STATE OF MICHIGAN

COURT OF APPEALS

PRIMESTAR, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF FLINT,

Respondent-Appellee.

UNPUBLISHED
October 18, 2002

No. 231293
Tax Tribunal
LC No. 00-271710

PRIMESTAR, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF FLINT,

Respondent-Appellee.

No. 231294
Tax Tribunal
LC No. 00-271709

PRIMESTAR, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF VIENNA,

Respondent-Appellee.

No. 231295
Tax Tribunal
LC No. 00-271708

PRIMESTAR, INC.,

Petitioner-Appellant,

v

No. 231296

Tax Tribunal
LC No. 00-271711

CITY OF FLINT,

Respondent-Appellee.

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

In these consolidated appeals, petitioner appeals as of right the opinions and judgments of the Tax Tribunal, which held that it lacked jurisdiction with respect to each of the four cases now before this Court. We affirm.

Petitioner owns medium power satellite receiving dishes used for satellite television reception. These receiving dishes are located in the Township of Flint, the Township of Vienna, and the City of Flint. Petitioner sought to challenge the 1999 assessment on all of its personal property located in these assessing jurisdictions. Petitioner filed four separate petitions, two in the Township of Flint, one in the Township of Vienna, and one in the City of Flint. However, petitioner did not protest its assessment to the board of review prior to appealing to the Tax Tribunal.

After holding separate hearings on each petition and considering the testimony and evidence offered, the Tax Tribunal held that it had no jurisdiction in the matters. The Tax Tribunal found that each respondent mailed notice of its 1999 assessment to petitioner pursuant to MCL 211.24c and that petitioner failed to protest its 1999 assessments at the board of review. The Tax Tribunal observed that protesting the assessment at the board of review was required in order to invoke the jurisdiction of the tribunal under MCL 205.735. The Tax Tribunal stated that the "futility" exception did not apply to the facts of any of these cases because petitioner did not offer any evidence indicating that an appearance before the board of review would have been futile. The Tax Tribunal further held that petitioner's argument that its protest of the assessments would have been futile because it did not have an appraisal of its properties at the time of the meeting of the board of review was without merit because many property owners successfully challenge assessments without appraisals and receive reductions.

On appeal, petitioner first argues that the Tax Tribunal erred when it denied jurisdiction over these personal property tax appeals. Petitioner contends that the applicable jurisdictional statute, MCL 205.735, does not apply when protests before the board of review would be futile. Appellate review of the Michigan Tax Tribunal's decisions is limited to deciding if the tribunal's factual findings are supported by competent, material, and substantial evidence on the record. Const 1963, art 6, § 28; *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 474; 674 NW2d 529 (2002). In the absence of fraud, this Court reviews the tribunal's legal decisions to determine whether the tribunal erred in applying the law or adopted the wrong legal principle. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. Substantial evidence is more than a mere scintilla but less than a

preponderance of the evidence. *In re Payne*, 444 Mich 679, 692, 698; 514 NW2d 121 (1994). When there is sufficient evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). It does not matter that alternative findings also could have been supported by substantial evidence on the record. *In re Payne*, *supra* at 692, 698.

Additionally, this Court reviews the tribunal's decisions to dismiss petitions for failure to comply with the tribunal's rules or orders for an abuse of discretion. *Professional Plaza*, *supra* at 475; *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986). "An abuse of discretion exists where the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Professional Plaza*, *supra* at 475.

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), and is set forth in MCL 205.731, which provides that:

> 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). Where 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).

The Tax Tribunal's jurisdiction is invoked in an assessment dispute when a party in interest files a written petition on or before June 30 of the pertinent tax year. MCL 205.735(2); *Florida Leasco, LLC v Department of Treasury*, 250 Mich App 506, 507; ___ NW2d ___ (2002). Further, the taxpayer must protest his assessment at the board of review before the Tax Tribunal acquires jurisdiction over the dispute. MCL 705.735(1). Courts have recognized that "a protest of an assessment before the local board of review is clearly required before the tribunal may acquire jurisdiction." *Manor House Apartments v City of Warren*, 204 Mich App 603, 605; 516 NW2d 530 (1994). A judicially created exception exists to the rule where an appeal to an administrative agency would be futile. However, "it must be '*clear* that an appeal to an

administrative board is an exercise in futility and nothing more than a formal step on the way to the courthouse.'" *Manor House, supra* at 605, quoting *Turner v Lansing Twp*, 108 Mich App 103, 108; 310 NW2d 287 (1981) (emphasis in original). Petitioner argues that this exception is applicable in this case and likens the facts of the case at bar to those in *Manor House*.

Contrary to petitioner's assertions, the instant case is distinguishable from *Manor House*. In the present case, unlike *Manor House*, the board of review was not limited in what cases it was empowered to hear and thus could have heard petitioner's appeal. Moreover, the board of review could have affected the assessment amount that petitioner challenged. "Nothing in the statutes indicates that adjustments to assessments must be done in accordance with any set formula so long as they are not done arbitrarily." *City of Ironwood v Gogebic County Bd of Comm'rs*, 84 Mich App 464, 470; 269 NW2d 642 (1978). Petitioner does not know and could not have predicted the actions of the board of review. Accordingly, we conclude that petitioner's appeal to the board of review would not have been an exercise in futility and "nothing more than a formal step on the way to the courthouse." *Manor House*, *supra* at 605.

Petitioner also advances several arguments explaining why it is reasonable to assume that the board of review would not have reduced the value of the property in this case and thus its appearance before the board would have been futile: (1) the property is highly specialized personal property and because petitioner did not provide an appraisal, the board of review had no evidence on which to base a reduction; (2) there is no similarly situated property, so without evidence provided by petitioner, any reduction would have been arbitrary and a violation of the law; and (3) because of the varying nature of the property, petitioner was required to meet a higher burden of proof in order to reduce the value of the property, and since it did not present any evidence, the board would not have been able to make a valuation decision.

These arguments are meritless because this Court cannot conclude, without facts to the contrary, that "the Board of Review, if given a chance to pass upon the matter, would have failed in its duty." *Turner, supra* at 110. Here, petitioner did not give the board of review an opportunity to hear the evidence and make a valuation decision. *Id*. Petitioner's argument – that under any circumstances the board of review's decision would have been arbitrary and in violation of the law because petitioner did not provide any evidence – must fail, because petitioner simply speculates regarding what evidence respondents may have presented to the board of review. Petitioner has provided no evidence demonstrating that the board of review was not empowered to affect its assessment and that an appeal to it would have been futile. On the contrary, if information would have been presented to the board of review, "it may well have adjusted the assessment." *Id.*

Petitioner next argues that its due process rights have been violated because the Tax Tribunal would not take jurisdiction over the case and, therefore, it has been deprived of its right to have a hearing on the assessment of its property. The determination whether a party has been afforded due process is a question of law subject to de novo review on appeal. *In re Carey*, 241 Mich App 222, 225-226; 615 NW2d 742 (2000). Due process generally requires notice and an opportunity to be heard. *Vincencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 504; 536 NW2d 280 (1995). Notice must be reasonably calculated to apprise interested parties of the pendency of the action and must afford them an opportunity to present objections. *Id.* Actual receipt of the notice is not required. *Dusenbery v US*, 534 US 161; 122 S Ct 694, 701; 151 L Ed 2d 597 (2002). Also, some form of hearing is required before the deprivation of a property

interest. *Dow v State*, 396 Mich 192, 205; 240 NW2d 450 (1976); *Brandon Twp v Tomkow*, 211 Mich App 275, 282-283; 535 NW2d 268 (1995).

MCL 211.24c states in relevant part:

> (1) The assessor shall give to each owner or person or persons listed on the assessment roll of the property a notice by first-class mail of an increase in the tentative state equalized valuation or the tentative taxable value for the year.
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> ***
>
> (4) The assessment notice shall be addressed to the owner according to the records of the assessor and mailed not less than 10 days before the meeting of the board of review. The failure to send or receive an assessment notice does not invalidate an assessment roll or an assessment on that property.

Because MCL 211.24c provides a scheme that includes notice and an opportunity to be heard for taxpayers, its application by the Tax Tribunal is not a violation of petitioner's due process rights. *Dusenbery, supra* at 122 S Ct 699. Our review of the record reveals that respondents conformed to MCL 211.24c and afforded notice to petitioner consistent with MCL 211.24c by timely mailing the notices ten days before the meeting of the board of review. See *Parkview Memorial Ass'n v City of Livonia*, 183 Mich App 116, 120; 454 NW2d 169 (1990).

Moreover, we reject petitioner's challenge to the constitutionality of MCL 211.24c. Statutes are presumed to be constitutional and courts have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent. *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999). The party challenging the constitutionality of the statute has the burden of proving the law's invalidity. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). Petitioner has only explained the "logistical" reasons why it believes application of the provisions of MCL 211.24c, when applied to it, violate its due process rights. However, petitioner has not sustained its burden of proving the constitutional invalidity of the statute itself or overcoming the strong presumption that the statute is constitutional. *Id.*

Finally, petitioner argues that it has been treated unfairly and unjustly in violation of the Michigan Constitution. The fair and just treatment clause provides as follows:

> No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. *The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.* Const 1963, art 1, § 17. [Emphasis added.]

In light of our holding that the Tax Tribunal did not err when it ruled that the futility exception to the appearance requirement did not apply in this case, petitioner's argument that the Tax Tribunal ignored the law, thereby treating petitioner unfairly and unjustly, is without merit. Const 1963, art 1, § 17. In light of our disposition, it is unnecessary for us to address the question whether the Tax Tribunal is part of the legislative or executive branch of government as those terms are used in the fair and just treatment clause.

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter