STATE OF MICHIGAN

COURT OF APPEALS

REDFORD OPPORTUNITY HOUSE, Petitioner-Appellant,	UNPUBLISHED May 18, 2004
v	No. 235051 Tax Tribunal
TOWNSHIP OF REDFORD, Respondent-Appellee.	LC No. 00-279118

Before: Talbot, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Petitioner Redford Opportunity House appeals as of right the Tax Tribunal's order dismissing its petition for recovery of excess property tax payments from respondent Redford Township. The Tax Tribunal determined that petitioner failed to allege either a clerical error or a mutual mistake of fact and, therefore, failed to invoke its jurisdiction under MCL 211.53a. We affirm.

I

In 2000, petitioner filed a petition for review in the Tax Tribunal, seeking recovery of property taxes paid to respondent in the years 1997, 1998, and 1999. Petitioner contended that it was entitled to refunds under MCL 211.53a, which allows taxpayers a three-year period to recover excess payments not made in protest due to clerical errors or a mutual mistake of fact between the taxpayer and the assessing officer. Petitioner alleges that when it paid the property taxes for those three years, it failed to realize that it was exempt from property taxes under the charitable institution exemption, MCL 211.7o. The Tax Tribunal dismissed the petition for want of jurisdiction on the basis that petitioner had alleged only an error of law, not of fact, and also, that the alleged mistake was not a mutual one between petitioner and respondent.

II

MCL 211.53a provides taxpayers with a three-year period in which they may recover excessive tax payments attributable to a clerical error or mutual mistake of fact:

> 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 contends that the Tax Tribunal erroneously determined that petitioner failed to identify a mutual mistake of fact. We disagree.

Petitioner's mistaken belief regarding its tax-exempt status is clearly a mistake of law rather than fact. In *Noll Equipment v Detroit*, 49 Mich App 37, 41-43; 211 NW2d 257 (1973), this Court held that a taxpayer's error in failing to recognize its entitlement to federal immunity from a local property tax was an error of law, not fact, and, therefore, the taxpayer was not entitled to relief under MCL 211.53a. This reasoning equally applies here to petitioner's failure to recognize its tax-exempt status.

To qualify for tax-exempt status, petitioner would have to establish, by a preponderance of the evidence, that it was a charitable institution within the meaning of MCL 211.7o. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 491-492; 644 NW2d 47 (2002). Petitioner has identified no mistake of fact relating to this inquiry. Petitioner's failure to "realize" that it was eligible for an exemption is not a mistake of fact, but a failure to comprehend and appreciate the legal significance of relevant facts. Moreover, petitioner's statement in a letter to the Tax Tribunal, referencing research of applicable statutes and case law, is essentially a concession that the mistake is one involving law, not fact. The Tax Tribunal correctly applied MCL 211.53a when it determined that this was a mistake of law, not fact.

Because we conclude that the Tax Tribunal correctly determined that petitioner failed to identify a mistake of fact, and the Tax Tribunal's decision is affirmed on this basis, we need not also consider whether the alleged mistake was mutual between petitioner and respondent.

We note, however, that on October 22, 2001, this Court issued an order holding this appeal in abeyance pending this Court's decision in *General Products Corp v Leoni Township* (Docket No. 233432). On May 8, 2003, this Court issued its decision in *General Products* and the abeyance order for this appeal was thereafter vacated. In *General Products*, in addressing a similar claim concerning the applicability of MCL 211.53a, this Court affirmed the Tax Tribunal's decision on the ground that there was no mutual mistake, but declined to consider whether the alleged mistake was one of fact or law. *General Products Corp v Leoni Township*, unpublished opinion per curiam of the Court of Appeals, issued May 8, 2003 (Docket No. 233432), slip op at 3, n 2. Because the circumstances here warrant the converse approach, we need not consider whether or to what extent the decision and rationale in *General Products* applies.

We also reject petitioner's argument that the Tax Tribunal erroneously failed to adopt a more liberal interpretation of MCL 211.53a, because it is a remedial statute that should be construed favorably to the taxpayer. This argument ignores the basic principle that nothing may be read into a clear statute that is not within the manifest intention of the Legislature as derived

from the language of the statute itself. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). The language of MCL 211.53a is clear and unambiguous. It affords relief only to a taxpayer whose overpayment is attributable to either a clerical error or a mutual mistake of fact. Here, petitioner's failure to recognize its tax-exempt status before 2000 was neither.

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ Pat M. Donofrio