenged in a subsequent year." *Id*. at 545 (emphasis added). Therefore, the Tribunal "has the ability to adjust the timely challenged taxable values of Toll's parcels *for tax year 2001 and subsequent years* because the tax year 2000 taxable value of the parent parcel was erroneous as a result of the inclusion of unconstitutional additions." *Id*. at 544-545 (emphasis added).

Contrary to petitioner's claim, *Toll Northville* and *Michigan Properties* stand only for the proposition that the Tribunal possesses the authority to adjust the taxable value of property in previous tax years *for the purpose of calculating the correct taxable value of tax years that were timely appealed*. Nothing in these cases grants the Tribunal the authority to order refunds to issue for prior tax years that were not timely appealed. In fact, in *Michigan Properties*, our Supreme Court stated:

> Although *the Tax Tribunal cannot adjust the tax year 2000 taxable value because of Toll's failure to timely appeal that value*, the tribunal can consider data from that year when adjusting the timely challenged 2001 taxable values. . . .In holding that the tribunal did not have jurisdiction to review taxable values of a year not timely appealed, the Court of Appeals erred by confusing *the difference between the Tax Tribunal's inability to change and grant relief regarding the tax year 2000 taxable value* and its ability to consider evidence of how the tax year 2000 was determined in reviewing taxable values for a year that was timely appealed. [*Michigan Properties*, 491 Mich at 544 n 49 (emphases added).]

Here, petitioner asks this Court to hold precisely the opposite of what our Supreme Court held in *Michigan Properties*, and to find that the Tribunal has the authority not only to consider tax years not timely appealed for the purposes of removing the unconstitutional amounts from the tax years under review, but also to grant relief in the form of a refund for those prior tax years that were not timely appealed. We decline to do so in light of this clear direction from our Supreme Court.

Petitioner additionally argues that MCL 211.53a provides a right to a refund for the tax years at issue. MCL 211.53a provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

Petitioner asserts that the "mutual mistake" in this instance is the belief that MCL 211.34d(1)(b)(*viii*) was constitutional. We disagree that this constitutes a mutual mistake *of fact*. A mutual mistake of fact is "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). Thus, in *Ford Motor Co*, our Supreme Court found a mutual mistake of fact when the taxpayer and the assessors both relied on an overstated amount of taxable personal property owned by the taxpayer. *Id*. at 443.

A mistake about the constitutionality of a tax levied is not a mutual mistake of fact. See *Wolverine Steel Co v City of Detroit*, 45 Mich App 671, 675; 207 NW2d 194 (1973); citing *Upper Peninsula Generating Co v City of Marquette*, 18 Mich App 516; 171 NW2d 572 (1969). "Michigan courts have held on several occasions that an unauthorized tax levy constitutes a mistake of law." *Briggs Tax Service, LLC v Detroit Public Schools*, 485 Mich 69, 81; 780 NW2d 753 (2010). Our Supreme Court in *Briggs Tax Service* specifically distinguished *Ford Motor Co* on the grounds that *Ford Motor Co* involved property being erroneously listed twice on a property form, resulting in a numeric value that was "inherently a factual mistake." *Id*. at 84. "In contrast, the mistake in this case was the imposition of an unlawful tax." *Id*. at 84.

Thus, MCL 211.53a does not apply to the instant case. Additionally, petitioner never filed a "suit" seeking a refund under MCL 211.53a; petitioner's first request for relief under this statute was made via this appeal. Therefore, in any event the three-year limitation period under MCL 211.53a has expired.

Because petitioner did not timely appeal the taxable values for tax years 2004 through 2007, we find that the Tribunal did not have jurisdiction to modify the taxable values for those years or to order a corresponding refund, and that it accordingly did not err in dismissing petitioner's appeal for those tax years.

Affirmed.

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ /E. Thomas Fitzgerald