

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

Shelly Schellenberg,
Petitioner,

v

MTT Docket No. 448880

County of Leelanau,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT ON REMAND

INTRODUCTION

Petitioner, Shelly Schellenberg, appealed the denial of her principal residence exemption for the 2009, 2010, 2011, and 2012 tax years on Parcel No. 45-001-011-018-00. On March 20, 2013, the Tribunal entered a Proposed Opinion and Judgment affirming Respondent's denial. On May 7, 2013, the Tribunal rendered a Final Opinion and Judgment affirming the Proposed Opinion and Judgment and on May 20, 2014, Petitioner filed a claim of appeal to the Michigan Court of Appeals.

On September 11, 2014, the Michigan Court of Appeals issued an opinion which reversed and remanded the Tribunal's decision. See *Shellenberg v Leelanau County*, unpublished opinion per curiam of the Court of Appeals, issued September 11, 2014 (Docket No. 316363). The Court held that the Tribunal erred in finding that both spouses are required to be residents, failing to cite any authority for potentially limiting the PRE to 74%, and its failure to address Petitioner's claim regarding the Equal Protection Clause.

CONCLUSIONS OF LAW

While husband and wife need not both be residents of Michigan to receive a PRE, a husband and wife who file joint tax returns are "entitled to not more than 1 exemption" in this

state or to receive an exemption in this state and a substantially similar exemption in another state. See MCL 211.7(3). In this case, Petitioner filed joint tax returns with her husband. Nevertheless, there is no evidence of Petitioner's husband receiving an exemption in another state. The only evidence presented includes the tax returns which indicate both resident and nonresident boxes were checked and a vehicle registered in Florida. This evidence is insufficient to demonstrate that Petitioner's husband also received a similar exemption in another state. As such, Petitioner's filing jointly with her husband does not preclude her from receiving an exemption under MCL 211.7cc(3)(a)-(b). Given the fact that both resident and nonresident boxes were checked, the Tribunal finds that Petitioner has not filed a nonresident Michigan income tax return or resident state tax return in a state other than Michigan, and as such, is not precluded from receiving an exemption under MCL 211.7cc(3)(c)-(d). As such, the Tribunal must determine whether Petitioner occupied the subject property as her principal residence during the tax years at issue. Petitioner submitted substantial documents to support her contention that she resided in the subject property during the tax years at issue. More specifically, Petitioner submitted numerous receipts, bills, and vehicle registrations listing the subject property as her address. As such, the Tribunal finds that the evidence and testimony on record support the determination that Petitioner occupied the subject property during the tax years at issue, and therefore, is entitled to a principal residence exemption for the tax years at issue.

The primary dispute is with respect to the proper percentage of the exemption to be granted. Petitioner contends that a 100% exemption should be granted and Respondent contends that a 74% exemption is appropriate. The Tribunal finds that neither Petitioner nor Respondent's contentions are supported. More specifically, Petitioner does not dispute that a portion of the subject property was rented during the tax years at issue. MCL 211.7dd(c) states that:

[e]xcept as otherwise provided in this subdivision, principal residence includes only that portion of a dwelling or unit in a multiple-unit dwelling that is subject to ad valorem taxes and that is owned and occupied by an owner of the dwelling or unit.

As such, the Tribunal finds that only the portion actually occupied by Petitioner, as her principal residence, is eligible for the exemption. While Respondent testified that the appropriate percentage is 74%, Respondent did not support this percentage or explain how it was calculated. The Tribunal finds that the appropriate percentage shall be based upon the value of the property actually occupied by Petitioner.¹ The portion of the property occupied by Petitioner includes the land, the land improvements, and building 1 (i.e., Petitioner’s residence). As such, the appropriate PRE percentage granted, for the tax years at issue, are:

Tax Year	PRE ²
2009	92%
2010	92%
2011	91%
2012	89%

The Court of Appeals also held that if the Tribunal found that a partial exemption is to be granted, the Tribunal shall address Petitioner’s equal protection claim. The Tribunal finds that it is an administrative tax court created by Act 186 of 1973. The Tribunal’s jurisdiction and powers are delineated by statute, which do not include addressing Constitutional arguments. See MCL 205.731 and MCL 205.732. See also *Bastuba v City of Farmington Hills*, unpublished opinion per curiam of the Court of Appeals Docket No. 312746 (issued June 26, 2014)

¹ The State Tax Commission Guidelines for the Michigan Principal Residence Exemption Program (“Guidelines”) state that an exemption shall be prorated “based on the portion of the taxable value of the property used as the principal residence.” *Id.* at 5. However, the Tribunal finds that, mathematically, the value that must be used is the state equalized value given that the taxable value is capped.

² The property record card for each year was used to determine the percentage occupied by the following formula:
$$\frac{(\text{Assessed Land Value} + \text{Assessed Land Improvement Value} + \text{Building 1 Assessed Value})}{\text{Total Assessed Value}}$$

(upholding the Tribunal’s finding that it lacked subject matter jurisdiction over constitutional claims). The Court in *Bastuba* specifically held that:

the tribunal’s jurisdiction is based on “either the subject matter of the proceeding (e.g., a direct review of a final decision of an agency relating to special assessments under property tax laws) or the type of relief requested (i.e., a refund or redetermination of a tax under the property tax laws.)” *Prayer Temple of Love v Wayne Co Treasurer*, 286 Mich App 108, 112; 777 NW2d 507 (2009), citing *Wikman v City of Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982); *Kasberg*, 287 Mich App at 566-567.

The tribunal “is well-qualified to resolve the disputes concerning those matters that the Legislature has placed within its jurisdiction: assessments, valuations, rates, allocation, and equalization.” *Prayer Temple*, 286 Mich App at 112 (citations omitted). It is the “longstanding policy” of this state “to have a tribunal with special expertise resolve nonconstitutional issues relating to tax bases and assessments.” *Jackson Community College v Dep’t of Treasury*, 241 Mich App 673, 682; 621 NW2d 707 (2000). “The need to preserve the tribunal’s exclusive jurisdiction is especially great where . . . factual issues requiring the tribunal’s expertise are present.” *Prayer Temple*, 286 Mich App at 112; quoting *Michigan Consolidated Gas Co v China Twp*, 114 Mich App 399, 402; 319 NW2d 565 (1982). As such, this Court has recognized that “[t]he Tax Tribunal has original and exclusive jurisdiction over those tax issues which involve the accuracy and methodology of the property tax assessment” imposed under the property tax laws. *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989); see also, *Ammex*, 272 Mich App at 495, citing *Kostyu v Dep’t of Treasury*, 170 Mich App 123, 128-129; 427 NW2d 566 (1988). Further, this Court has recognized that, where a petitioner’s claim implicates whether the taxing authority followed statutory procedures and requires factual determinations concerning the bases for the assessment, the Tax Tribunal is the appropriate forum. *Meadowbrook*, 226 Mich App at 597. However, “[t]he Tax Tribunal has no jurisdiction to hold statutes invalid or to consider constitutional matters.” *Prayer Temple*, 286 Mich App at 112, citing *WPW Acquisition Co v City of Troy (On Remand)*, 254 Mich App 6, 8; 656 NW2d 881 (2002); *Ammex*, 272 Mich App at 495-496; *Meadowbrook*, 226 Mich App at 596-597, citing *Wikman*, 413 Mich at 647; *Johnston*, 177 Mich App at 208. “**Rather, the circuit court has jurisdiction to consider such matters.**” *Ammex*, 272 Mich App at 495-496, quoting *WPW Acquisition*, 254 Mich at 8; see also, *Prayer Temple*, 286 Mich App at 112. [*Id.* at 2. (Emphasis added).]

It is clear that a property is only entitled to receive a PRE for the portion actually occupied by the claimant. See MCL 211.7dd(c). Nevertheless, the Tribunal does not have the authority over any other parcels that Petitioner contends are being treated dissimilarly to the

subject property because those properties were not specifically appealed in this case. In this case, the Tribunal's jurisdiction was specifically invoked by the filing of a Small Claims Petition form appealing the October 16, 2012 Denial of the PRE for Parcel No. 45-001-011-018-00 for the 2009, 2010, 2011, and 2012 tax years. Thus, the Tribunal's subject matter jurisdiction in this case is limited to that parcel and those tax years. Furthermore, the Tribunal does not have authority over constitutional issues and cannot rule on Petitioner's equal protection claim; rather, the appropriate venue for this claim is the circuit court.

JUDGMENT

IT IS ORDERED that Parcel No. 45-001-011-018-00 is entitled to a partial Principal Residence Exemption, for the tax years at issue, as specifically set forth above.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's principal residence exemption for the tax years at issue as provided in this Final Opinion and Judgment within 20 days of entry of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall be without interest, as provided by MCL 211.7cc. It shall, however, include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded.

This Opinion resolves the last pending claim and closes this case.

Entered: Nov 26, 2014
krb

By: Steven H. Lasher