

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE COUNTY AIRPORT AUTHORITY,

Petitioner-Appellant,

v

CITY OF ROMULUS,

Respondent-Appellee.

UNPUBLISHED

November 15, 2005

No. 255149

Tax Tribunal

LC No. 00-304724

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Petitioner appeals as of right an order of the Tax Tribunal dismissing its petition for lack of jurisdiction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner argues that the Tax Tribunal erred in determining that it lacked jurisdiction. Issues concerning the interpretation and application of statutes are questions of law that this Court decides de novo. *Danse Corp v City of Madison Hts*, 466 Mich 175, 178; 644 NW2d 721 (2002). 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 legal principle. *Id.* The tribunal's factual findings are conclusive "if supported by competent, material, and substantial evidence on the whole record." *Id.* (citation and internal quotation marks omitted).

MCL 205.731 sets forth the jurisdiction of the Tax Tribunal over particular types of cases, including a proceeding for refund or redetermination of a tax under the property tax laws. In an assessment dispute, a petitioner must invoke the jurisdiction of the tribunal by acting within the time limitations of MCL 205.735. "An untimely filing under MCL 205.735(2) deprives the Tax Tribunal of jurisdiction to consider the petition and it is therefore properly dismissed." *W A Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 338; 686 NW2d 9 (2004); *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 543; 656 NW2d 215 (2002)(observing that "[b]oth our Supreme Court and this Court have clearly stated that the time requirements contained in MCL 205.735(2) are jurisdictional in nature," citing *Szymanski v City of Westland*, 420 Mich 301, 305; 362 NW2d 224 (1984)). The time limitations in MCL 205.735 apply unless a specific provision providing a longer period exists. *Szymanski, supra* at 304.

The tribunal's order states that the petitioner failed to properly invoke the tribunal's subject-matter jurisdiction pursuant to MCL 205.735, because the petition was filed more than

30 days after the issuance of ad valorem tax bills for the tax year at issue. Petitioner does not contest this determination. Instead, petitioner relies on the longer period provided in MCL 211.53a, which states:

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.

We have thoroughly contemplated all of the arguments on this issue, considered the statutory language and the analytical framework as structured by the statute, and reviewed the relevant case law. We conclude that the allegation that the property was assessed in the name of the wrong entity does not suggest a clerical error of the type that is subject to correction pursuant to MCL 211.53a. Indeed, respondent's position is that there was no clerical error because the Westin Hotel was the entity *intended* to be assessed. Under these circumstances, it would be nonsensical to conclude that there was clerical error. We agree with the tribunal's assessment of the issue.

Petitioner contends that if there was no clerical error, we should nonetheless remand this case for a determination on the merits because it was not timely notified of the assessment and will be deprived of due process if not given an opportunity to be heard.

An issue that was not raised and addressed below is generally not preserved for appellate review. *STC, Inc v Dep't of Treas*, 257 Mich App 528, 538; 669 NW2d 594 (2003). Petitioner did not raise the issue of alleged inadequacy of notice before the tribunal at any time. Petitioner did not allege in its petition that notice of the assessment was inadequate. After the tribunal issued its decision, petitioner could have, but did not, file a motion for reconsideration. 1999 AC, R 205.1288. Although "this Court may address unpreserved constitutional questions where no question of fact exists and the interest of justice and judicial economy so dictate," *STC, Inc, supra* at 538 (citation omitted), here the parties dispute whether adequate notice was received, and no factual record or argument was developed below concerning the issue. An appellant is responsible for developing a factual record to support its claims. The proper approach where development of a factual record is necessary for appellate consideration of an issue is to file a motion to remand in this Court. MCR 7.211(C)(1)(a)(ii). Petitioner did not utilize this procedure. Petitioner and respondent have attached additional documentation to their briefs, but it is not properly before this Court because it was not presented below. MCR 7.210(A); *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990). Because petitioner never raised the issue of notice and due process below and because the facts necessary to consider this issue are not apparent from the record, we decline to examine it further.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter