

STATE OF MICHIGAN
COURT OF APPEALS

GRACE BAPTIST CHURCH OF GAYLORD,

Petitioner-Appellant,

v

TOWNSHIP OF BAGLEY,

Respondent-Appellee.

UNPUBLISHED

December 17, 2020

No. 352460

Tax Tribunal

LC No. 18-003966-TT

Before: O’BRIEN, P.J., and M. J. KELLY and REDFORD, JJ.

PER CURIAM.

Petitioner appeals as of right the order of the Tax Tribunal dismissing the case for lack of jurisdiction. We affirm.

I. BACKGROUND

Petitioner owns two parcels in Bagley Township. In tax year 2016, both parcels were exempt from taxes. In 2017, the parcels’ exemption status was changed, and they became subject to taxation as commercial properties. Petitioner did not contest the exemption-status change, and as a result, the parcels were taxed as commercial properties in tax years 2017 and 2018.

On October 10, 2018, petitioner filed a petition in the Tax Tribunal challenging the taxes assessed to the two parcels. Petitioner contended that the parcels should have been classified as church properties exempt from taxation in 2017 and 2018, not as commercial properties. Petitioner also contended that it never received notice of the parcels’ 2017 change in exemption status. Petitioner asked the tribunal to consider its petition “due to lack of notice,” and to “correct the classification” of the contested parcels.

In answer, respondent contended that petitioner was notified of the parcels’ assessment, and that, because petitioner was given notice of the parcels’ assessment, petitioner had no grounds to invoke the Tax Tribunal’s jurisdiction.

On December 11, 2018—after petitioner filed its petition with the Tax Tribunal—petitioner appeared before the Bagley Township Board of Review to contest the non-exempt status of the

parcels. Following petitioner's appearance, the board of review sent a letter to petitioner's attorney stating, "Owing to ongoing tax tribunal jurisdiction, the Board of Review lacks jurisdiction in the cause."

On May 14, 2019, respondent moved for summary disposition. Respondent argued that the Tax Tribunal could not reach the merits of whether the contested parcels were entitled to an exemption because petitioner failed to invoke the tribunal's jurisdiction by protesting the parcels' exemption status to the board of review *before* filing its petition with the tribunal. Respondent further argued that there was no question of fact that petitioner received notice of the parcels' change in exemption status, so respondent was entitled to summary disposition on the notice issue.

On June 13, 2019, the Tax Tribunal denied respondent's motion. The tribunal noted that petitioner did not need to appear before the board of review to challenge a lack of notice, and the tribunal concluded that, when viewing the evidence on the notice issue in the light most favorable to petitioner, there was a question of fact whether petitioner received notice of the change in its parcels' exemption status.

On January 13, 2020, the case proceeded to a hearing before the Tax Tribunal. At the start of the hearing, the Tax Tribunal noted, "Before we go forward, there is a matter, there is a jurisdictional issue that we are going to make findings with before we start the hearing." The Tax Tribunal then asked petitioner if anyone could testify to its mailing address, and Adam Ewing testified that the mailing address for the parcels at issue was "Post Office Box 177, Gaylord, Michigan 49734." Turning to respondent, the tribunal asked if respondent had a witness who could testify to "where the change of assessment notices and tax bills were mailed," and Jason Woodcox testified that the assessments were mailed to "Post Office Box 177, Gaylord, Michigan 49734-0177." The tribunal then adjourned the hearing to consider the evidence.

Following the hearing, the Tax Tribunal issued an order dismissing the petition because the tribunal had "no authority over Petitioner's appeal." The tribunal explained that it had no authority to address petitioner's concerns related to the 2017 and 2018 taxable value of the parcels at issue under MCL 205.735a(6) because "Petitioner failed to file a petition with the Tribunal on or before May 31 of the 2018 tax year." The tribunal went on to explain that it also lacked jurisdiction under MCL 211.53a because the facts alleged did not establish a clerical error or a mutual mistake. Finally, the tribunal noted that petitioner "attempted to appear before Respondent's December Board of Review ('BOR') under MCL 211.53b, [but] the December BOR correctly determined that it did not have jurisdiction because the BOR has no jurisdiction over parcels already under appeal before the Tribunal." For these reasons, the tribunal determined that it had "no authority to grant Petitioner the relief requested" and dismissed the case.

Petitioner now appeals.

II. STANDARD OF REVIEW

In the absence of fraud, this Court's review of a Tax Tribunal's decision is limited to determining whether the tribunal made an error of law or adopted a wrong principle. *President Inn Properties, LLC v City of Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011). To the extent that this Court is asked to review the Tax Tribunal's interpretation of a statute, issues of

statutory interpretation are reviewed de novo. *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518, 528; 817 NW2d 548 (2012). Constitutional issues are likewise reviewed de novo. *Chelsea Inv Group LLC v Chelsea*, 288 Mich App 239, 261; 792 NW2d 781 (2010).

III. ANALYSIS

Petitioner first argues that the Tax Tribunal had jurisdiction to hear its petition. We disagree.

“The jurisdiction of the Tax Tribunal is granted by statute.” *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239; 477 NW2d 492 (1991). The tribunal’s jurisdiction is set forth in MCL 205.735a(6), which, as relevant to this case, provides:

The jurisdiction of the tribunal in an assessment dispute as to property classified . . . as commercial real property . . . is invoked by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved. . . . In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination.

Petitioner is challenging the assessments of two parcels for tax years 2017 and 2018. Both parcels were classified as commercial property. There is no question that petitioner did not file a written petition on or before May 31 of the tax years involved. Therefore, to invoke the tribunal’s jurisdiction, petitioner had to file “a written petition within 35 days after the final decision, ruling, or determination” that it was contesting. MCL 205.735a(6).

Petitioner contends that it invoked the tribunal’s jurisdiction by contesting a final decision of the Bagley Township Board of Review. Petitioner went before the board of review in December 2018 to challenge the exemption status of its property, see MCL 211.53b(1) and (8)(f) (explaining that a board of review can review a “qualified error,” and defining “qualified error” to include “[a]n error regarding the correct taxable status of the real property being assessed”), and the board ruled that it lacked jurisdiction to review petitioner’s claim.

Despite petitioner’s appearance before the board of review, it filed its petition before—not after—the board of review made its determination, and therefore did not invoke the tribunal’s jurisdiction. The Tax Tribunal’s jurisdiction—which “is granted by statute,” *Nicholson*, 191 Mich App at 239—is invoked only if the petitioner files its petition “*after* the final decision, ruling, or determination” that it is contesting, which in this case is a final determination by the board of review. MCL 205.735a(6) (emphasis added). Petitioner filed its petition two months *before* the board of review’s decision. Thus, petitioner failed to comply with the timing requirements in MCL 205.735a(6), and this failure left the tribunal without jurisdiction over petitioner’s case.¹ See

¹ The tribunal also determined that it did not have jurisdiction under 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

Electronic Data Sys Corp v Flint Twp, 253 Mich App 538, 543-544; 656 NW2d 215 (2002) (explaining that the timing requirements in MCL 205.735a(6) are jurisdictional, and the Tax Tribunal lacks jurisdiction to consider an untimely petition). The tribunal properly applied the plain language of MCL 205.735a(6), and it was without powers in equity to reach a different result. See *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 634; 752 NW2d 479 (2008) (“The powers of the [Tax Tribunal] are limited to those authorized by statute, and the [Tax Tribunal] does not have powers of equity.”) (Quotation marks and citation omitted.)

Petitioner next contends that the Tax Tribunal erred by agreeing with the board of review that the board lacked jurisdiction to hear petitioner’s claim because petitioner had filed a petition with the Tax Tribunal. We need not reach the merits of this argument because the tribunal erred by considering the issue. “When a court lacks subject matter jurisdiction to hear and determine a claim, any action it takes, other than to dismiss the action, is void.” *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992). Accordingly, that part of the tribunal’s decision deciding whether the board of review had jurisdiction to hear petitioner’s claim is void.

Petitioner lastly argues that it was denied due process because the Tax Tribunal refused to hear the merits of petitioner’s case after determining that it lacked jurisdiction. We disagree.

“Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker.” *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). Respondent contested the Tax Tribunal’s jurisdiction, and petitioner received notice of respondent’s arguments. Petitioner had the opportunity to respond to respondent’s arguments before the hearing in front of the Tax Tribunal as well as at the hearing before the tribunal. Petitioner does not contest that the Tax Tribunal judge was an impartial decisionmaker. In light of these facts, it is clear that petitioner received due process.

Petitioner contends that it was deprived of due process because the Tax Tribunal did not hear the merits of petitioner’s case. While petitioner may not have been given the opportunity to present the merits of its case, that does not mean that it was denied due process. See *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 460; 688 NW2d 523 (2004) (noting the “flexible nature of due process”) (quotation marks and citation omitted). Petitioner has failed to cite any authority to support its contention that due process required the Tax Tribunal to hear the merits of a case over which it had no jurisdiction. Indeed, as noted before, the Tax Tribunal was required to dismiss the case after determining that it lacked jurisdiction, and any action it took other than dismissing the case would have been void. *Bowie*, 441 Mich at 56. Accordingly, for

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.

Petitioner does not contest the tribunal’s ruling that it did not acquire jurisdiction under this statute, and it is otherwise clear that petitioner’s petition did not allege a clerical error or a mutual mistake of fact.

the reasons explained, petitioner was given due process, and its arguments to the contrary do not warrant appellate relief.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Michael J. Kelly
/s/ James Robert Redford