STATE OF MICHIGAN

COURT OF APPEALS

U-WASH, INC., Petitioner-Appellant,	UNPUBLISHED August 30, 2011
v	No. 295798 Tax Tribunal
CITY OF ALLEN PARK, Respondent-Appellee.	LC No. 00-328289

Before: METER, P.J., and SAAD and WILDER, JJ.

PER CURIAM.

In this dispute over valuation of tangible personal property for purposes of ad valorem taxation, petitioner, U-Wash, Inc. (U-Wash), appeals by leave granted a final judgment of the Michigan Tax Tribunal. We affirm in part, reverse in part, and remand.

U-Wash contends that the Tax Commission did not have jurisdiction under MCL 211.154 to change the taxable values of U-Wash's personal property, consisting of car-wash equipment.[1] The Tax Tribunal disagreed with this contention.

[1] To preserve an issue for appeal, a party must have raised the issue in the tribunal. See *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Although U-Wash's jurisdictional issue is preserved, U-Wash also raises a constitutional issue (whether the city's action unlawfully "uncaps" the taxable values of U-Wash's machinery) that U-Wash's statement of questions presented does not include, as required by MCR 7.212(C)(5). Accordingly, that issue is deemed abandoned. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008). Also, U-Wash gives this argument cursory, conclusory analysis only, and U-Wash simply references "related case law," without citing it. This Court will not search for authority to support or reject a party's argument, and it is not the duty or proper role of this Court to discover or elaborate a party's argument. See *Flint City Council v Michigan*, 253 Mich App 378, 393 n 2; 655 NW2d 604 (2002).

The Michigan constitution provides for judicial review of decisions by state administrative agencies. "All decisions, findings, rulings and orders of any administrative officer or agency . . . [that] are judicial or quasi-judicial[,] and [that] affect private rights . . . shall be subject to direct review by the courts . . . ." Const 1963, art 6, § 28. That review is narrow:

> [Judicial] review [of agency decisions] shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. [Const 1963, art 6, § 28.]

"In the absence of fraud, error of law or the adoption of wrong legal principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation." Const 1963, art 6, § 28.

Jurisdiction is a question of law and is reviewed de novo. See *Packowski v United Food & Commercial Workers Local 951*, 289 Mich App 132, 138; 796 NW2d 94 (2010). Statutory construction is also a question of law that is reviewed de novo. *McManamon v Redford Charter Twp*, 273 Mich App 131, 134; 730 NW2d 757 (2006).

Deference is given to the Tax Tribunal regarding the interpretation of statutes pertaining to valuation, because they are the type commonly interpreted by the tribunal, and property valuation is within the tribunal's expertise. See *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002). "[T]his Court will generally defer to the Tax Tribunal's interpretation of a statute that it is charged with administering and enforcing." *Twentieth Century Fox Home Entertainment, Inc v Dep't of Treasury*, 270 Mich App 539, 541; 716 NW2d 598 (2006) (internal quotation marks and citation omitted). A construction given to a statute by an agency charged with executing it is entitled to "the most respectful consideration and ought not to be overruled without cogent reasons." *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 629; 765 NW2d 31 (2009) (internal quotation marks and citations omitted).

Under the tax tribunal act, MCL 205.701 *et seq.*, proceedings before the Tax Tribunal are "original and independent and . . . de novo . . . ." MCL 205.735(2). In the Tax Tribunal, a property's assessed valuation on the tax rolls carries no presumption of validity, so the Tax Tribunal "cannot merely affirm the assessment as placed upon the rolls by the assessing authority." *President Inn Props LLC v Grand Rapids*, ___ Mich App ___, ___ (slip op at 8); ___ NW2d ___ (2011). In other words, the tribunal may not "rubber stamp" the taxing authority's assessment, because "'[t]he Tax Tribunal has a duty to make its own, independent determination of true cash value.'" *Id.*, quoting *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). The petitioner has the burden of establishing the true cash value. MCL 205.737(3).

"Even on the failure of a [taxpayer's] evidence that a property's . . . [valuation] is lower than that on the rolls, the burden of going forward with the evidence may shift to the [taxing authority]." *President Inn Props*, ___ Mich App at ___ (slip op at 8). The tribunal may take the taxing authority's assessed valuation and hold it to be its own independent finding of true cash value, as long as substantial evidence supports that valuation. *Id.*

MCL 211.154 provides, in relevant part:

> (1) *If the state tax commission determines that property . . . 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. The state tax commission shall issue an order certifying to the treasurer of the local tax collecting unit . . . the amount of taxes due as computed by the correct annual rate of taxation for each year except the current year. Taxes computed under this section shall not be spread against the property for a period before the last change of ownership of the property.
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> (7) A person to whom property is assessed under this section may appeal the state tax commission's order to the Michigan tax tribunal. [Emphases added.]

Part of general property tax act, MCL 211.1 *et seq.*, is MCL 211.150, which grants the Tax Commission general supervisory authority over assessments of property. *Superior Hotels*, 282 Mich App at 632. The Tax Commission has authority "[t]o receive all complaints as to property liable to taxation that has not been assessed or that has been fraudulently or improperly assessed, and to investigate the same, and to take such proceedings as will correct the irregularity complained of, if any is found to exist." MCL 211.150(3).

Another relevant statutory section is MCL 211.53a, which provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of 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. [Emphasis added.]

MCL 211.53b, which changed in relevant respects during the course of events at issue here, currently provides, in relevant part:

> (1) If there has been a *qualified error*, the qualified error shall be verified by the local assessing officer and approved by the board of review. . . . Except as otherwise provided in subsection (6) and section 27a(4), a correction under this subsection may be made for the current year and the immediately preceding year only.
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> (2) Action pursuant to this section may be initiated by the taxpayer or the assessing officer.
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> * * *

(5) An owner or assessor may appeal a decision of the board of review under this section regarding an exemption under section 7ee or 7jj to the residential and small claims division of the Michigan tax tribunal. An owner is not required to pay the amount of tax in dispute in order to receive a final determination of the residential and small claims division of the Michigan tax tribunal. However, interest and penalties, if any, shall accrue and be computed based on interest and penalties that would have accrued from the date the taxes were originally levied as if there had not been an exemption.

(6) A correction under this section that grants a principal residence exemption pursuant to section 7cc may be made for the year in which the appeal was filed and the 3 immediately preceding tax years.

* * *

(8) As used in this section, "*qualified error*" means 1 or more of the following:

(a) A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes.

(b) A mutual mistake of fact.

* * *

(e) An error of omission or inclusion of a part of the real property being assessed.

(f) An error regarding the correct taxable status of the real property being assessed.

(g) *An error made by the taxpayer in preparing the statement of assessable personal property under section 19.* [Emphases added; footnotes omitted.]

2006 PA no. 13 (effective February 3, 2006) changed MCL 211.53b.[2] Before 2006 PA 13, there was no "qualified error" phrase in subsection (1) and no definition of "qualified error." Of particular relevance, there was no language regarding an error made by the taxpayer in preparing the statement of assessable personal property.

Before 2006 PA 13 amended it, MCL 211.53b(1) read, in relevant part:

[2] There were additional amendments after 2006 PA 13.

> If there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes, the clerical error or mutual mistake of fact shall be verified by the local assessing officer and approved by the board of review . . . . Except as otherwise provided in subsection (6), a correction under this subsection may be made in the year in which the error was made, or in the following year only.

The general rule is that a statutory amendment is given prospective application, unless the amendment is merely procedural, or the Legislature expressly or impliedly identified an intention to give it retroactive effect. *Detroit v Walker*, 445 Mich 682, 704-705; 520 NW2d 135 (1994); *GMAC LLC v Dep't of Treasury*, 286 Mich App 365, 377; 781 NW2d 310 (2009). We conclude that 2006 PA 13 should be given prospective application. It was given "immediate effect" by the Legislature. MCL 211.53b (historical and statutory notes). The phrase "immediate effect" is not, in and of itself, expressive of retroactive effect. Moreover, the parties have not shown that the Legislature intended to give this amendment retroactive effect.

The city first notified U-Wash of the alleged taxable-value errors in question in 2005. Prospective application of 2006 PA 13 means that the amendment does not apply to this case. Significantly, these proceedings relate to tax years 2003, 2004, and 2005, and application of a 2006 amendment would constitute unwarranted retroactive application.

We now must decide whether MCL 211.154 (allowing action by the Tax Commission to correct assessments for "incorrectly reported" property), or MCL 211.53b (providing for an appeal to the Tax Tribunal and the board of review where there is a "mutual mistake of fact"), applies to the city's effort to correct the alleged errors in the assessments. We conclude that MCL 211.154 properly applies, as the Tax Tribunal found.

In resolving this issue, we first consider *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 428; 716 NW2d 247 (2006), which interpreted MCL 211.53a, in particular the phrase "mutual mistake of fact." This phrase also appears in MCL 211.53b (which U-Wash contends was applicable in this case, instead of MCL 211.154[1]).

In *Ford Motor Co*, 475 Mich at 428, the plaintiff, Ford Motor Company (Ford), filed personal property statements with several municipalities. Ford mistakenly reported some of the information in the statements, resulting in overstatements of the quantity of taxable property it owned and overstatements of its tax liabilities. *Id*. at 429. The municipal assessors accepted and relied on Ford's personal property statements as accurate when they calculated Ford's tax liability. *Id*. Without either side recognizing the errors, Ford paid the taxes, and the municipalities accepted the payments. *Id*.

After discovering the errors, Ford petitioned the Tax Tribunal, arguing that there had been a "mutual mistake of fact" within the meaning of MCL 211.53a. *Ford Motor Co*, 475 Mich at 430. The Court held that that phrase means "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Id*. at 442. The *Ford Motor Co* Court held that there were mutual mistakes of fact and applied MCL 211.53a. *Ford Motor Co*, 475 Mich at 429.

On the other hand, in *Superior Hotels*, the Court held that there was error in that case because property was "incorrectly reported or omitted" under MCL 211.154. See *Superior Hotels*, 282 Mich App at 644-645. The Court applied that statute and held that the Tax Tribunal erred in holding that the Tax Commission lacked jurisdiction to issue an order correcting the taxable value. *Id*. A central question here is whether the case at bar is more similar to *Ford Motor Co* or to *Superior Hotels*.

The mistakes here are dissimilar to those of *Ford Motor Co*, because here, there was no error regarding what property was subject to tax, no double reporting of assets, no misclassification of property, no omission of taxable property, no listing of assets that are not taxable personal property, and no listing of assets that were retired or idle. See *Ford Motor Co*, 475 Mich at 430, 436-437. In addition, here, rather than mutual mistakes, each side made a somewhat different mistake. U-Wash's mistake in its personal property statement for 2003 (the first year in which it was liable for tax on the car-wash personal property) was in failing to use historical cost in determining the true cash value of its car-wash machinery; instead it used its own (much lower) purchase price. The city made the mistake of accepting U-Wash's representations of true cash value instead of doing an independent assessment of true cash value.

In *Superior Hotels*, an assessment error arose over a two-year period in which the taxpayer, Superior Hotels, was building a motel. *Superior Hotels*, 282 Mich App at 623. During that time (tax years 2001 to 2003), the township's assessor continued to calculate the real property's taxable value on the basis of the taxable value established when the motel was only half finished. *Id*. at 623-624. Later, the township petitioned the Tax Commission to correct the taxable values, and the Tax Commission granted relief. *Id*. at 624. Superior Hotels appealed to the Tax Tribunal, which held that the Tax Commission lacked jurisdiction to correct the assessor's error in calculating taxable value because the township had failed to show that the property was "incorrectly reported" under MCL 211.154(1). *Superior Hotels*, 282 Mich App at 624. This Court reversed, holding that Tax Commission had jurisdiction. *Id*.

The case at bar is similar to *Superior Hotels*. The assessor in *Superior Hotels* made the mistake of failing to accurately calculate the property's taxable value. *Id*. at 623-624. That is analogous to the error by the city's assessor in this case, because here the city's assessor failed to accurately calculate taxable values. In light of *Superior Hotels*, we conclude that the Tax Commission did have jurisdiction to entertain the city's request to correct the taxable values because property was "incorrectly reported" within the meaning of MCL 211.154(1).

There remains a valuation question. As noted above, the Tax Tribunal may not presume the validity of a property's assessed value, because that would conflict with the statutory mandate that proceedings before the tribunal are "original and independent and . . . de novo . . . ." MCL 205.735(2); *President Inn Props*, ___ Mich App at ___ (slip op at 8). "Even if the tribunal had correctly concluded that petitioner's proofs had failed, the tribunal would still be required to make an independent determination of the true cash value of the property." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 355; 483 NW2d 416 (1992).

The Tax Tribunal did not fulfill its duty to make an independent determination of true cash value. The Tax Tribunal judge, by all appearances, merely adopted the city's proposed true cash values (as corrected by the Tax Commission) as her own findings, without identifying

substantial evidence to support them. We find the record insufficient to indicate that the true cash values of the car-wash equipment for 2003, 2004, and 2005 were indeed $80,600, $75,200, and $68,000.

Accordingly, we affirm the Tax Tribunal's ruling that that the Tax Commission had jurisdiction to entertain the city's proposed correction of true cash values, but reverse the Tax Tribunal's determination of true cash values and remand this case to the Tax Tribunal for a redetermination of them.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Kurtis T. Wilder