

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD F. REHBERG,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED
February 12, 2013

No. 308098
Tax Tribunal
LC No. 00-373756

Before: JANSEN, P.J., and WHITBECK and BORRELLO, JJ.

MEMORANDUM.

Petitioner appeals by right an order of dismissal entered by the Michigan Tax Tribunal Small Claims Division upholding respondent's decision to deny a principal residence exemption for his Kalamazoo County property pursuant to MCL 211.7cc. The order also dismissed petitioner's claims regarding the constitutionality of MCL 211.7cc(3)(d). We affirm.

Petitioner purchased property in Kalamazoo County in 1999 and used it as his principal residence until 2005, when he lost his job and moved to Delaware for new employment. Respondent determined that petitioner was ineligible for a principal residence exemption for tax years 2006 and 2007 because he had filed income tax returns as a resident of Delaware. MCL 211.7cc(3)(d) provides that a person may not claim a principal residence exemption if "[t]hat person has filed an income tax return in a state other than this state as a resident, except active duty military personnel stationed in this state with her or her principal residence in this state."

In his petition to the Tax Tribunal, petitioner alleged that MCL 211.7cc(3)(d) was unconstitutional based on the Equal Protection Clause of the Michigan Constitution, as well as the Privileges and Immunities Clause, the Commerce Clause, and the Equal Protection Clause of the United States Constitution. The Tax Tribunal dismissed petitioner's constitutional claims after determining that it did not have jurisdiction to consider the constitutional challenge to the statute. Petitioner again asserts his constitutional challenges on appeal.

Because the Tax Tribunal correctly determined that it did not have jurisdiction to decide the constitutional question, we decline to address petitioner's constitutional claims. The circuit court is the proper place for such constitutional challenges. *Meadowbrook Village Assoc v City of Auburn Hills*, 226 Mich App 594, 596-597; 574 NW2d 924 (1997). The Tax Tribunal does not have jurisdiction or authority to resolve constitutional questions or declare a statute invalid. *Id.* at 596. It is true that "[t]he Tax Tribunal may . . . consider claims that an assessment is

arbitrary or without foundation even if couched in constitutional terms.” *Id.* at 597. But petitioner’s claims were direct challenges to the constitutionality of MCL 211.7cc(3)(d), not merely indirect challenges of an assessment. The Tax Tribunal properly dismissed petitioner’s constitutional claims.

Affirmed.

/s/ Kathleen Jansen
/s/ William C. Whitbeck
/s/ Stephen L. Borrello