

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

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WAYNE COUNTY TREASURER,

Plaintiff-Appellant,

v

MICHIGAN CONSOLIDATED GAS COMPANY  
and DTE ENERGY COMPANY, a/k/a DETROIT  
ENTERPRISE, INC.,

Defendants-Appellees.

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UNPUBLISHED  
February 12, 2004

No. 241730  
Wayne Circuit Court  
LC No. 01-143307-CZ

Before: Schuette, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Plaintiff Wayne County Treasurer appeals as of right an order denying its motion for summary disposition and motion for an order compelling defendants, Michigan Consolidated Gas Company and DTE Energy Company, also known as Detroit Enterprise, Inc., to pay delinquent personal property taxes and/or allow seizure of defendants' personal property in an amount sufficient to satisfy defendants' delinquent taxes; and instead granting defendants' cross-motion for summary disposition and dismissing the case. We affirm in part, and reverse in part.

I

This appeal arises as a result of a dispute over whether plaintiff is entitled to collect personal property taxes from defendants (hereinafter collectively MichCon) in an amount (\$2,907,825.57) calculated without using the State Tax Commission's (hereinafter STC) newly adopted multiplier tables, and whether the circuit court has jurisdiction to decide that plaintiff was not entitled to collect this amount, finding that it was unlawfully assessed.

Plaintiff and other local taxing units levied taxes on certain gas transmission and distribution personal property owned by MichCon located in Wayne County for the tax year 2000. It is undisputed that in arriving at its tax assessment of MichCon's personal property, plaintiff did not use the STC's new multiplier tables, and in fact, used the old tables. It is also undisputed that MichCon did not pay this tax bill in full and instead paid a lesser amount based on a calculation it made using the newly adopted STC multiplier tables. The lawfulness of these new multiplier tables was to be reviewed in a case pending before the Michigan Tax Tribunal, in which both plaintiff and MichCon were parties (hereinafter the STC case).

Before the Tax Tribunal reached a decision on the lawfulness of the new multiplier tables in the STC case, plaintiff filed a complaint against MichCon in the circuit court for the collection of the unpaid portion of the personal property taxes levied against MichCon for the 2000 tax year, calculating the total amount of “unpaid delinquent taxes” owed to be \$2,907,825.57, plus related penalties, interest, and fees calculated through December 31, 2001. Plaintiff also alleged that under the General Property Tax Act, specifically MCL 211.47, plaintiff had the authority to seize MichCon’s personal property in order to satisfy the unpaid taxes. The parties filed cross-motions for summary disposition in this collection action.

MichCon also filed over three-hundred separate petitions in the Tax Tribunal challenging the validity of the assessments of each parcel of property assessed by the various local taxing units in Wayne County, and seeking a reduction in these assessments to an amount equal to the amount calculated using the newly adopted multiplier tables. These individual appeals have not yet been adjudicated because they were each being held in abeyance by the tribunal pending a resolution of the issues raised concerning the new multiplier tables in the STC case.

At the first hearing on the parties’ motions for summary disposition in the circuit court, the court invoked the doctrine of primary jurisdiction and stayed plaintiff’s collection action against MichCon until the Tax Tribunal reached a decision on the lawfulness of the new multiplier tables in the STC case, finding that the “enforcement of [plaintiff’s] claim requires the resolution of an issue which has been placed within the special competence of the Tax Tribunal; that is, this court has neither the jurisdiction nor the expertise to decide whether the assessment was in fact lawful.”

Subsequently, the tribunal in the STC case found that the STC’s newly adopted multiplier tables were lawfully developed and were properly incorporated into the assessor’s manual, which local tax assessors are statutorily required to use as a guide in arriving at tax assessments. It further found that “[a] local assessing official has no authority to adopt and apply as a *mass appraisal tool* a multiplier table other than the latest tables included in the official *Assessor’s Manual* or other manual provided by the STC” and that a local tax assessor may deviate from these tables only if it has other evidence of a more accurate true cash value (hereinafter TCV).

After the tribunal issued its opinion, at another hearing on the parties’ motions for summary disposition in the collection action, the circuit court found that there was no evidence that plaintiff used any evidence, other than the “outdated” multiplier tables that had been repudiated by the tribunal’s opinion, in arriving at its tax assessment of MichCon’s personal property taxes. Thus it denied plaintiff’s motion for summary disposition and order compelling payment and/or seizure of MichCon’s personal property, and instead granted MichCon’s cross-motion for summary disposition and dismissed the case.

Plaintiff first argues that the circuit court erroneously applied the primary jurisdiction doctrine in the present case because the history of the doctrine reveals that it is only applied to administrative agencies whose authority includes issues of a regulatory nature, and in which the Legislature has expressly conferred regulatory authority; and here the Tax Tribunal act does not confer on the Tax Tribunal expressly or impliedly any regulatory authority. We disagree.

We review a trial court’s decision on a motion for summary disposition de novo. *Spiek v Dep’t of Trans*, 456 Mich 331, 337; 572 NW2d 201 (1998). The doctrine of primary jurisdiction

was defined by our Supreme Court in *Rinaldo's Const Corp v Michigan Bell Telephone Co*, 454 Mich 65, 71; 559 NW2d 647 (1997), as follows:

“‘Primary jurisdiction’ . . . applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body.” [Citing *Attorney General v Diamond Mortgage Co*, 414 Mich 603, 613; 327 NW2d 805 (1982), quoting *United States v Western P R Co*, 352 US 59; 77 S Ct 161; 1 L Ed 2d 126 (1956).]

Our Supreme Court has “recognized application of the primary jurisdiction doctrine to all cases in which it was deemed that an administrative agency possessed superior knowledge and expertise in addressing recurring issues within the scope of their authority.” *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 200; 631 NW2d 733 (2001). “No fixed formula exists for applying the doctrine of primary jurisdiction. In every case the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation.” *Rinaldo's Const Corp, supra*, 71, quoting *Western PR Co, supra*, 64.

“[T]he Tax Tribunal’s jurisdiction and powers are defined by the Tax Tribunal Act, MCL 205.701 *et seq.* . . .” *Johnston v Livonia*, 177 Mich App 200, 205; 441 NW2d 41 (1989). MCL 205.731 states the following:

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 Tax Tribunal lacks equitable powers. *EDS v Flint Twp*, 253 Mich App 538, 547; 656 NW2d 215 (2002). “The Tribunal is a quasi-judicial agency, the primary function of which is to find facts and review agency decisions within its jurisdiction. . . . The expertise of the tribunal relates primarily to questions concerning the ‘factual underpinnings’ of taxes.” *Johnston, supra* at 205.

In determining whether to apply the doctrine of primary jurisdiction, a court should analyze the following three purposes of the doctrine:

First, a court should consider “the extent to which the agency’s specialized expertise makes it a preferable forum for resolving the issue. . . .” Second, it should consider the “need for uniform resolution of the issue. . . .” Third, it should consider “the potential that judicial resolution of the issue will have an adverse impact on the agency’s performance of its regulatory responsibilities.” [*Rinaldo's supra*, 454 Mich 71, quoting Davis & Pierce, 2 Administrative Law (3d ed), § 14.1, p 272.]

In the present case, the above factors favored the circuit court's deference to the primary jurisdiction of the Tax Tribunal. First, as the circuit court correctly found, the tribunal's "specialized expertise" in, and original and exclusive jurisdiction over tax assessment matters, made the tribunal the preferable forum for resolving the issue whether taxes calculated without using the STC's new multiplier tables are still held to be lawfully assessed. Second, in regard to the need for uniform resolution of the issue, there were and still are numerous cases pending in the tribunal involving the same issue, and the possibility of different outcomes in each of those cases and the present case, favored application of the doctrine. Third, although the tribunal is not a regulatory agency per se, it is responsible for the direct review of final decisions relating to assessments, valuations, rates, special assessments, allocations, or equalizations, under property tax laws, and thus, it is responsible for the administration of property tax laws. MCL 205.731. If the circuit court enforced plaintiff's tax assessments, which were calculated without using the new multiplier tables that were under review by the tribunal on the question of the lawfulness and required use of the tables, it would have directly interfered with the tribunal's activities, because there were numerous other cases pending on this issue in the tribunal, and the tribunal invested substantial time and effort in resolving the issue.

Finally, contrary to plaintiff's argument, the primary jurisdiction doctrine does not *only* apply to regulatory agencies. The cases cited by plaintiff including, *Western P R Co*, *supra*, *Rinaldo's Const Corp*, *supra*, and *Travelers Ins Co*, *supra*, hold that the doctrine applies "principally" to administrative agencies that perform regulatory functions, not "solely" or "only" to such agencies. None of the cases state that the agencies performing quasi-judicial and regulatory functions are excluded from the doctrine. In fact, in *Travelers Ins Co*, *supra*, our Supreme Court found that the Public Service Commission (PSC) had primary jurisdiction to hear and decide breach of contract claims on matters pertaining to the formation, operation, or direction of public utilities, concluding that the PSC was not limited only to performing regulatory functions, but also performed extensive quasi-judicial functions. *Id.*, 202-203 n 17. Thus, the doctrine has been applied to agencies which perform both quasi-judicial and regulatory functions, and as stated in *Rinaldo's Const Corp*, *supra*, 71, "[i]n every case the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation." In the present case, as previously discussed, the reasons for the existence of the doctrine were present and the circumstances called for its application.

## II

Plaintiff next argues that the circuit court erred in finding plaintiff's tax assessments unlawful and denying its motion for summary disposition and order compelling payment of unpaid taxes, and/or seizure of MichCon's personal property in satisfaction of the unpaid taxes; and instead granting MichCon's cross-motion for summary disposition. We agree that the court erred in granting MichCon's cross-motion for summary disposition, and in finding plaintiff's tax assessments unlawful. We do not agree that the court erred in denying plaintiff's motion for summary disposition and for an order compelling payment of the unpaid taxes, or for seizure of MichCon's personal property.

First, plaintiff notes, and it is undisputed, that the circuit court has exclusive jurisdiction over tax collection matters, while the Tax Tribunal has exclusive and original jurisdiction over tax assessment matters. Plaintiff argues that based on the circuit court's limited jurisdiction to

only address tax collection matters, and not tax assessment matters, it did not have the authority to address the validity of the assessments. Plaintiff further asserts that the circuit court also erred in attempting to compel plaintiff to produce “other market evidence” to establish TCV when it lacked jurisdiction to review or adjudicate the issue of assessment; and the evidence of market value would have been produced in the tribunal in each of the several pending appeals before it. Plaintiff claims that the tribunal’s opinion in the STC case did not find that plaintiff’s tax assessments were illegal because the only issue presented, reviewed and decided by the tribunal was limited to a determination of the method used by the STC in adopting the new multiplier tables, and whether this method was lawful. Plaintiff also asserts that the court has no authority under the statute to adjudicate the accuracy of the assessment, only whether the amount was paid.

We agree that the circuit court erred in granting summary disposition to MichCon on the basis that the assessments were unlawful. The circuit court had no authority to determine that the individual assessments were invalid. The Tax Tribunal has exclusive jurisdiction to determine whether the assessments are valid, and only it can make that determination, based on the evidence presented in the over three-hundred cases before it. We therefore reverse the grant of summary disposition to defendants.<sup>1</sup>

It is a separate question whether the circuit court erred in denying summary disposition to plaintiff. We conclude it did not. At the outset, we note our agreement with plaintiff’s various assertions regarding the circuit court’s jurisdiction over tax collection matters. The court does, indeed, have such jurisdiction. Nevertheless, just as the court properly deferred to the STC’s primary jurisdiction in determining the validity of the new schedules, so too the court could properly defer to its jurisdiction in determining the validity of the specific assessments.

Although normally the accuracy or validity of the assessment is presumed in a tax foreclosure action, and proof of unpaid taxes entitles the collecting authority to judgment, where, as here, there is a substantial underlying issue being litigated in the Tax Tribunal, a court has the discretion to hold the matter in abeyance pending the decision of the Tax Tribunal. Plaintiff cites no authority to the contrary. For the reasons argued by plaintiff, such discretion should be exercised in only the most unusual of circumstances. However, we conclude that the requisite unusual circumstances are present here.

The Tax Tribunal recognized the importance of the underlying question concerning the validity of the new tables and granted a motion to stay litigation of the individual petitions until the underlying issue is finally resolved.<sup>2</sup> Plaintiff itself requested that the individual cases

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<sup>1</sup> We recognize that defendants’ motion for summary disposition, and the resultant dismissal, were without prejudice. Nevertheless, to the extent the court ruled on the merits, it erred.

<sup>2</sup> In a May 17, 2002 order, the Tax Tribunal ordered that pursuant to the original order holding the cases in abeyance, the individual petitions would continue in abeyance pending the final resolution of the underlying dispute, and noted that a timely appeal had been filed in the Court of Appeals.

continue in abeyance after the Tax Tribunal's decision rejecting its challenge to the new tables. Thus, the timely filed petitions challenging the assessments have not been permitted to proceed in the normal course. Further, having determined that the tables are valid, the Tax Tribunal must decide whether it will invalidate on a blanket basis all assessments that are based on the old tables, or whether it will hold hearings in each case and determine whether the individual assessment accurately reflects the true cash value without regard to the tables used. These are issues that can only be decided by the Tax Tribunal, and they are issues that go beyond the validity of an individual assessment. Because the validity of the underlying assessments in light of the failure to use the new tables was clearly a matter of bona fide and substantial dispute before the Tax Tribunal, and the individual challenges had been stayed by the Tax Tribunal, the circuit court did not abuse its discretion in denying summary relief to plaintiff.

Plaintiff further asserts that MCL 205.743(1) required that the circuit court grant plaintiff's requested relief without delay. We disagree. MCL 205.743(1) states:

If the date set by law for the payment of taxes has passed, the tribunal shall not make a final decision on the entire proceeding until the taxes are paid. *This requirement may be waived at the tribunal's discretion.* [Emphasis added.]

This provision clearly applies to the Tax Tribunal only. Further, it grants discretion to the Tax Tribunal regarding its enforcement.

Under the circumstances presented by the instant case, while it may have been better to hold plaintiff's motion for summary disposition in abeyance, the circuit court did not err in denying the motion without prejudice. However, as discussed above, the entry of judgment in favor of defendants was erroneous.

Affirmed in part, and reversed in part and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Helene N. White