STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN M. ATKINSON, on behalf of himself and all others similarly situated,

Petitioner-Appellant,

and

CITY OF GROSSE POINTE PARK and GROSSE POINTE BOARD OF EDUCATION

Intervening Petitioners,

v

CITY OF DETROIT,

Respondent-Appellee.

UNPUBLISHED
June 25, 1999

No. 199537
Michigan Tax Tribunal
LC No. 174129

STEPHEN M. ATKINSON, on behalf of himself and all others similarly situated,

Petitioner-Appellee,

and

CITY OF GROSSE POINTE PARK and GROSSE POINTE BOARD OF EDUCATION,

Intervening Petitioners-Appellants,

v

CITY OF DETROIT,

No. 199803
Michigan Tax Tribunal
LC No. 174129

Respondent-Appellee.

Before: MacKenzie, P.J., and Gribbs and Wilder, JJ.

PER CURIAM.

In Docket No. 199537, petitioner Stephen M. Atkinson, on behalf of himself and others similarly situated (hereafter collectively referred to as "petitioners") appeals as of right from the order of the Michigan Tax Tribunal dismissing his claim for a refund of taxes erroneously assessed and collected by respondent, City of Detroit (hereafter referred to as "Detroit"). In Docket No. 199803, intervening petitioners, the City of Grosse Pointe Park and the Grosse Pointe Board of Education (hereafter referred to as "Grosse Pointe"), appeal by delayed leave granted from the same order. We affirm.

In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, §28. *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994).

Petitioners and Grosse Pointe both contend that this Court, in its previous decision in this matter,[1] determined as a matter of law that petitioners were entitled to a tax refund from Detroit, and that this Court remanded the matter to the Tax Tribunal solely for the purpose of determining the appropriate amount of the refund that was due petitioners. Accordingly, they assert that the Tax Tribunal violated the law of the case doctrine when, on remand, the tribunal revisited the legal issues in the case and determined that petitioners were not entitled to a refund. We disagree.

The law of the case doctrine provides that, if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be decided differently on a subsequent appeal in the same case where the facts remain materially the same. *People v Fisher*, 449 Mich 441, 444-445; 537 NW2d 577 (1995); *Clemens v Lesnek (After Remand)*, 219 Mich App 245, 250; 556 NW2d 183 (1996).

The Michigan Tax Tribunal has "exclusive and original jurisdiction" of a "proceeding for refund or redetermination of a tax under the property tax laws." MCL 205.731(b); MSA 7.650(31). One apparent legislative purpose of vesting the tax tribunal with such broad authority over property tax assessment questions is to assure that tax contests are resolved in the first instance by an expert body. *State Treasurer v Eaton*, 92 Mich App 327, 333; 284 NW2d 801 (1979). See also *Kostyu v Dep't of Treasury*, 170 Mich App 123, 128; 427 NW2d 566 (1988). A proceeding before the tribunal is considered original, independent, and de novo. MCL 205.735; MSA 7.650(35); *Tradewinds E Associates v Hampton Charter Twp*, 159 Mich App 77, 82; 406 NW2d 845 (1987).

The dispositive issue in the prior appeal of this matter was whether the circuit court or Tax Tribunal had jurisdiction over the case. The circuit court refused to consider the question of alleged

overpayment of taxes to Detroit, properly recognizing that the Tax Tribunal had exclusive jurisdiction over that issue. On appeal, this Court agreed and remanded the matter to the Tax Tribunal, an "expert body," for a determination of the refund issue. Indeed, a close review of this Court's decision reveals that it did not actually decide, as a matter of law, that petitioners were legally entitled to a refund; rather, it reserved resolution of the substantive issue for the Tax Tribunal. Thus, this Court's prior decision did not establish any law of the case with respect to the issue of petitioner's entitlement to a refund in the first instance.

Grosse Pointe also argues that the Tax Tribunal erred in disregarding an earlier decision declaring Detroit liable to petitioners, but requesting additional proofs of damages. We conclude, however, that the Tax Tribunal had the power to entertain a reconsideration of that prior decision. See *Bean v State Land Office Board*, 335 Mich 165, 175; 55 NW2d 779 (1952); *Chesnow v Nadell*, 330 Mich 487, 490; 47 NW2d 666 (1951).

Next, petitioners and Grosse Pointe both contend that the Tax Tribunal erred in its determination that petitioners were not entitled to a refund from respondent. We disagree, although for reasons somewhat different than that of the Tax Tribunal.

Before enactment of the tax tribunal act, MCL 205.701 *et seq.*; MSA 7.650(1) *et seq.*, a taxpayer dissatisfied with an assessment could not sue for a refund unless the tax was paid "under protest." See e.g., *Carpenter v Ann Arbor*, 35 Mich App 608, 610-611; 192 NW2d 523 (1971). Although the tax tribunal act abolished the "payment under protest" requirement, MCL 205.774; MSA 7.650(74), its enactment did not affect the provisions of the general property tax act, MCL 211.1 *et seq.*, MSA 7.1 *et seq.*, governing property tax refunds. An aggrieved taxpayer must still satisfy the requirements of MCL 211.53a; MSA 7.97(1) and MCL 211.53b; MSA 7.97(2) in order to be eligible for a refund.

MCL 211.53a; MSA 7.97(1) 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 . . . [Emphasis supplied.]

MCL 211.53b; MSA 7.97(2) explains the refund process where there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes. Simply stated, the statute refers to errors "of a typographical, transpositional, or mathematical nature." *International Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996). An error in the determination of a boundary line, such is at issue in this case, is not "of a typographical, transpositional, or mathematical nature." Thus, the Tax Tribunal did not err by finding the absence of a clerical error entitling petitioners to a refund.

We disagree, however, with the Tax Tribunal's conclusion that petitioners did not establish payment based on a "mutual mistake of fact." Under principles of contract law, a "mutual mistake" requires a belief by one or both of the parties not in accord with the facts, and the erroneous belief must relate to a basic assumption of the parties upon which the contract is made and which materially affects the agreed performances of the parties. *Shell Oil Co v Estate of Kent*, 161 Mich App 409, 421-422; 411 NW2d 770 (1987).

Here, all of the parties erroneously believed that petitioners' properties were situated within the boundaries of Detroit, rather than Grosse Pointe Park. The location of the boundary line was a "basic assumption" that "materially affect[ed]" the relationship between the parties. Accordingly, we are satisfied that a mutual mistake of fact existed, and that the Tax Tribunal erred by basing its holding that petitioners were not entitled to a tax refund on a finding that there was no mutual mistake between the parties. Nonetheless, we believe that this error was harmless.

MCL 211.1; MSA 7.1 provides that "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." In addition, MCL 211.99; MSA 7.153 provides:

> *No tax assessed upon any property . . . shall be held invalid by any court of this state on account of any irregularity* in any assessment, . . . or on account of any other irregularity, informality, or omission, or want of any matter of form or substance in any proceeding *that does not prejudice the property rights of the person whose property is taxed . . . .* [Emphasis supplied.]

Thus, a harmless-error-type analysis applies to nonprejudicial irregularities in form or substance. *Crawford v Michigan*, 208 Mich App 117, 124; 527 NW2d 30 (1994). See also *Smelsey v Safety Investment Co*, 310 Mich 686, 690; 17 NW2d 868 (1945). In addition, the Tax Tribunal has broad powers to remedy any alleged irregularity in the assessment and valuation process. MCL 205.732; MSA 7.650(32); *Richland Twp v State Tax Comm*, 210 Mich App 328, 336; 533 NW2d 369 (1995). Accord *Caplan v Jerome*, 314 Mich 198, 203; 22 NW2d 270 (1946).

We find that the assessment and collection of taxes on petitioners' properties by Detroit, rather than by Grosse Pointe, constituted an unprejudicial irregularity about which petitioners are in no position to complain. Regardless of the boundary line determination, petitioners would have been subject to taxation by one of the two taxing authorities. Detroit and Grosse Pointe had previously stipulated that the petitioners would not have paid less taxes to Grosse Pointe before 1983, than they actually paid to Detroit. Since petitioners did not demonstrate that Detroit collected more taxes than would have been collected by Grosse Pointe, no prejudice to petitioners can be established.

We recognize that both petitioners and Grosse Pointe argue that the 1986 stipulation between Detroit and Grosse Pointe is not controlling for purposes of our analysis of petitioners right to any refund from Detroit, however, we disagree. The Tax Tribunal found that "the clear implication of the

stipulation is that Detroit provided services to petitioners because of the express distinction it makes as to which party provided services and when that party provided such services." This finding is supported by competent, material, and substantial evidence on the whole record. *Michigan Bell Telephone Co, supra* at 476.

Petitioners also argue that Detroit should not be permitted to retain the taxes it collected "without legal authority," and that they (petitioners) should therefore receive a refund of *all* the taxes erroneously paid to Detroit. However, petitioners offer no authority for this proposition that would absolve them of any obligation to pay taxes and we will not search for it. *Winiemko v Valenit*, 203 Mich App 411, 419; 513 NW2d 181 (1994).

In light of the foregoing conclusions, we need not consider the parties' remaining arguments.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Barbara B. MacKenzie
/s/ Roman S. Gribbs

[1] *Atkinson v Detroit*, unpublished opinion per curiam of the Court of Appeals, issued March 18, 1992 (Docket No. 124635).