

STATE OF MICHIGAN  
COURT OF APPEALS

---

JAMES LOOMIS,

Petitioner-Appellant,

v

NEWBERG TOWNSHIP,

Respondent-Appellee.

---

UNPUBLISHED

March 27, 2007

No. 265866

Tax Tribunal

LC No. 00-306163

Before: Fort Hood, P.J., and White and Borrello, JJ.

PER CURIAM.

In this property tax dispute, petitioner appeals as of right the September 30, 2005 judgment of the Michigan Tax Tribunal dismissing his valuation claims for tax years before 2004 for lack of jurisdiction, affirming the valuation of his property for tax years 2004 and 2005, and affirming the denial of his poverty exemption application. We affirm in part, and vacate and remand in part.

In the absence of fraud, our review of a tribunal decision is limited to determining whether the tribunal committed error in applying the law or adopting a wrong legal principle. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). “The tribunal’s factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record.” *Mich Milk Producers Ass’n v Dep’t of Treasury*, 242 Mich App 486, 490-491; 618 NW2d 917 (2000). Additionally, statutory interpretation presents a question of law that is reviewed de novo. *Ford Motor Co*, *supra* at 438. But, we “generally defer to the Tax Tribunal’s interpretation of a statute that it is charged with administering and enforcing.” *Mich Milk Producers Ass’n*, *supra* at 491.

Petitioner argues that the tribunal had jurisdiction to address the valuation issues he raised for tax years 2002 and 2003. Under the Tax Tribunal Act, MCL 205.701 *et seq.*, the jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest filing a written petition on or before June 30 of the tax year involved. MCL 205.735(2) (emphasis added); *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 543; 656 NW2d 215 (2002). In residential property and small claims cases, a written petition must be postmarked by first-class mail, or delivered in person, on or before June 30 of the tax year involved to be considered timely. *Id.* The timeliness requirements for filing an appeal with the tribunal are jurisdictional and failure to comply with the requirements divests the tribunal of jurisdiction over the appeal. *Id.* at 543-544.

Petitioner appealed to the tribunal in June 2004. Because he filed his appeal before June 30, 2004, his appeal was timely with respect to tax year 2004. An appeal for tax year 2005 was automatically added to his appeal pursuant to MCL 205.737(5)(b). Although petitioner attempted to raise valuation issues for tax years 2002 and 2003 in his appeal to the tribunal, he failed to bring timely appeals during those years. Accordingly, the tribunal determined that it had no jurisdiction to consider petitioner's claims regarding 2002 and 2003 and that it could only consider valuation issues pertinent to tax years 2004 and 2005. Because petitioner has not shown that the tribunal's decision to dismiss his claims for lack of jurisdiction is the product of fraud, an error of law, or the adoption of a wrong principle, the decision is affirmed.

Petitioner next argues that the tribunal erred in affirming the valuation of his property in tax years 2004 and 2005. Specifically, petitioner contends that respondent failed to reduce the assessed and taxable value of his property to reflect the removal of lakefront property assessed to him in error. We disagree.

"True cash value" (TCV) is the fair market value of property, and the petitioner has the burden of proving TCV. *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). The tribunal must, however, make its own determination of TCV. *Id.* A property's assessment must not exceed 50 percent of its TCV and its taxable value is the lesser of: (1) the property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions, or (2) the property's current state equalized valuation. MCL 211.27a; *Kok v Cascade Charter Twp*, 255 Mich App 535, 540; 660 NW2d 389 (2003). If there was a clerical error or a mutual mistake of fact regarding a property assessment, the rate of taxation, or the mathematical computation of the assessment, the error or mistake must be verified by the local assessor and approved by the local board of review. *Int'l Place Apartments v Ypsilanti Twp*, 216 Mich App 104, 108; 548 NW2d 668 (1996), MCL 211.53b(1).

The record indicates that in July 2004, the board of review acknowledged that certain lakefront property owned by petitioner's neighbor was assessed to petitioner in error. The board of review subsequently ordered that the lakefront property be removed and that petitioner's property assessment be reduced accordingly. Petitioner's 2005 assessment card indicates that the value of his land was reduced from \$17,350 in 2004 to \$7,710 in 2005. Because of the timing of petitioner's payment, the lower assessment was applied to both the 2005 and 2004 taxes. The tribunal found that the reduced value reflected "the removal of the excess land from the tax rolls." Petitioner contends that the assessed and taxable value of his property must be further reduced to reflect the removal of the lakefront property, but he offers no evidence, other than his own speculation, to support this contention. Because the tribunal's findings were based on competent, material, and substantial evidence of record, its decision is affirmed.

Finally, petitioner argues that the tribunal erred in affirming the denial of his application for a poverty exemption under MCL 211.7u. Specifically, petitioner asserts that the tribunal erred in finding him ineligible to receive an exemption because he failed to satisfy the federal poverty guidelines and because he failed to file an exemption application for tax year 2005. A taxpayer has the burden of proving his entitlement to an exemption and exemption statutes are strictly construed in favor of the taxing authority. *APCOA, Inc v Dep't of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995).

Petitioner argues that the tribunal erred in finding him ineligible to receive a poverty exemption for tax year 2005 because he failed to submit an application for that year.<sup>1</sup> However, petitioner, who is proceeding in pro per, appears to have filed a timely application in March, 2005. Thus, we vacate the tribunal's decision in that regard and remand for further proceedings on the 1995 application. We note petitioner's claim that the tribunal wrongly concluded that he was receiving alimony based on a divorce mediation brief he submitted only to support his contentions regarding the value of the property, while his judgment of divorce awards no alimony. On remand, the tribunal shall base its decision on the judgment of divorce.

Finally, we reject petitioner's claims of error with respect to the poverty exemption applications for 2003 and 2004, because we conclude that he filed untimely poverty exemption applications for those years. MCL 211.7u(3) requires applications for an exemption to "be filed after January 1 but before the day prior to the last day of the board of review" and under MCL 211.30(2) a board of review may meet at the latest during the week following the second Monday in March. Petitioner filed his exemption application for 2003 and 2004 in August 2004, after the required board of review proceedings in March 2004. Thus, the application was untimely.

Affirmed in part; vacated and remanded in part. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Helene N. White

/s/ Stephen L. Borrello

---

<sup>1</sup> We reject petitioner's argument that, pursuant to MCL 205.737(5), it is unnecessary to file separate claims for subsequent tax years. MCL 205.737(5)(a) provides that a motion to amend a petition to add subsequent years is unnecessary "[i]f the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year . . . shall be added automatically . . . ." However, that section applies to exemptions generally, while MCL 211.7u(2) provides that poverty exemption applicants must file an exemption claim annually. Rules of statutory construction instruct that when two statutes conflict, the statute that is more specific to the subject matter generally controls. *In re Brown*, 229 Mich App 496, 501; 582 NW2d 530 (1998). While MCL 205.737(5) automatically amends petitions on appeal for subsequent years, it does not specifically address poverty exemption applications. On the other hand, MCL 211.7u(2) specifically addresses poverty exemption claims and, therefore, must prevail.