STATE OF MICHIGAN

COURT OF APPEALS

PAMELA ABBETT NICHOLSON,

Petitioner-Appellant,

v

CITY OF BIRMINGHAM,

Respondent-Appellee.

UNPUBLISHED
March 20, 1998

No. 192199
Michigan Tax Tribunal
LC No. 00202257

Before: Gribbs, P.J., and Murphy and Gage, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's denials of her appeal of respondent's 1993, 1994, and 1995 assessments of her real property and her request for a rehearing. We affirm.

In the absence of fraud, this Court reviews a decision of the Tax Tribunal to determine whether the tribunal erred in applying the law or adopted a wrong principle. *Holland Home v City of Grand Rapids*, 219 Mich App 384, 393; 557 NW2d 118 (1996). Factual findings of the tribunal are final, provided they are supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Comcast Cablevison of Sterling Heights, Inc v City of Sterling Heights*, 218 Mich App 8, 11; 553 NW2d 627 (1996). In general, tax exemption statutes must be strictly construed in favor of the taxing authority. *Holland Home, supra* at 396. However, this rule does not permit a strained construction adverse to the Legislature's intent. *Id*.

First, petitioner argues that the Tax Tribunal's denial of her appeal for a poverty exemption for those tax years under MCL 211.7u; MSA 7.7(4r) must be reversed pursuant to *Nicholson v Birmingham Bd of Review*, 191 Mich App 237; 477 NW2d 492 (1991). We disagree. In *Nicholson*, which involved the same parties as the present case, respondent denied petitioner's 1986 and 1987 § 7u poverty exemptions. *Nicholson, supra* at 238-239. Petitioner appealed to the Tax Tribunal, which dismissed petitioner's appeals for the § 7u exemptions on the grounds that it lacked jurisdiction. *Id*. at 239. Petitioner filed subsequent appeals in the circuit court, which dismissed the claims and held that the Tax Tribunal had exclusive jurisdiction. *Id*. Petitioner appealed to this Court, which held that the Tax Tribunal held exclusive jurisdiction to hear claims for exemptions under § 7u

following a taxpayer's unsuccessful request for the exemption before a board of review. *Id*. This Court remanded petitioner's claims to the Tax Tribunal. *Id*. at 243.

This Court stated in *Nicholson* that respondent's denial of § 7u relief was an abuse of discretion, and petitioner was entitled to review because respondent did not state the reasons for its denial until the litigation reached circuit court. *Id*. at 241-242. In the present case, respondent informed petitioner that she was denied relief because she did not fill out the proper form and because the property had multiple owners, four to be exact. Petitioner received a full review by the Tax Tribunal, which included one hearing and review of her claim by the hearing referee, and review by the administrative law judge, both of whom issued written opinions.

The facts and circumstances of *Nicholson*, *supra*, are not substantially similar to the present case, with the exceptions that the same parties are involved and the same form of tax relief is the subject. *Nicholson*, *supra*, primarily involved a jurisdictional question and did not decide the merits of petitioner's § 7u claim. Moreover, we find that the Tax Tribunal hearing referee's decision to affirm respondent's decision as to the 1993 poverty claim was supported by substantial evidence. Petitioner was only one of four owners of the property, even though she was the one who paid the taxes. The Tax Tribunal did not adopt a wrong principle of law in denying the relief. MCL 211.7u; MSA 7.7(4r) plainly granted local officials the discretion to approve or deny requests for that exemption. *Nicholson*, *supra* at 241. Construing the exemption statute in favor of respondent, the taxing authority, it was not unreasonable to deny a poverty exemption for property owned by four persons based upon the poverty of one person. Under MCL 211.3; MSA 7.3, respondent had the authority to hold any and all owners liable for taxes on the residential property.

Next, petitioner argues that the Tax Tribunal administrative law judge erred in denying her request for a rehearing on her assessment appeal because she did not file separate § 7u claims for the tax years 1994 and 1995 as required by 1994 amendments. We disagree.

In denying petitioner's request for a rehearing, the administrative law judge ruled that petitioner's § 7u claims for 1994 and 1995 were properly denied because she did not file separate claims for relief for those years as required by MCL 211.7u(2)(b); MSA 7.7(4r)(2)(b). MCL 211.7u; MSA 7.7(4r) was amended in 1994 to read in part:

> (1) The homestead of persons who, in the judgment of the supervisor and board of review, by reason of poverty, are unable to contribute toward the public charges is eligible for exemption in whole or in part from taxation under this act. This section does not apply to the property of a corporation.
>
> (2) To be eligible for exemption under this section, a person shall do all of the following on an annual basis:
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> (a) Be an owner of and occupy as a homestead the property for which an exemption is requested.

(b) File a claim with the supervisor or board of review on a form provided by the local assessing unit, accompanied by federal and state income tax returns for all persons residing in the homestead, including any property tax credit returns, filed in the immediately preceding year or in the current year. The filing of a claim under this subsection constitutes an appearance before the board of review for the purpose of preserving the claimant's right to appeal the decision of the board of review regarding the claim.

* * *

(3) The application for an exemption under this section shall be filed after January 1 but before the day prior to the last day of the board of review.[1]

Petitioner contends that under MCL 205.737(5); MSA 7.650(37)(5), her 1994 and 1995 § 7u appeals did not require separate claims. MCL 205.737(5); MSA 7.650(37)(5) states:

A motion to amend a petition to add subsequent years is not necessary in the following circumstances:

(a) For petitions filed after December 31, 1987, if the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from appeal at the time of the hearing on the petition.

(b) If the residential property and small claims division of the tribunal has jurisdiction over a petition, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. The residential property and small claims division shall automatically add to an appeal of a final determination of a claim for exemption of a homestead or of qualified agricultural property each subsequent year in which a claim for exemption of that homestead or that qualified agricultural property is denied. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from appeal at the time of the hearing on the petition.

In general, tax exemption statutes must be strictly construed in favor of the taxing authority. *Holland Home, supra* at 396. MCL 211.7u(2)(b); MSA 7.7(4r)(2(b), as amended, requires a person to file a poverty exemption claim on an annual basis for the purposes of an appeal and that the filing shall constitute an appearance for the purpose of preserving the claimant's right to appeal. The administrative law judge stated that petitioner knew or should have known the 1994 amendments to the law required an annual claim.

We find that the Tax Tribunal did not err when it denied petitioner's 1994 and 1995 claims because she failed to file separate applications for those years. When two statutes cover the same general subject matter, the more specific statute must prevail over the more general one. *Michigan Employment Security Comm v Westphal*, 214 Mich App 261, 265; 542 NW2d 360 (1995). MCL 205.737(5); MSA 7.650(37)(5) automatically amends petitions on appeal for subsequent "tax years," and also permits a party to remove a tax year from an appeal at a hearing, but does not specifically address the poverty exemption applications. MCL 211.7u(2)(b); MSA 7.7(4r)(2)(b) specifically addresses appeals for the poverty relief exemption claims and therefore must prevail. Strictly construing MCL 211.7u(2)(b); MSA 7.7(4r)(2)(b) in favor of respondent, the taxing authority, the administrative law judge properly denied petitioner's claims for § 7u exemptions for 1994 and 1995 because she failed to filed claims for those years.

Next, petitioner argues that the Tax Tribunal erred in denying § 7u relief based on her use of the old application form instead of applying with the new form supplied by respondent. There is no dispute that respondent provided petitioner with a copy of a new, more detailed § 7u poverty exemption application form for the 1993 tax year, and that petitioner refused to file it. The new form was seven pages long and included detailed questions of an applicant's financial status. Instead of filling out the new form, petitioner filled out the old § 7u form, which was two pages long and contained fewer questions. The Tax Tribunal administrative law judge found that there was no cause for a rehearing on the 1993 poverty claim, in part, because petitioner used the old application form and refused to use the new form, even though she was asked to do so. The judge stated that the new form requested information as to petitioner's assets, whereas the older form requested information only as to income and expenses.

We find that the Tax Tribunal administrative law judge did not err in affirming respondent's denial of petitioner's 1993 claim partly due to her failure to use the new form. Under MCL 211.7u; MSA 7.7(4r), prior to the 1994 amendments, respondent had the discretion to approve or deny requests for a § 7u exemption. Petitioner contends that respondent had all the information it needed to determine her eligibility. However, respondent, not petitioner, enjoyed the discretion to determine eligibility. Petitioner had no right to use the form of her choice instead of the one sent to her by respondent, which contained many more questions about her financial status. Respondent properly exercised its discretion in determining that petitioner was not eligible for relief due to her refusal to submit her claim on the newer form.

Moreover, we do not agree with plaintiff's contention that the 1994 amendments to MCL 211.7u; MSA 7.7(4r) should be applied retroactively to save her 1993 claim. These amendments created substantial new rights for § 7u applicants. These include requiring the board of review to make the guidelines for eligibility available to the public, mandating the board of review to follow the guidelines except for a substantial or compelling reason, and permitting a person filing a § 7u claim to appeal an assessment on the property for which the claim is made in the same year.

Generally, statutes are applied prospectively unless the Legislature has expressly or impliedly indicated its intent to give retroactive effect or unless the statutes are remedial or procedural in nature. *Cipri v Bellingham Frozen Foods, Inc*, 213 Mich App 32, 37; 539 NW2d 526 (1995). There is no

express indication that the Legislature intended the amendments to be retroactive. In contrast, when the Legislature amended MCL 205.737(5); MSA 7.650(37)(5), the statute was amended to read, "For petitions filed after December 31, 1987. . . ." There was no similar language in the 1994 amendments to MCL 211.7u; MSA 7.7(4r). We find that the Legislature did not intend the amendments to be applied retroactively, and the Tax Tribunal accordingly did not err when it failed to apply the 1994 amendments to petitioner's 1993 claim.

Petitioner separately argues that the denial of her claim for § 7u relief for 1991 must be reversed because the 1994 amendments should be applied retroactively. As noted above, we do not believe the Legislature intended these amendments to have retroactive application. Moreover, petitioner did not raise this issue below and the Tax Tribunal did not address it. Generally, this Court does not review issues raised for the first time on appeal and not addressed by the trial court. *Auto Club Ins Ass'n v Lozanis*, 215 Mich App 415, 421; 546 NW2d 648 (1996).

Next, petitioner argues that the Tax Tribunal hearing referee's 1995 decision denying her appeal was a legal nullity because the referee did not consider the 1994 amendments to MCL 211.7u; MSA 7.7(4r) in rendering her decision. We find that the hearing referee's ruling was not a legal nullity. The 1994 amendments would have applied only to the referee's consideration of petitioner's 1994 and 1995 appeals and not to the hearing referee's determination of the 1993 assessment. Therefore, the hearing referee's ruling, as it pertains to the 1993 assessment, is not a nullity. Moreover, upon petitioner's request for a rehearing, the administrative law judge *did* apply the 1994 amendments to the 1994 and 1995 assessments. The judge found under MCL 211.7u(2)(b); MSA 7.7(4r)(2)(b) that the hearing referee should not have even considered petitioner's 1994 and 1995 § 7u exemption appeals because of petitioner's failure to file a § 7u claim for those years. As previously discussed, the administrative law judge properly denied those claims. Had the hearing referee applied the 1994 amendments to petitioner's 1994 and 1995 claims as petitioner seems to have desired, the referee should have denied them for the same reason as did the administrative law judge.

Petitioner also argues that the *Nicholson* precedent controls with regard to the proper implementation of § 7u. As previously discussed, *Nicholson*, *supra*, involved petitioner's 1986 and 1987 claims, and this Court's holding involved jurisdiction of those claims, and not their merits. Therefore, petitioner's argument is without merit.

Next, petitioner argues that the Tax Tribunal's ruling on the true cash value of her homestead property for the 1993, 1994 and 1995 tax years should be reversed as not in conformity with substantial evidence and/or the correct assessment standard. We disagree.

Factual findings of the tribunal are final, provided they are supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Comcast*, *supra* at 11. Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). The taxpayer has the burden of proof to establish the true cash value of the property. *Samonek v Norvell Twp*, 208 Mich App 80, 84; 527 NW2d 24 (1994); MCL 205.737(3); MSA 7.650(37)(3). True cash value is synonymous with fair market value and is

commonly determined by three different approaches: (1) cost less depreciation, (2) sales comparison, and (3) capitalization of income. *Id*. Regardless of the approach, the value determined must represent the usual price for which the property would sell. *Id*. The tribunal may not automatically accept a respondent's assessment, but must make its own findings of fact and arrive at a legally supportable true cash value. *Jones*, *supra* at 355. The tribunal is not bound to accept either of the parties' theories of valuation. *Id*. at 356. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Id*. However, the Tax Tribunal must consider the sales prices of comparable parcels of property not sold at an auction or forced sale in determining the true cash value of a subject property. See *Samonek*, *supra* at 81, 84-85.

Petitioner has appealed the Tax Tribunal's order affirming the property tax assessments on her property for 1993, 1994 and 1995. The property consists of a one-story home located on Smith Street in Birmingham. The house was built on a 40' by 120' site in 1950. The house has 758 square feet, and included one full bathroom and a full basement. There was also a detached, unfinished garage. Respondent assessed the true cash value for the property at $80,200 for the 1993 tax year, $85,400 for 1994 and $92,260 for 1995.

Petitioner argues that the hearing referee did not make independent findings of fact and conclusions of law in her opinion and that the facts supporting the opinion were inadequate. Petitioner requested that the true cash value for her property be assessed at $67,518 for 1993, $72,200 for 1994, and $78,000 for 1995. Petitioner provided evidence that in 1993, there were three homes in her neighborhood for sale at prices ranging from $70,000 to $79,000. In 1994, homes in her neighborhood sold for prices ranging from $65,000 to $82,000. Petitioner requested that for 1994, a value of $72,200 was required because the district realized true cash values in the "60s" in 1994, and petitioner's property had a history of being valued at or less than the lower range of market values for the area. Petitioner had submitted evidence of the 1995 sale of a comparable home, also located on Smith Street in Birmingham, for $75,000. The house was 784 square feet in size, and contained two bedrooms, one bathroom, a basement, and a two-car garage.[2]

Respondent filed an appraisal of petitioner's property with the Tax Tribunal prior to the hearing. For 1995, it estimated the true cash value of the property at $92,260. In addition, the assessor attached information regarding the sales of what it considered to be three similar one-story houses on properties located in Birmingham. "Comparable #1" was an 816 square-foot house built in 1925, which also included a full basement, one full bathroom and a detached garage. This property sold for $99,900 in October 1993. "Comparable #2" was also built in 1925, contained 726 square feet, a full basement, one full bathroom and a detached garage. This house sold for $96,000 in October 1992. "Comparable #3" was built in 1932, contained 975 square feet, a full basement, one full bathroom, but no garage. This house sold for $93,000 in April 1992.

Following the hearing, the hearing referee determined that no revised assessments were required for the property for 1993, 1994 and 1995. The hearing referee's opinion stated that she examined the evidence submitted by the parties, including petitioner. The hearing referee stated that although petitioner presented information on numerous sales in the area, those sales were not adjusted for physical differences. While the hearing referee did not specify in her opinion as to which physical

differences she was referring, it is evident that the referee did not simply accept respondent's assessment, but did consider petitioner's evidence and did arrive at her own determination. Respondent submitted evidence of recent sales of comparable homes for amounts ranging from $93,000 to $99,900 in 1992 and 1993. This was substantial evidence that respondent's assessments, the latest of which was $92,260 for 1995, were not unreasonably high. Accordingly, the Tax Tribunal did not err in affirming respondent's assessment of petitioner's property.

Petitioner now argues that under the cost-less-depreciation method, the true cash value of her home was only $51,696. Petitioner did not make this argument below, and we decline to review it. In any event, the Tax Tribunal was not obligated to accept petitioner's theory of valuation. *Jones*, *supra* at 356.

Finally, petitioner argues that respondent's 1989 increase in her property assessment was in violation of the Michigan Constitution and that the Tax Tribunal improperly failed to rule on the issue. Petitioner's argument is without merit. Her argument involves the assessment for the 1989 tax year, whereas her petition to the Tax Tribunal in the present case involved her 1993, 1994, and 1995 assessments. In addition, as petitioner points out, the Tax Tribunal has already considered an appeal by petitioner on this issue for the 1989 assessment and denied it.

Affirmed.

/s/ Roman S. Gribbs
/s/ William B. Murphy

Judge Gage not participating.

[1] MCL 211.30(2); MSA 7.30(2) requires a board of review to meet during the week following the second Monday in March to hear protests of assessments. Following review by the board of review, MCL 211.30(4); MSA 7.30(4) requires the assessor to deliver the approved, completed assessment roll to the county equalization director no later than the tenth day after adjournment of the board of review, or the Wednesday following the first Monday in April, whichever occurs first.

[2] In her brief on appeal, petitioner also included information regarding sales of property which occurred in 1996. This information was not in the lower court record and was not considered by this Court. Appeals to this Court are heard on the original record. MCR 7.210(A).