

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH KASBERG,

Petitioner-Appellant,

and

NATIONAL CHURCH RESIDENCES OF WIN
YPSILANTI,

Appellant,

v

YPSILANTI TOWNSHIP,

Respondent-Appellee.

FOR PUBLICATION

March 16, 2010

9:15 a.m.

No. 287682

Michigan Tax Tribunal

LC No. 00-338289

Before: Markey, P.J., and Bandstra and Murray, JJ.

BANDSTRA, J.

Appellants, the National Church Residences of Win Ypsilanti (National), a non-profit housing concern, and one of its officers, Joseph Kasberg, appeal by right the Tax Tribunal's August 29, 2008, order dismissing an appeal of appellee Ypsilanti Township's tax assessment of certain real property. Appellants assert that appellee wrongfully determined the property was not exempt from taxation under MCL 125.1415a. The hearing officer granted appellee's motion for summary disposition pursuant to MCR 2.116(C)(4) on the ground that the tribunal lacked jurisdiction because the claimed exemption is a creature of the state's police power under the State Housing Development Authority Act, MCL 125.1401 *et seq.*, not of the General Property Tax Act, MCL 211.1 *et seq.* We reverse.

Appellants filed this appeal with the Tax Tribunal arguing appellee wrongfully denied a property tax exemption known as a "payment in lieu of taxes" (PILOT) pursuant to the State Housing Development Authority (SHDA) Act. MCL 125.1415a.¹ Appellants assert that

¹ "If a housing project owned by a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or
(continued...)

National is “a non-profit charitable corporation, which makes it PILOT eligible.” Appellee moved the Tax Tribunal for summary disposition pursuant to MCR 2.116(C)(4) on the ground that it lacked jurisdiction and asserting that the PILOT exemption is a creature of the state’s police power, not of the General Property Tax Act, MCL 211.1 *et seq.* The hearing officer agreed with appellee, so he granted summary disposition and dismissed the case.

Whether the Tax Tribunal has jurisdiction² is a question of law that we review de novo. *W A Foote Mem Hosp v Dep’t of Pub Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995). We note that a court must be vigilant in respecting the limits of its jurisdiction. *Fox v Univ of Michigan Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965). This is because any actions of a court regarding a matter over which it lacks jurisdiction are void. *Id.*

The Legislature has granted the Tax Tribunal “exclusive and original jurisdiction” over certain proceedings, including the following:

(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 the property tax laws of this state.*

(b) A proceeding for a refund or redetermination of a tax levied *under the property tax laws of this state.* [MCL 205.731; Emphases added.]

In other words, the MTT has “exclusive and original jurisdiction” over any “proceeding for direct review of a final decision . . . relating to assessment . . . under the property tax laws of this state.” MCL 205.731(a). Obviously, this case involves an assessment imposed under the property tax laws of Michigan and, applying the straightforward statutory language, the tax tribunal has exclusive and original jurisdiction.

(...continued)

mobile home park association is financed with a federally-aided or authority-aided mortgage or advance or grant from the authority, then, except as provided in this section, the housing project is exempt from all ad valorem property taxes imposed by this state or by any political subdivision, public body, or taxing district in which the project is located. The owner of a housing project eligible for the exemption shall file with the local assessing officer a notification of the exemption, which shall be in an affidavit form as provided by the authority. The completed affidavit form first shall be submitted to the [SHDA] for certification by the [SHDA] that the project is eligible for the exemption. The owner then shall file the certified notification of the exemption with the local assessing officer before November 1 of the year preceding the tax year in which the exemption is to begin.” [MCL 125.1415a(1).]

² This is the only issue before us. We note that much of our dissenting colleague’s discussion has to do with the merits of appellant’s arguments, not with the jurisdiction of the MTT to review the appeal. We express no opinion whether appellants were entitled to and should have been granted certification of exemption from taxation under the PILOT program by SHDA nor the merits of appellants’ MTT appeal in light of the absence of such PILOT certification.

Arguing otherwise, appellee relies on dictum from *Wikman v City of Novi*, 413 Mich 617; 322 NW2d 103 (1982), as well as *Beattie v East China Twp*, 157 Mich App 27; 403 NW2d 490 (1987). *Wikman* actually determined that the MTT *had* jurisdiction over the matter at issue, special assessments imposed for a road paving project in the city of Novi. *Wikman*, 413 Mich at 626, 630-631. The Court reasoned that, because the city was granted power and authority to levy the special assessments by the Legislature through the property tax laws, the Tax Tribunal had jurisdiction to review them. *Id.* at 636. The dispositive question under *Wikman* is whether the assessment at issue here was imposed “under the property tax laws” in the sense that appellee’s power to impose the tax was granted by the property tax laws. That is clearly the case, and, therefore, the MTT has jurisdiction.

Further, we note that the *Wikman* Court drew a contrast between the case before it and those involving “special assessments [that] are clearly not related to property taxes” like assessments “exacted through the state’s police power as part of the government’s efforts to protect society’s health and welfare” or “special assessments . . . collected in connection with a regulatory program to defray the cost of such regulation.” *Id.* at 635. The assessment at issue here was imposed under the property tax laws, not some other authority; it is not within the category of cases declared to be outside of the jurisdictional rule established by *Wikman*.

While noting that *Beattie* is not binding upon us, MCR 7.215(J), appellee nonetheless argues that its reasoning is persuasive. Appellee reads *Beattie* as meaning that, even though a tax assessment has been imposed under the authority of the property tax laws, the MTT is divested of jurisdiction if the propriety of that imposition depends on the availability of an exemption created by some other law, like the State Housing Development Authority Act here.

As appellants point out, however, this *Beattie* reasoning cannot trump either *Wikman* or the clear and unambiguous language of the statute. The statute does not limit the MTT’s jurisdiction to cases where provisions of the property tax laws are to be exclusively or primarily interpreted. Instead, as *Wikman* concluded, the MTT has exclusive and original jurisdiction as to the imposition of taxes by agencies operating under the authority of the property tax laws. There is no “except” clause for cases where other laws might limit that authority or exempt taxpayers from tax liability. See *In re Petition for Foreclosure*, 286 Mich App 108, 111; ___ NW2d ___ (2009) (“The Tax Tribunal has jurisdiction under MCL 205.731(a) to determine whether a taxpayer is entitled to a property tax exemption because the determination relates to an assessment.”); MCL 205.735a(3) (MTT has jurisdiction regarding the “exemption of property” from an assessment so long as a protest has been filed before the Board of Review.) As this panel has recently noted, the MTT has been granted exclusive jurisdiction to decide all sorts of statutory and constitutional questions that might impact the propriety of taxation imposed under the authority of the property tax laws. *Michigan’s Adventure, Inc v Dalton Twp*, ___ Mich App ___; ___ NW2d ___ (Docket No. 287682, issued January 14, 2010).

We reverse and remand for further proceedings in the MTT. No costs should be taxed, a public question being at issue. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Christopher M. Murray