

STATE OF MICHIGAN
COURT OF APPEALS

LINDA S. AXE,

Petitioner-Appellant,

V

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

April 26, 2002

No. 228713

Tax Tribunal

LC No. 00-263407

Before: Gage, P.J., and Griffin and Buth*, JJ.

MEMORANDUM.

Petitioner appeals as of right from an opinion and judgment of the Tax Tribunal Small Claims Division upholding respondent's determination that her residence did not qualify for a homestead exemption under MCL 211.7cc and dismissing her request that subsection 3 of the statute be declared unconstitutional. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner is a married woman who files joint Michigan income tax returns with her husband, John R. Axe, from his principal residence in Grosse Pointe. John Axe received a homestead exemption for the Grosse Pointe residence beginning in 1994. From 1994 to 1996, petitioner established a dwelling she owned in Holland as her residence. Respondent denied her claim that she was entitled to a homestead exemption for the Holland residence pursuant to MCL 211.7cc(3). That subsection provides:

(3) A husband and wife who are required to file or who do file a joint Michigan income tax return are entitled to not more than 1 homestead exemption.

In her petition to contest the denial of the homestead exemption, petitioner contended that the statute was unconstitutional under the equal protection clauses of the Michigan and United States Constitutions, Const 1963, art 1, § 2, US Const, Am XIV, and violated the Civil Rights Act, MCL 37.2101 *et seq.* The Tax Tribunal determined that it lacked jurisdiction to decide the constitutionality of the statute and therefore dismissed the petition.

On appeal, petitioner again asserts that MCL 211.7cc(3) is unconstitutional. We decline to address this issue because the Tax Tribunal correctly concluded that it did not have

* Circuit judge, sitting on the Court of Appeals by assignment.

jurisdiction to decide the question. See *Meadowbrook Village Associates v Auburn Hills*, 226 Mich App 594, 596; 574 NW2d 924 (1997). While the Tax Tribunal may decide claims framed in constitutional terms alleging that a tax assessment was arbitrary and capricious and without foundation, *Johnston v Livonia*, 177 Mich App 200, 207; 441 NW2d 41 (1989), *Kostyu v Dep't of Treasury*, 170 Mich App 123, 128; 427 NW2d 566 (1988), *Wikman v Novi*, 413 Mich 617, 647; 322 NW2d 103 (1982), it does not have jurisdiction over constitutional questions and does not possess authority to hold statutes invalid. *Meadowbrook*, *supra* at 596, citing *Wikman*, *supra* at 647, and *Eyde v Lansing Twp*, 420 Mich 287, 292; 363 NW2d 277 (1984). In this case, petitioner directly challenged the constitutionality of MCL 211.7cc(3) and sought to have the statute declared invalid under the Civil Rights Act. The Tax Tribunal correctly recognized that it lacked the authority to do so. The proper forum for petitioner's argument is the circuit court. *Meadowbrook*, *supra* at 596-597.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth