STATE OF MICHIGAN

COURT OF APPEALS

JED WUEBBEN and KATE WUEBBEN, Petitioners-Appellants,	UNPUBLISHED December 22, 2011
v	No. 299573 Tax Tribunal
TOWNSHIP OF FRANKLIN, Respondent-Appellee.	LC No. 00-357783

Before: STEPHENS, P.J., and SAWYER and K.F. KELLY, JJ.

PER CURIAM

In this property tax liability action, petitioners, Jed Wuebben and Kate Wuebben, appeal as of right from a judgment of the Michigan Tax Tribunal (Tribunal) affirming the State Tax Commission's (Commission) retroactive reassessment of a parcel of property owned by petitioners for the years 2006, 2007, and 2008. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Petitioners purchased a parcel of property with a mobile home on it and, beginning in 2005, began construction that included adding a garage, an outbuilding, and a house. Petitioners obtained all necessary permits for these structures and completed construction on the new home in 2007. That year, petitioners attended a Township Board Meeting on the subject of taxes. At the meeting, the township supervisor remarked that there would be no tax bill increases on new construction until a year after construction was completed. In 2008, petitioners sent the tax assessor a letter, indicating that they had not yet received notice of an assessment increase. The assessor advised petitioners that the assessed value of the property for 2008 would increase from $12,410 to $38,770 and that the taxable value of the property would increase from $9,800 to $34,245. Petitioners did not object to the assessment increases and paid all applicable taxes for 2008. They listed the property for sale.

Petitioners closed on the sale of the property in September 2008, whereupon they were presented with delinquent tax bills for 2006 and 2007, along with an increased tax bill for 2008. In an order dated August 21, 2008, the Commission had retroactively reassessed petitioners' property pursuant to MCL 211.154, changing the values as follows: for 2006, the assessed value increased from $10,790 to $97,716 and the taxable value increased from $9,451 to $88,265; for 2007, the assessed value increased from $12,410 to $141,300 and the taxable value increased from $9,800 to $131,920; and, for 2008, the assessed value increased from $38,770 to $141,300

and the taxable value increased from $34,245 to $131,920. Petitioners filed a timely appeal of the Commission's order to the Tribunal.

A hearing was held before a hearing referee on November 12, 2009. In a hearing that was not transcribed, the referee received testimony from petitioners and from the new county assessor. The referee found that not all of the structures were included on the tax roll for the years 2006, 2007, and 2008, but that "there is no evidence that Petitioner[s] incorrectly reported to the assessor the structures on their property;" rather, the structures were consciously omitted from the tax roll by the previous assessor, and petitioners "had no duty to beg the assessor to place the structures on the roll and, when she didn't, appeal to the board of review." Accordingly, the referee concluded that the property tax assessment was not subject to correction under MCL 211.154 and that the tax values for 2006 and 2007 should be returned to their original amounts. In a proposed opinion, the referee wrote:

> We do not believe that Respondent, which had the burden of showing that property had been incorrectly reported or omitted from the tax rolls has met that burden. It appears to us that the assessor deliberately did not update the property record card of the Petitioner[s'] property in 2006 and 2007 and 2008 and place various structures on the roll . . . We believe that was her conscious decision. She did not make a mistake. She just did not do her job.

Petitioners filed limited exceptions to the referee's proposed opinion, primarily contesting the 2008 valuation. The Township filed no exceptions. On April 22, 2010, Judge Victoria Enyart issued a Final Opinion and Judgment. While accepting the referee's findings of fact, Judge Enyart nevertheless concluded that the "[a]ssessor's failure to properly assess the property does not . . . justify a reduction in the property's assessment for the tax years at issue absent evidence indicating that the property had, in fact, been included in the assessment or that the value of the omitted property was less than the value added to the assessment." Petitioners never submitted evidence to establish the true cash value for the years in question. The Tribunal, therefore, modified and adopted the proposed opinion, allowing retroactive assessments of petitioners' property in keeping with MCL 211.154.

On May 7, 2010, petitioners filed a motion for reconsideration, arguing that Judge Enyart lacked the authority to reinstate the Commission's decision because MCL 205.762 only allowed the Tribunal to review *exceptions* to the referee's proposed order. Petitioners submitted limited exceptions and the Township submitted no exceptions, yet Judge Enyart effectively reversed the referee's proposed order and reinstating the Commission's original retroactive reassessments. Petitioners also argued that because there was no "under-reporting or omission" on the part of petitioners, there was no reason for a retroactive valuation for those years.

Judge Enyart denied the motion on July 26, 2010, finding that her review powers were not limited by petitioners' exceptions; rather, MCL 205.762(2) clearly provided that the Tribunal could modify a hearing referee's proposed order. Judge Enyart also rejected petitioners' claim that since no mistake was made, retroactive valuation was prohibited:

> Contrary to Petitioners' contentions, Judge Enyart's "final opinion" was supported "by the facts and applicable law." More specifically, the Hearing

> Referee specifically found that "Petitioner[s] began construction on their property in 2005, partially completed it in 2006 and fully completed it in 2007." As such, the assessments at issue should have reflected the partial construction completed during 2005 for the 2006 tax year, the additional partial construction completed during 2006 for the 2007 tax year and the final partial construction completed during 2007 for the 2008 tax year. In that regard, the underlying issue has nothing to do with misrepresentations or incorrect reporting, as the [Commission] did not "correct an assessor's error in mistakenly undervaluing the property." Rather, the assessor did not, in fact, assess the partial construction and, as such, failed to include "previously existing tangible real property" in the assessments. As a result, the construction for each year constituted omitted property. Further, Petitioners did not submit sufficient and reliable evidence to establish the true cash value of the partial construction for each tax year at issue. As a result, the Tribunal has no evidence to indicate that the values adopted by the [Commission] for that construction are erroneous. [Citations omitted.]

Petitioners appeal as of right, again raising the issues of whether the Tribunal had the authority to go beyond the exceptions in reviewing the referee's proposed opinion and whether the Commission could retroactively revalue petitioners' property absent a mistake or omission on petitioners' part.

II. STANDARD OF REVIEW

Our primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548–549; 685 NW2d 275 (2004). In so doing, we must begin with the language of the statute, ascertaining the intent that may reasonably be inferred from its language. *Lash v Traverse City*, 479 Mich 180, 187; 735 NW2d 628 (2007). It is axiomatic that the words contained in the statute provide us with the most reliable evidence of the Legislature's intent. *Kinder Morgan Mich, LLC v City of Jackson*, 277 Mich App 159, 163; 744 NW2d 184 (2007). If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. *Lash*, 479 Mich at 187; *Rose Hill Ctr, Inc v Holly Twp*, 224 Mich App 28, 32; 568 NW2d 332 (1997). Only if a statute is ambiguous is judicial construction permitted. *Detroit City Council v Mayor of Detroit*, 283 Mich App 442, 449; 770 NW2d 117 (2009).

III. APPLICATION OF MCL 211.154(1)

Petitioners first argue that the Commission erred in applying MCL 211.154(1). Under MCL 211.154(1), they argue, the Commission cannot retroactively reassess property in the absence of some error or omission by the taxpayer. Because they made no such error or omission, petitioners argue that the Tribunal erred when finding that the Commission had the authority to retroactively reassess their property. We disagree.

MCL 211.154(1) states, in relevant part as follows:

> If the state tax commission determines that property subject to the collection of taxes under this act . . . 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. . . .

Under MCL 211.154(1), the STC has "limited authority to correct erroneous property tax assessments in specific limited circumstances." *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 630; 765 MW2d 31 (2009).

There is no question that structures on petitioners' property were omitted from the tax roll despite being subject to property taxation. There is also no question that the omissions were discovered in 2008, and that the Commission's retroactive reassessment covered that year and the two immediately preceding years. The only question is whether the omission of the structures on the petitioners' property from the tax roll was the sort of reporting error or "omission" that the Commission is mandated to correct under MCL 211.154(1). Petitioners argue that the omissions are not covered by § 154(1) because the statute only covers omissions that can be attributed to actions of the taxpayer. In support, petitioners rely on *Eagle Glen Golf Course v Surrey Twp*, unpublished opinion per curiam of the Court of Appeals, issued April 19, 2002 (Docket No. 224810).

At issue in *Eagle Glen* was commercial property that the respondent argued "was incorrectly reported because the wrong value for the property was mistakenly placed on the assessment rolls" due to the respondent's assessing errors. *Eagle Glen*, slip op at p 2. This Court concluded that because the errors did not involve the status of the property, the Commission did not have jurisdiction under MCL 211.154. *Id.* at pp 2-3. "MCL 211.154 does not apply to property conceded to be taxable but alleged to be improperly assessed." *Id.* at p 3. In support, *Glen Eagle* relied on and quoted from *Detroit v Norman Allan & Co*, 107 Mich App 186, 191-192; 309 NW2d 198 (1981):

> "We believe that MCL 211.22; MSA 7.22 applies when the assessor petitions the tribunal to increase the value on the tax roll of personal property inadequately and improperly reported by a taxpayer but which is conceded to be taxable. MCL 211.154; MSA 7.211, on the other hand, applies when property has been incorrectly reported as exempt property but it [sic] thought to be . . . taxable property. The issue in such cases is the proper *status* of the property, whether it is amendable to taxation in the first place." [*Glen Eagle*, at p 2 (quotation error and omission by *Eagle Glen* Court; emphasis in original).]

Both *Eagle Glen* and *Norman Allan* have been closely considered by this Court in subsequent opinions, most particularly *Superior Hotels*. At issue in *Superior Hotels* was property on which the petitioner was building a motel. *Superior Hotels*, 282 Mich App at 623-624. Respondent had improperly assessed the taxable value of the property when a former assessor continued to calculate the value of the completed property on the basis of the value of the property when the motel was half completed. *Id.* The tribunal, relying in part on a prior tribunal decision predicated on *Eagle Glen*, had "ruled that the [Commission] lacked jurisdiction

to correct an assessor's error in calculating taxable value because respondent had failed to show that the subject property was 'incorrectly reported or omitted,'" *Id.* at 624.

This Court disagreed, concluding that the amendment of MCL 211.154 in "1982 PA 539 must be considered the Legislature's rejection of the *Norman Allan* decision." *Superior Hotels,* 282 Mich App at 624. The Court observed that as amended, MCL 211.154 applied where there is "an 'assessment value' that needs to be corrected as a result of taxable property having been 'incorrectly reported or omitted.'" *Id.* at 633. The Court concluded that "the 'new construction,'" i.e., the completion of the motel, "not included in the determination of the 1999 taxable value became 'omitted real property' as of the 2000 assessment date and assessment dates thereafter." *Id.* at 638-639. The Court reasoned that "the plain language of § 154, read in light of the post-Proposal A tax scheme, supports the conclusion that § 154 confers jurisdiction on the [Commission] whenever taxable property has been 'incorrectly reported or omitted' *for whatever reason* and an incorrect 'assessment value' results." *Id.* at 644 (emphasis added). In other words, § 154 speaks of the authority to correct assessment values where the property in issue has been "incorrectly reported or omitted," but it does not specify that the error must come from a particular source.

Thus, *Superior Hotels* held that under the new statutory language, the Commission could retroactively reassess additions to property that were omitted from the tax roll, despite facts that showed no evidence of taxpayer omission. *Id*. at 638-639. Petitioners' authorities in support of their interpretation of MCL 211.154(1) are no longer good law. Because additions to property that have been incorrectly omitted from the tax roll may be retroactively assessed regardless of the absence of taxpayer fault, the tribunal did not err in concluding the Commission had the authority to retroactively reassess the petitioners' property under MCL 211.154(1).

IV. SCOPE OF TRIBUNAL REVIEW

Petitioners filed three specific exceptions to the proposed opinion and judgment of the hearing referee, none of which related to the referee's conclusions with regard to the proper tax values to be placed on petitioners' property for 2006 and 2007. Respondent did not file its own exception, nor did it object to the three exceptions filed by petitioners. Nevertheless, Judge Enyart reviewed and chose not adopt the referee's conclusions with regard to the appropriate tax values for the petitioners' property in 2006 and 2007. Petitioners argue that the scope of the Tribunal's review was limited to the exceptions absent a rehearing and that, because neither party took exception to or requested relief from, the 2006 and 2007 tax values in the referee's proposed opinion, Judge Enyart erred in reviewing and modifying the referee's tax values for those years. We disagree.

The issue involves an interpretation of MCL 205.762, which provides, in pertinent part:

> (1) The residential property and small claims division created in section 61 has jurisdiction over a proceeding, otherwise cognizable by the tribunal, in which residential property is exclusively involved. . . .
>
> (2) A person or legal entity entitled to proceed under section 31, and whose proceeding meets the jurisdictional requirements of subsection (1), may elect to

> proceed before either the residential property and small claims division or the entire tribunal. A formal record of residential property and small claims division proceedings is not required. Within 20 days after a hearing officer or referee issues a proposed order, a party may file exceptions to the proposed order. The tribunal shall review the exceptions to determine if the proposed order shall be adopted as a final order. Upon a showing of good cause or at the tribunal's discretion, the tribunal may modify the proposed order and issue a final order or hold a rehearing by a tribunal member. A rehearing is not limited to the evidence presented before the hearing officer or referee.

Contrary to petitioners' assertions, the language "upon a showing of good cause *or at the tribunal's discretion*, the tribunal may *modify* the proposed order and issue a final order or hold a rehearing by a tribunal member" is clear and unambiguous and is not limited by the preceding sentences "Within 20 days after a hearing officer or referee issues a proposed order, a party may file exceptions to the proposed order. The tribunal shall review the exceptions to determine if the proposed order shall be adopted as a final order." Nothing in those two sentences limits the Tribunal's authority to independently review the referee's findings of fact and conclusions of law. Rather, the sentences merely set forth the procedural requirements for when parties disagree with a referee's proposed opinion – requiring that such exceptions be filed within twenty days and mandating that the Tribunal address those exceptions. To read the statute as petitioners do would compel a finding that the Tribunal has no authority to review a referee's proposed opinion absent exceptions thereto. Such a conclusion is insupportable under the relevant statutes.

In order to gain a better understanding of the Tribunal's role in reviewing matters that have been referred to a referee, it is helpful to examine Tax Tribunal Act (Act), MCL 205.701 *et seq*. in more depth. MCL 205.721 provides that "[t]he tax tribunal is created and is a quasi-judicial agency" and is comprised of seven members. "Agency" under the Act is defined as "a board, official, or administrative agency empowered to make a decision, finding, ruling, assessment, determination, or order that is *subject to review* under the jurisdiction of the tribunal or that has collected a tax for which a refund is claimed." MCL 205.703(a) (emphasis added). The appointment of hearing officers or referee's is specially provided for in MCL 205.726, which provides:

> The tribunal may appoint 1 or more hearing officers to hold hearings. Hearings, except as otherwise provided in chapter 6, shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969 [APA], 1969 PA 306, MCL 24.271 to 24.287, and the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the hearing shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. *A proposed decision of a hearing officer or referee shall be* ***considered*** *and* ***decided*** *by 1 or more* ***members***[1] *of the tribunal.* [Emphasis added.]

[1] It is uncontested that the hearing referee was not a "member" of the tribunal.

The foregoing subsection provides that the APA, MCL 24.201 *et seq.*, applies to the Tax Tribunal Act, with the exception of the conduct of hearings. The Act does not require a formal record of proceedings. In all other respects, the APA applies to Tribunal proceedings. Section 281 of the APA provides:

> (1) When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party adversely affected to file exceptions and present written arguments to the officials who are to make the decision. Oral argument may be permitted with consent of the agency.
>
> (2) The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact and law necessary to the proposed decision, prepared by a person who conducted the hearing or who has read the record.
>
> (3) The decision, without further proceedings, shall become the final decision of the agency in the absence of the filing of exceptions or review by action of the agency within the time provided by rule. *On appeal from or review of a proposal of decision the agency, except as it may limit the issue upon notice or by rule, shall have all the powers which it would have if it had presided at the hearing.* [MCL 24.281 (emphasis added).]

Section 285 then provides:

> A final decision or order of an agency in a contested case shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law separated into sections captioned or entitled "findings of fact" and "conclusions of law", respectively. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. *A decision or order shall not be made* ***except upon consideration of the record as a whole*** *or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence.* A copy of the decision or order shall be delivered or mailed immediately to each party and to his or her attorney of record. [MCL 24.282 (emphasis added).]

The foregoing APA subsections, as well as the Tax Tribunal Act, clearly indicate that the Tribunal is the final authority on *any* decision within its jurisdiction absent appellate review.

Notably, the referee's proposed opinion contains the following language, which acknowledges the review process:

EXCEPTIONS

This Proposed Opinion and Judgment (POJ) was prepared by the State Office of Administrative Hearings and Rules. The parties have 20 days from date of entry of this POJ to notify the Tribunal in writing if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). The exceptions are *limited* to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions.

A copy of a party's written exceptions *must* be sent to the opposing party and the opposing party has 14 days from the date the exceptions were sent to that party to file a written response to the exceptions.

After the expirations of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, the POJ, the exceptions and responses, if any, and:

> a. Issue a Final Opinion and Judgment adopting the POJ as a Final Decision.
>
> b. Issue a Final Opinion and Judgment modifying the POJ and adopting the Modified Proposed Opinion and Judgment as a Final Decision.
>
> c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate. [Emphasis in original.]

The clear indication is that the parties must take exception to the POJ within 20 days and provide the opposing party an opportunity to respond. There is no indication that the Tribunal's review will be limited by the exceptions. To the contrary, the language "Tribunal will *review* the case file, the POJ, the exceptions and responses, *if any*," clearly evinces a plenary review power, even in the absence of exceptions. The parties are also advised that the Tribunal may adopt the POJ in its entirety or issue a final opinion that modifies the proposed order. Here, Judge Enyart clearly adopted the referee's findings of fact, but rejected the referee's conclusions of law. In justifying her decision to do so, Judge Enyart wrote:

> 1. Contrary to Petitioners' contentions, the Tribunal was not limited to a consideration of the three issues raised by Petitioners' exceptions. Rather, MCL 205.762(2) provides, in pertinent part:
>
> > "Within 20 days after a hearing officer or referee issues a proposed order, a party may file exceptions to the proposed order. The tribunal shall review the exceptions to determine if the proposed order shall be adopted as a final order. Upon a showing of good cause **or at the tribunal's discretion**, the tribunal **may modify the proposed order and issue a final order** or hold a rehearing by a tribunal member." [Emphasis in original.]

Judge Enyart, by emphasizing the phrases within the statute, clearly recognized her duty to review the proposed judgment in its entirety, regardless of the parties' exceptions.

In arguing that the Tribunal was limited in its review by the exceptions filed, petitioners would undercut the Tribunal's review powers, which are clearly contemplated and mandated by the foregoing statutes. The Tribunal's power of review is broad. Judge Enyart not only had the authority to review the referee's judgment, she was required to do so.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly