STATE OF MICHIGAN

COURT OF APPEALS

QUALITY BEHAVIORAL HEALTH, INC., Petitioner-Appellant,	UNPUBLISHED September 27, 2011
v	No. 297664 Tax Tribunal
CITY OF DETROIT, Respondent-Appellee.	LC No. 00-341721

Before: SERVITTO, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Petitioner appeals by right the dismissal of its tax appeal petition. We affirm.

The Tax Tribunal concluded that because petitioner failed to allege facts indicating mutuality of mistake (as required to trigger the applicability of the three-years-from-payment limitation period provided by MCL 211.53a[1]), the usual, jurisdictional, time periods provided by MCL 205.735 and MCL 205.735a[2] applied. And because petitioner did not meet those jurisdictional time periods, the tribunal concluded that it lacked "authority over" (i.e., subject-matter jurisdiction of) this tax appeal.

[1] "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 . . . ." MCL 211.53a. This section is part of the general property tax act, MCL 211.1 *et seq*.

[2] These sections are part of the tax tribunal act, MCL 205.703 *et seq*. Effective May 30, 2006, the time limits in MCL 205.735 were moved from subsection (2) to subsection (3), and the general limitation period was changed from 30 days to 35 days. 2006 PA 174; *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 73 n 3; 780 NW2d 753 (2010). Petitioner relies exclusively on the three-year limitation period in MCL 211.53a.

Petitioner argues that the Tax Tribunal erred in dismissing its tax appeal petition sua sponte, without notice, and without an opportunity for it to be heard on the grounds for the dismissal. We disagree.

Our constitution provides for judicial review of decisions by administrative agencies:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review 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.]

Whether the Tax Tribunal has subject-matter jurisdiction is a question of law, which we review de novo. *Kasberg v Ypsilanti Twp*, 287 Mich App 563, 566; 792 NW2d 1 (2010). Also, we review issues of statutory construction de novo. *McManamon v Redford Charter Twp*, 273 Mich App 131, 134; 730 NW2d 757 (2006). Finally, we review de novo whether a party has alleged facts stating a prima facie case sufficient to establish subject matter jurisdiction. See *W H Froh, Inc v Domanski*, 252 Mich App 220, 225-226; 651 NW2d 470 (2002).

The Michigan Rules of Court govern "[if] an applicable . . . tribunal rule does not exist." TTR 205.1111(4). Here, in ruling that petitioner had failed to allege facts stating a prima facie case of mutual mistake of fact, the Tax Tribunal rendered a decision analogous to a summary disposition under MCR 2.116(C)(8) for failure to state a claim on which relief can be granted, which we review de novo. *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 304; 788 NW2d 679 (2010). Also, MCR 2.116(C)(4) specifically authorizes summary disposition where the court "lacks jurisdiction of the subject matter." We examine the entire record to determine whether the tribunal lacked subject-matter jurisdiction as a matter of law. *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000).

The interpretation of MCL 211.53a is a matter in which the Tax Tribunal has expertise to which we accord deference. "'[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) (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 be overruled absent cogent reasons. *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 629; 765 NW2d 31 (2009). But agency interpretations of statutes are not binding on courts, and cannot conflict with legislative intent as expressed in the statutory language. *In re Rovas Complaint Against SBC Mich*, 482 Mich 90, 103; 754 NW2d 259 (2008). Also, at least generally, tax laws (as opposed to exemptions) are construed against the government. See *DaimlerChrysler Corp v Dep't of Treasury*, 268 Mich App 528, 534; 708 NW2d 461 (2005).

A preliminary question is whether the three-years-from-payment time limitation, MCL 211.53a, is jurisdictional. We conclude that it is not.

This Court has been held that the time requirement in MCL 205.735(3) ("[t]he jurisdiction of the tribunal . . . is invoked by a party . . . filing a written petition on or before June 30 of the tax year involved") is, as the language suggests, jurisdictional. *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 543; 656 NW2d 215 (2002). Similarly, the 35-day time period in MCL 205.735a(6) is phrased in jurisdictional terms: "In all other matters, the jurisdiction of the tribunal is invoked by a party . . . filing a written petition within 35 days after the final decision, ruling, or determination."

In contrast, the three-years-from-payment time period in MCL 211.53a is not phrased in jurisdictional terms. Our conclusion that the three-years-from-payment time period is not jurisdictional is reinforced by MCL 205.731 which expressly confers "exclusive and original jurisdiction" on the Tax Tribunal over, among other disputes, "[a] proceeding for a refund or redetermination of a tax levied under the property tax laws of this state." MCL 205.731(b). [3]

Also, in *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006), the meaning of the phrase "mutual mistake of fact" as used in MCL 211.53 was at issue. Ford Motor Company (Ford) filed personal property statements with the city of Woodhaven, the city of Sterling Heights, and Bruce Township. Ford mistakenly reported some of the information in the statements, resulting in overstatements of the quantity of taxable property it owned, and, concomitantly, its tax liabilities. The municipal assessors accepted and relied on Ford's personal property statements as accurate when they calculated Ford's tax liability. Without either side's realizing the error, Ford paid the taxes, and the municipalities accepted the payments. *Ford Motor Co*, 475 Mich at 429. The Court opined:

> [T]he mistakes made in these cases are best characterized as mutual. . . . [E]ach assessor's erroneous belief that Ford's personal property statement was accurate does not practically differ from Ford's belief that the statement was accurate. In other words, if Ford believed that it owned certain personal property and reported it properly at the time, then *Ford believed that each statement was accurate. Similarly, if each assessor believed that Ford's statement was accurate,* then the assessor likewise believed Ford owned certain personal property and reported it properly. [*Id*. 443 (emphasis added).]

After discovering the errors, Ford petitioned the Tax Tribunal, arguing a mutual mistake of fact under MCL 211.53a. *Ford Motor Co*, 475 Mich at 430. The Court held that that phrase is a technical term that has acquired a peculiar meaning in the law: "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. For the reasons quoted, the Court held that Ford stated a valid claim in the Tax Tribunal under MCL 211.53a based on mutual mistakes of fact. *Id*. at 442-443.

Our conclusion that the three-years-from payment time period is not jurisdictional is also supported by *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69; 780 NW2d 753 (2010). In that case, the taxpayer alleged that both it and the city assessor erroneously believed that the

[3] We quote the current language with nonsubstantive changes enacted by 2008 PA 125.

taxpayer was legally required to pay 18 mills of a school operating millage although voter approval for the 18 mills had expired. The Tax Tribunal dismissed the appeals, holding that the taxpayer had not alleged a mistake of fact by the Detroit Board of Assessors. *Id*. at 74. This Court reversed, finding that a mutual mistake had occurred, and that it was a mistake of fact and not of law. *Id*. Our Supreme Court reversed this Court's judgment and reinstated the decision of the Tax Tribunal dismissing the appeal because there was no mutual mistake of fact by the assessing officer and the taxpayer. *Id*. at 71, 81, 85. Rather, the mistake was attributable to the Detroit Public Schools alone because it was Detroit Public Schools' CEO, not the city assessor, who certified the tax. *Id*. at 78. There was simply no mistake by the assessor. *Id*.

Briggs is notable regarding whether the three-years-from-payment time period is jurisdictional because the Court referred to the three-years-from-payment period as a limitations period. *Briggs Tax Serv*, 485 Mich at 71. Moreover, in a footnote, the Court observed that the Tax Tribunal had exclusive and original jurisdiction under MCL 205.731(a) (regarding final determinations relating to "assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws") and MCL 205.731(b) (regarding "[a] proceeding for refund or redetermination of a tax under the property tax laws"). *Briggs Tax Serv*, 485 Mich at 72 n 1. Accordingly, petitioner is correct in its argument that the Tax Tribunal had subject-matter jurisdiction under MCL 205.731. Insofar as the Tax Tribunal used the word "authority" to mean "subject-matter jurisdiction," it erred in holding that it lacked subject-matter jurisdiction of petitioner's tax appeal.

Now, given that the three-years-from-payment time period imposed by MCL 211.53a is a limitations period and not jurisdictional, the question remains whether petitioner stated a valid claim under the mutual-mistake statute, MCL 211.53a. In this case, petitioner did not allege mutuality of mistake. Specifically, it did not allege that it (through one of its officers or agents) told the assessor that the property was a group home. Rather, petitioner merely alleged that during an inspection by the city, "someone on the premises" told the city inspector that the property was a group home.

Applying mutual mistake of fact in MCL 211.53a as explicated in *Ford Motor Co* and *Briggs Tax Serv*, the Tax Tribunal is affirmed, albeit on somewhat different grounds. Because petitioner alleged no facts indicating mutuality of mistake, the Tax Tribunal correctly dismissed the tax appeal. Although the tribunal possessed subject-matter jurisdiction, the failure to satisfy MCL 211.53a rendered the appeal untimely. *Leahy v Orion Twp*, 269 Mich App 527, 532; 711 NW2d 438 (2006). This Court will not reverse where the right result was reached for the wrong reason. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007).

Petitioner also argues that the Tax Tribunal erred in dismissing the tax appeal without a hearing because the city is not entitled to judgment as a matter of law and because there is a genuine issue of material fact. We disagree.

The ruling here at issue is analogous to summary disposition under MCR 2.116(C)(8) (failure to state a claim on which relief can be granted). As such, MCR 2.116 applies. "If the grounds asserted [in favor of summary disposition] are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided in MCR 2.118,

unless the evidence then before the court shows that amendment would not be justified." MCR 2.116(I)(5). Here, amendment would not be justified.

First, the dismissal at issue here is most closely an analog of a summary disposition under MCR 2.116(C)(7) (claim time-barred by reason of a limitation period) because we have held that MCL 211.53a is a limitation period and not a jurisdictional statute. Next, MCR 2.116(I)(5) does not state that if the grounds asserted in favor of summary disposition are based on subrule (C)(7), the court shall give the parties an opportunity to amend their pleadings.

Second, petitioner's documentary evidence does not sufficiently substantiate its claim of mutual mistake of fact by both the assessor and it. The two documents submitted in anticipation of the hearing do not relate to an alleged mutual mistake. Two of the documents attached to the petition do relate to the alleged mutual mistake. The first such document, the letter from Evangeline Townsend (the head clerk for exemptions in the assessment division) stating the reason for the denial of the exemption, merely states that the property was "being used as a group home." Accordingly, this letter does not substantiate the claim that there was a *mutual* mistake of fact.

The second document relating to the alleged mutual mistake is the March 1, 2007, handwritten memo by Townsend to the city Ombudsman, stating that the tax exemption was denied in 2005, "reason: stated as [a] group home." This memo also fails to indicate who stated that the property was a group home. Accordingly, because petitioner lacked documentary evidence to support the mutuality requirement for the mutual-mistake-of-fact claim, reversing and remanding to allow an amendment of the petition would be futile and is not justified.

Petitioner also argues that the dismissal of its tax appeal without prior notice and before the small claims hearing was a procedural due process violation. This issue is not included in petitioner's statement of questions presented; therefore it is abandoned. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008).

Even were we to reach the merits of this issue, we would reject petitioner's argument. Procedural due process requires notice and an opportunity to be heard. E.g., *Mettler Walloon, LLC*, 281 Mich App at 213. Petitioner was, judging by the petition, already fully on notice and well aware of the issue of whether MCL 211.53a is satisfied since it attempted to plead facts sufficient for a claim under MCL 211.53a. Second, petitioner had an opportunity to be heard by the Tax Tribunal; it submitted a petition with allegations of fact and filed its "packet of evidence" submitted in anticipation of the small claims hearing. Therefore the procedural due process argument is rejected.

Petitioner also argues that it stated a prima facie case of mutual mistake of fact as required by MCL 211.53a. We disagree.

As discussed above, petitioner did not allege facts indicating that both the assessor and it committed a mutual mistake of fact. Consequently, petitioner failed to plead facts indicating that the three-years-from-payment limitation period in MCL 211.53a applies. If that limitation period

does not apply, the usual time periods apply, and there is no dispute that petitioner's tax appeal was not timely filed under them. MCL 205.735; MCL 205.735a.

We affirm.

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly