

STATE OF MICHIGAN
COURT OF APPEALS

SUPERIOR PLASTICS, INC,

Petitioner-Appellant,

v

STATE TAX COMMISSION,

Respondent-Appellee.

UNPUBLISHED

June 3, 2008

No. 275588

Tax Tribunal

LC No. 00-312897

Before: Whitbeck, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Petitioner Superior Plastics, Inc., appeals as of right from the final order of the Michigan Tax Tribunal finding that the State Tax Commission did not have jurisdiction pursuant to MCL 211.154 to reassess the 1999 value of petitioner's property because it did not receive the petition for reassessment until 2002. We affirm.

Petitioner is a manufacturing company headquartered at 417 East Second Street in Rochester, Michigan, and pays taxes on two parcels of property, Parcel 68-99-00-001-250 ("Parcel 250") and Parcel 68-99-00-001-210 ("Parcel 210"). Petitioner alleged that the assessed, state-equalized, and taxable values recorded on the tax rolls for these parcels were too high and on December 28, 2001, it filed petitions pursuant to MCL 211.154 requesting a change in the assessment values of the parcels. Petitioner, acting through its agent, Scott Aston of Deloitte & Touche, LLP, used Michigan Department of Treasury, State Tax Commission Form 628, Notice by Owner of Property Incorrectly Reported or Omitted from Assessment Roll ("Form 628") to file its petitions. On the forms, petitioner requested that Parcels 250 and 210 be assessed at a lower value for the years 1999 through 2001 than the assessed values listed on the assessment rolls for these parcels during those years.¹

¹ The assessed value found on the assessment roll for Parcel 250 was \$2,705,800 in 1999, \$2,525,820 in 2000, and \$2,271,780 in 2001. Petitioners requested that the assessed value of Parcel 250 be listed at \$2,356,018 in 1999, \$2,199,662 in 2000, and \$1,983,552 in 2001. Similarly, the assessed value found on the assessment roll for Parcel 210 was \$403,150 in 1999, \$387,270 in 2000, and \$355,880 in 2001. Petitioners requested that the assessed value of Parcel 210 be listed at \$334,979 in 1999, \$312,153 in 2000, and \$288,452 in 2001.

The front page of Form 628 states, “This form is issued under authority of Section 211.154, MCL. Initial filing of this form is voluntary.” The bottom of the front page of Form 628 states, “When you have completed this side of the form, send or carry the form to your local assessor who will complete the reverse side and file the form with the State Tax Commission.” The instructions on the reverse side of Form 628 state that the assessor would complete the information on that side of the form. At the bottom of the reverse side of the form, the following mailing instructions are provided: “Send this completed form to: State Tax Commission, Michigan Dept. of Treasury, P.O. Box 30471, Lansing, MI 48909-7971.”

Aston compiled the petitions using Form 628 and hand-delivered prepared copies of Form 628 requesting reassessment for each parcel to the City of Rochester Assessor’s Office on December 28, 2001. However, the State Tax Commission apparently did not receive these petitions until May 2002. In January 2005, the State Tax Commission notified petitioner that it did not have jurisdiction over petitioner’s request for a change in the 1999 assessment value of the property because it received the petition in 2002.²

On petitioner’s behalf, Aston filed a petition before the Michigan Tax Tribunal on February 10, 2005, alleging that petitioner overpaid property taxes on these parcels in 1999 because the 1999 assessed values, state-equalized values, and taxable values of the parcels used to determine the amount of property taxes owed were higher than the correct assessed values, state-equalized values, and taxable values of the parcels. Petitioner requested that the tribunal retain jurisdiction pursuant to MCL 205.735(2) to hear the case and to refund petitioner the disputed amount of taxes, interest, and fees.

Both petitioner and the State Tax Commission moved for summary disposition pursuant to Tax Tribunal Rule 230 and MCR 2.116(C)(10). The parties’ motions revealed that the central issue before the Tax Tribunal was whether petitioner was entitled to tax relief for the 1999 tax year because it filed the petition with the City of Rochester Assessor’s Office in 2001, although the State Tax Commission did not receive the petition until 2002. The Tax Tribunal determined that, although petitioner filed Form 628 with the local assessor in late 2001, the State Tax Commission did not have jurisdiction pursuant to MCL 211.154 to reassess the 1999 value of the parcels because it did not receive the petition for reassessment until 2002. The Tribunal explained:

The Tribunal finds that while the additional instructions located on the current form provides additional notice, the instructions on the year 2001 form indicate that filing with the STC would only occur when the local assessor’s office submitted the completed form to the STC. As such, it would not be reasonable under normal business practices to assume that the local assessor’s office could complete and submit the form to the STC within such a short window

² After a meeting held on November 30, 2004, the state tax commission approved a corrected assessed and taxable value for Parcel 250 of \$2,236,660 in 2000 and \$2,024,280 in 2001, and approved a corrected assessed and taxable value for Parcel 210 of \$312,153 in 2000 and \$288,452 in 2001.

of time. Thus, as applied here, the filing procedure required by MCL 211.154 was not met when Petitioner submitted the form to the Assessor for the City of Rochester on December 28, 2001. Rather, filing was completed for purposes of MCL 211.154 when the local assessor's office submitted the form to the STC in 2002. Therefore, there is no genuine issue of material fact to be decided in this case, and Respondent is entitled to judgment as a matter of law.

On appeal, petitioner does not dispute the Tax Tribunal's interpretation of MCL 211.154 or its conclusion that MCL 211.154, taken alone, statutorily precludes the State Tax Commission from reassessing the value of petitioner's property in 1999.³ Instead, petitioner contends that the Tax Tribunal erred when it failed to invoke its equitable powers to grant petitioner's request for a reassessment of the value of its property in 1999. We disagree. "Absent an allegation of fraud, our review of a Tax Tribunal's decision is limited to determining whether the tribunal committed an error of law or applied the wrong legal principle." *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002); see also Const 1963, art 6, § 28. Whether the Tax Tribunal has jurisdiction to hear a particular claim and grant equitable relief is a question of law that we review de novo. *Trostel, Ltd v Dep't of Treasury*, 269 Mich App 433, 440; 713 NW2d 279 (2006).

The Tax Tribunal does not have jurisdiction to grant equitable relief. MCL 205.731 describes the Tribunal's jurisdiction as follows:

The tribunal's exclusive and original jurisdiction shall be:

³ At the time petitioner filed Form 628, MCL 211.154(1) stated:

If the state tax commission determines that property liable to taxation . . . has been incorrectly reported or omitted for any previous year, but not to exceed the current assessment year and 2 years immediately preceding the date of discovery and disclosure to the state tax commission of the incorrect reporting or omission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll. . . .

The current version of MCL 211.154(1) took effect on December 29, 2003. 2003 PA 247. The current version of the relevant portion of MCL 211.154(1) is substantively similar to the version of the statute in effect at the time petitioner filed Form 628. The relevant portion of the statute currently states:

If the state tax commission determines that property subject to the collection of taxes under this act . . . has been incorrectly reported or omitted for any previous year, but not to exceed the current assessment year and 2 years immediately preceding the date the incorrect reporting or omission was discovered and disclosed to the state tax commission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll. . . .

(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.

MCL 205.732 lists the powers granted to the Tax Tribunal:

The tribunal's powers include, but are not limited to:

(a) Affirming, reversing, modifying, or remanding a final decision, finding, ruling, determination, or order of an agency.

(b) Ordering the payment or refund of taxes in a matter of which it may acquire jurisdiction.

(c) Granting other relief or issuing writs, orders, or directives which it deems necessary or appropriate in the process of disposition of a matter of which it may acquire jurisdiction.

(d) Promulgating . . . rules for the implementation of this act, including rules for practice and procedure before the tribunal.

Our Supreme Court has long recognized that “[t]he cognizance of equitable questions belongs to the judiciary as a part of the judicial power,” *Brown v Circuit Judge of Kalamazoo*, 75 Mich 274, 285; 42 NW 827 (1889), and that “[t]he constitution limits the Legislature’s power to transfer judicial power to administrative agencies,” *Wikman v City of Novi*, 413 Mich 617, 647; 322 NW2d 103 (1982). Unless expressly authorized by statute, a legislative tribunal does not have equitable jurisdiction, *Bd of Ed of Benton Harbor Area Schools v Wolff*, 139 Mich App 148, 156; 361 NW2d 750 (1984), and we will not extend that power by implication, *Wikman, supra* at 648.

Because the Tax Tribunal’s powers are limited to those authorized by statute and the Legislature did not expressly grant the Tax Tribunal jurisdiction over equitable claims, “the Tax Tribunal does not have powers of equity.” *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 547-548; 656 NW2d 215 (2002). Accordingly, petitioner’s assertion that the Tax Tribunal should have exercised its equitable authority lacks merit, because the Tribunal has no equitable power to exercise. Therefore, the Tax Tribunal did not err when it applied the plain language of MCL 211.154 and determined that it did not have the authority to reassess the value of petitioner’s property in 1999 because the State Tax Commission only received notice regarding petitioner’s challenge to the 1999 value of plaintiff’s property listed on the assessment rolls in 2002, after the time period in which petitioner could challenge the 1999 assessed value of his property had passed.

Petitioner also argues that if this Court determines that the Tax Tribunal lacks the power to grant equitable relief, this Court should grant petitioner equitable relief pursuant to MCR 7.216(A)(7), which states:

(A) Relief Obtainable. The Court of Appeals may, at any time, in addition to its general powers, in its discretion, and on the terms it deems just:

* * *

(7) enter any judgment or order or grant further or different relief as the case may require[.]

However, we conclude that equitable relief is not warranted in this case. Aston, who filed Form 628 for petitioner and initially represented petitioner in this case, was an employee in the property tax services division of the Detroit office of Deloitte & Touche, LLP, and presumably was familiar with the General Property Tax Act, MCL 211.1 *et seq.*⁴ The instructions on Form 628 stated that petitioner should send or carry the form to the local assessor and the local assessor would complete its section of the form and file it with the State Tax Commission, indicating that filing would only occur when the local assessor's office submitted the form to the State Tax Commission. Further, the State Tax Commission included language at the top of Form 628 stating that the form was issued under the authority of MCL 211.154, indicating that this statute, and not the directions on the form, governed the procedure for requesting a reassessment.

Yet although Form 628 indicated that filing would only occur when the local assessor submitted the form to the State Tax Commission and referenced MCL 211.154, Aston took Form 628 to the City of Rochester Assessor's Office on Friday, December 28, 2001, the last business day of the year.⁵ In order to ensure that petitioner's requests for reassessment were disclosed to the State Tax Commission by the end of that calendar year, the assessor would have had to find the information required by Form 628 for both parcels of property, fill out the forms, and take them to the State Tax Commission office before the close of business that day.⁶

Petitioner failed to give the Assessor's Office a reasonable amount of time to fill out the forms and mail them to the State Tax Commission so the Commission would receive them by the end of the calendar year. Considering that Form 628 indicated that filing would only occur when the State Tax Commission received the form and that petitioner, by filing his request on December 28, 2001, did not give the Assessor's Office a reasonable amount of time to fill out the forms and send them to the State Tax Commission before the end of the calendar year, it was unreasonable for petitioner to believe that the State Tax Commission would receive the forms before the end of the calendar year. Accordingly, equitable relief pursuant to MCR 7.216(A)(7) is not appropriate.

⁴ Petitioner's representative did not provide an attorney bar number on any filings before the Tax Tribunal and it is unclear whether he is a licensed attorney in this state.

⁵ Although December 31, 2001, was a Monday, state offices were closed on this day.

⁶ The parties do not indicate the time of day when Aston delivered the forms to the Assessor's Office.

Affirmed.

/s/ William C. Whitbeck

/s/ Donald S. Owens