

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KOETJE BUILDERS & DEVELOPERS, L.L.C.,  
Petitioner-Appellant,

UNPUBLISHED  
December 4, 2012

v

TOWNSHIP OF GEORGETOWN,  
Respondent-Appellee.

No. 303220  
Michigan Tax Tribunal  
LC No. 00-374001; 00-374002;  
00-374003; 00-374004;  
00-374005; 00-374018;  
00-374019

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Before: BORRELLO, P.J., and FITZGERALD and OWENS, JJ.

PER CURIAM.

Petitioner appeals as of right the order of the Michigan Tax Tribunal denying its appeal of the Board of Review's denial of its petition challenging the taxable value of several of its properties. The Tax Tribunal held that it lacked jurisdiction over petitioner's challenges. For the reasons set forth in this opinion, we reverse the order of the Michigan Tax Tribunal and remand the matter for further proceedings consistent with this opinion.

**I. PROCEDURAL HISTORY**

Petitioner does not challenge the Michigan Tax Tribunal's findings of fact. Rather, this appeal arises from the Tax Tribunal's legal conclusion that it lacked jurisdiction over petitioner's challenges to the taxable value of several of its residential properties.

After purchasing the properties in 2004, petitioner installed various public service improvements on the properties in 2005. Respondent, in reliance on MCL 211.34d(1)(b)(viii), added the value of the public service improvements to the properties' 2006 taxable values as "taxable additions" to the properties.

On February 20, 2009, petitioner filed seven separate petitions with the March 2009, Board of Review and alleged that the value of the public service improvements on their seven properties was unlawfully added to the properties' taxable values, and as such, the properties' taxable value should be reduced for the 2009 year and in the years to come. The review board denied each petition. On May 29, 2009, petitioner filed its appeals to the Michigan Tax Tribunal. In its appeals, petitioner continued to assert that the value of the public service improvements was unlawfully added to the taxable value of the properties. As such, petitioner requested correction of the 2009 taxable value of the properties. In support of its position, petitioner noted the Michigan Supreme Court's decision in *Toll Northville, Ltd v Northville Twp*,

480 Mich 6; 743 NW2d 902 (2008). In *Toll Northville*, 480 Mich at 13-16, the Michigan Supreme Court held that public service improvements on land do not constitute additions, and that taxing public service improvements as additions under MCL 211.34d(1)(b)(viii) was unconstitutional. MCL 211.34d(1)(b)(viii) provides:

Public services. As used in this subparagraph, “public services” means water service, sewer service, a primary access road, natural gas service, electrical service, telephone service, sidewalks, or street lighting. For purposes of determining the taxable value of real property under section 27a, the value of public services is the amount of increase in true cash value of the property attributable to the available public services multiplied by 0.50 and shall be added in the calendar year following the calendar year when those public services are initially available.

On December 29, 2010, hearing referee Glekler, of the Michigan Tax Tribunal, issued seven proposed opinions and judgments for each of the petitioner’s cases and granted petitioner’s request to recalculate the taxable values of the properties. The proposed opinions and judgments held that pursuant to *Toll Northville*, the value of petitioner’s public service improvements should be deducted from the properties for the 2009 tax year and in future years.

On March 7, 2011, hearing referee Halm *sua sponte* issued seven Final Opinions and Judgments and reversed the December 29, 2010, Proposed Opinions and Judgments. Each Final Opinion and Judgment concluded that the Tax Tribunal lacked jurisdiction over petitioner’s challenges to the taxable value of the properties. The Tax Tribunal held that it lacked jurisdiction over petitioner’s challenges because it characterized petitioner’s challenges as a collateral attack on the 2006 taxable values of the properties. It thus concluded that it did not have jurisdiction to correct a previously entered erroneous taxable value from a year that had not been properly challenged for purposes of correcting the properties’ current taxable values. In addition to finding that it lacked jurisdiction over petitioner’s challenges, the Tax Tribunal held that the Michigan Supreme Court’s ruling in *Toll Northville* should not apply retroactively to petitioner’s challenges. In reaching this conclusion, the Tax Tribunal noted that governmental units added public service improvements to the taxable value of property for 14 years pursuant to MCL 211.34d(1)(b)(viii), and that

[r]etroactive application of the *Toll Northville* decision would require each of these hundreds of units of government to review fourteen years of assessment rolls to determine which properties’ taxable values were increased pursuant to MCL 211.34d(1)(b)(viii). Having done so, every unit of government that levied a millage against that taxable value would have to issue a refund of excess taxes paid. The result would be an extreme hardship that can only be avoided by prospective application [of the rule.]

It is from this order that petitioner appeals as of right.

## II. ANALYSIS

On appeal, petitioner argues that in *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 537-546; 817 NW2d 548 (2012), our Michigan Supreme Court decided this precise issue and held that the Tax Tribunal has jurisdiction over challenges such as the one raised by petitioner. “Review of decisions by the Tax Tribunal is limited.” *Mich Props, LLC*, 491 Mich at 527.

“[T]his Court’s review of decisions of the Tax Tribunal, in the absence of fraud, is limited to determining whether the tribunal made an error of law or adopted a wrong principle; the factual findings of the tribunal are final, provided that they are supported by competent and substantial evidence.” *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011), lv den 490 Mich 911 (2011) (quotation omitted). See also Const 1963, art 6, § 28 (“[i]n the absence of fraud, error of law or the adoption of wrong 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 or allocation.”).

In this case, the Tax Tribunal concluded that it lacked jurisdiction to hear defendant’s appeal. Whether the Tax Tribunal has jurisdiction is a question of law that this Court reviews de novo. *Kasberg v Ypsilanti Twp*, 287 Mich App 563, 566; 792 NW2d 1 (2010). The Tax Tribunal also found that the Michigan Supreme Court’s ruling in *Toll Northville* did not apply retroactively. “Whether a ruling applies retroactively is a question of law that this Court reviews de novo.” *McNeel v Farm Bureau Gen Ins Co of Mich*, 289 Mich App 76, 94; 795 NW2d 205 (2010).

Reviewing de novo the issue of whether the Tax Tribunal had jurisdiction over this matter, we begin our analysis with our Supreme Court’s observation that: “The Tax Tribunal Act sets forth the Tax Tribunal’s jurisdiction.” *Mich Props, LLC*, 491 Mich at 524. MCL 205.731 provides that the Tax Tribunal has exclusive and original jurisdiction over the following:

- (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state.
- (b) A proceeding for a refund or redetermination of a tax levied under the property tax laws of this state.
- (c) Mediation of a proceeding described in subdivision (a) or (b) before the tribunal.
- (d) Certification of a mediator in a tax dispute described in subdivision (c).
- (e) Any other proceeding provided by law.

The Michigan Supreme Court’s decision in *Mich Props, LLC*, 491 Mich at 540 n 37, was a consolidation of two cases, *Mich Props, LLC v Meridian Twp* and *Toll Northville, Ltd v Northville Twp*. The facts and applicable rules of law in one of the consolidated appeals, *Toll Northville*, were nearly identical to those in the case at bar, and were succinctly set forth in *Mich Props, LLC*. One of the petitioners, Toll Northville, made public service improvements to its

property in 2000 and the respondent counted these public service improvements as additions under MCL 211.34d(1)(b)(viii), such that they increased the taxable value of the property. *Id.* at 538. Toll Northville did not challenge the initial increase in the taxable value of its property in 2000. *Id.* at 538-539, 541. Consequently, the increased taxable value was placed on the tax rolls. *Id.* at 541. However, in 2001, Toll Northville challenged the constitutionality of public service improvements being classified as additions such that they affected the taxable value of the properties, and challenged the taxable value of the properties for the 2001 tax year and in subsequent years going forward. *Id.* at 538-539.

We concur with petitioner that our Supreme Court in *Mich Props, LLC*, decided the precise issue of jurisdiction that is contested in the case at bar, i.e., whether the Tax Tribunal has jurisdiction to adjust previously entered erroneous taxable values for purposes of bringing the current taxable values into compliance with the decision in *Toll Northville*. In *Mich Props, LLC*, the Michigan Supreme Court held that the Tax Tribunal has jurisdiction over challenges to taxable values such as the one raised by petitioner in the case at bar. *Id.* at 544-546. In reaching this conclusion, the Court examined the authority of the Tax Tribunal. In pertinent part, the Court noted, “MCL 205.737(1) provides that ‘[t]he tax tribunal shall determine a property’s taxable value . . . .’” *Id.* at 543, quoting MCL 205.737(1). More significantly, the Court concluded that the Legislature vested the Tax Tribunal with the authority and duty “to correct a previous erroneous taxable value in order to adjust the current taxable value, thereby bringing the taxable value back into compliance with the [General Property Tax Act].” Therefore, the Court found that the Tax Tribunal had authority to correct an erroneously calculated taxable value and to correct such a taxable value in the year challenged by a petitioner and in subsequent years. *Id.* at 543-544. Accordingly, the Court held “that the Tax Tribunal does have the authority to reduce an unconstitutional previous increase in taxable value for purposes of adjusting a taxable value that was timely challenged in a subsequent year.” *Id.* at 545-546.

Significantly, in reaching this conclusion, the Court noted that, similar to petitioner in this case, Toll Northville timely challenged the taxable value of its properties in 2001 and in the following years. *Id.* at 544 n 49. Identical to petitioner in this case, while Toll Northville sought a readjustment of these taxable values based on an error made in 2000, it did not seek a refund of the erroneous taxable value that it paid in 2000. The Court noted that Toll Northville would not have been able to seek such a refund of the taxes it paid in 2000 because it did not file a timely appeal in that year. Similarly, in this case, had petitioner sought a refund for the unconstitutional increase in the taxable value of its property from 2006 to 2008, the Tax Tribunal would not have authority to issue a refund for those years as petitioner did not timely challenge the taxable value of its properties for those years. It is also important to note that in this case, while the Tax Tribunal characterized petitioner’s request as a “refund,” petitioner did not request a “refund” but rather, as was the case in *Toll Northville*, petitioner sought a reduction in the taxable value of its properties. The distinction between the relief of a refund and a reduction in the taxable value of its properties may explain how the Tax Tribunal arrived at its conclusion that it lacked jurisdiction in this matter, however its significance lies more in the fact that in *Mich Props, LLC*, the Court held that Toll Northville could seek a recalculation of the taxable value of its properties in the years that it did timely appeal, and that the basis for seeking this recalculation could be an error made in the year prior to the challenge. Hence, the Court clearly differentiated between “the Tax Tribunal’s inability to change and grant relief regarding the tax year 2000 taxable value and its ability to consider evidence of how the tax year 2000 assessment was determined in

reviewing taxable values for a year that was timely appealed.” *Mich Props, LLC*, 491 Mich at 544 n 49.

Because the “. . . [the]Tax Tribunal does have the authority to reduce an unconstitutional previous increase in taxable value for purposes of adjusting a taxable value that was timely challenged in a subsequent year.” *Mich Props, LLC*, 491 Mich at 545-546, the question put forth by petitioner is whether that rule from *Mich Props, LLC* was intended to have retroactive effect. We find that the rule cited above in *Mich Props, LLC* was intended to have at least limited retroactive effect.<sup>1</sup> Such a finding is in accordance with prior decisions of this Court. In *McNeel v Farm Bureau Gen Ins Co of Mich*, 289 Mich App 76, 94; 795 NW2d 205 (2010) (quotation omitted), we held: “[T]he general rule is that judicial decisions are to be given complete retroactive effect.” In this case, it is apparent that the decision from *Mich Props, LLC*, 491 Mich at 545-546, was not intended to have prospective-only effect because the Michigan Supreme Court applied the holding from the case to the parties involved in that case. See *McNeel*, 289 Mich App at 95. Indeed, where courts announce a rule and apply the rule in that case, it is clear that the rule does not apply only prospectively. *Id.* (“it is clear that this Court has already concluded that [*Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551; 741 NW2d 549 (2007)] did not apply prospectively only because it applied its holding to the three cases consolidated in *Griswold* . . . .”)

Thus, applying the rule from *Mich Props, LLC*, to the case at bar, we hold that the Tax Tribunal committed clear legal error by ruling it lacked jurisdiction over petitioner’s challenges. Here, petitioner raised the issue of the Tax Tribunal’s jurisdiction before the tax tribunal and preserved it for appellate review. Thus, petitioner made a timely challenge to the taxable value of its properties. Hence, under *Mich Props, LLC*, the Tax Tribunal had authority and jurisdiction to correct the taxable values of those properties based on an erroneous and unconstitutional calculation of that value in 2006. *Id.* at 545-546. Therefore, contrary to the Tax Tribunal’s holding, the Tax Tribunal has jurisdiction to deduct the unconstitutional increase in the taxable value of petitioner’s properties that was attributable to public service improvements for the years in which petitioner filed a timely challenge.

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<sup>1</sup> Based on our ruling that the rule from *Mich Props, LLC* has at least limited retroactive effect and it applies to the case at bar, we need not decide whether to give the case full retroactive effect because such a conclusion is not necessary for the resolution of the outcome of this appeal. *Rozankovich v Kalamazoo Spring Corp*, 44 Mich App 426, 428; 205 NW2d 311 (1973) (“[c]ourts ordinarily do not render advisory opinions . . . .”). See also *Jackson v Detroit Med Ctr*, 278 Mich App 532, 539 n 4; 753 NW2d 635 (2008) (this Court need not decide issues that are not necessary for a resolution of the issues raised on appeal).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello  
/s/ E. Thomas Fitzgerald  
/s/ Donald S. Owens