

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

---

IRISH OAKS LIMITED PARTNERSHIP,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF DAVISON,

Defendant-Appellee.

---

UNPUBLISHED

April 22, 2003

No. 235608

Genesee Circuit Court

LC No. 01-069379-CZ

Before: Gage, P.J., and Wilder and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm in part and reverse in part.

Defendant's board approved a special assessment for police services, pursuant to MCL 41.801. Plaintiff, the owner of an apartment complex located in defendant township, brought this action challenging the assessment in Genesee Circuit Court. Plaintiff alleged that MCL 41.801 violated the constitutional due process and equal protection guarantees of the federal and state constitutions, that application of the statute violated the Headlee Amendment, and that the method adopted by defendant for apportioning the assessment was contrary to the statute. Plaintiff also sought monetary relief, including a refund of money paid under the special assessment. Defendant moved for summary disposition, pursuant to MCR 2.116(C)(4), arguing that the Michigan Tax Tribunal had exclusive jurisdiction over plaintiff's claims. The circuit court agreed and granted defendant's motion.

Plaintiff first argues that the circuit court erred in determining that this matter was within the exclusive jurisdiction of the Tax Tribunal, because the tribunal does not have the authority to declare a statute unconstitutional.

Subject-matter jurisdiction refers to the power of a court to act and the authority a court has to hear and determine a case. *Wayne Co Chief Executive v Governor*, 230 Mich App 258, 269; 583 NW2d 512 (1998). Subject-matter jurisdiction is determined by reference to the allegations in the complaint. *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 586; 644 NW2d 54 (2002), quoting *Grubb Creek Action Comm v Shiawassee Co Drain Comm'r*, 218 Mich App 665, 668-669; 554 NW2d 612 (1996). If it is apparent from the allegations that the matter alleged is within the class of cases over which the body has power to act, then subject-matter

jurisdiction exists. *Id.* The burden of proof is on the plaintiff to establish jurisdiction. *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000).

Circuit courts are courts of general jurisdiction, and have original jurisdiction over all civil claims and remedies except where exclusive jurisdiction is vested in some other court or the circuit court is denied jurisdiction by constitution or statute. *Farmers Ins Exch v South Lyon Community Sch*, 237 Mich App 235, 241; 602 NW2d 588 (1999). The jurisdiction of the Tax Tribunal is granted by statute, *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239; 477 NW2d 492 (1991), and is set forth in MCL 205.731, which provides:

The tribunal's exclusive and original jurisdiction shall be:

(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 property tax laws.

(b) A proceeding for refund or redetermination of a tax under the property tax laws.

“The tribunal's jurisdiction is based either on 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).” *Wikman v Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982) (emphasis in original).

It is the “longstanding policy” of this state to allow the Tax Tribunal, with its specific expertise, to decide nonconstitutional issues regarding tax bases and assessments. *Jackson Community College v Dep't of Treasury*, 241 Mich App 673, 682; 621 NW2d 707 (2000). The Tax Tribunal can order the payment or refund of taxes and grant other relief or issue writs, orders, or directives it deems necessary. MCL 205.732(b) and (c). Where a 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 Village Assoc v Auburn Hills*, 226 Mich App 594, 597; 574 NW2d 924 (1997). However, the Tax Tribunal does not have jurisdiction over constitutional questions and has no authority to hold statutes invalid. *WPW Acquisition Co v City of Troy (On Remand)*, 254 Mich App 6, 8; 656NW2d 881 (2002); *Meadowbrook, supra* at 596, citing *Wikman, supra* at 647. These matters fall within the jurisdiction of the circuit court. *WPW Acquisition, supra; Meadowbrook, supra* at 596-597.

In *Johnston v Livonia*, 177 Mich App 200, 207-208; 441 NW2d 41 (1989), this Court held that where the plaintiff alleged that the defendant city failed to follow the appropriate statutory procedure for assessing taxes, the claim was clearly within the scope of the Tax Tribunal's jurisdiction. The plaintiff in *Johnston* framed her complaint in a manner that alleged a deprivation of the constitutional right to due process of law, but did not challenge the use of the taxes or the constitutional validity of the authorizing statute. *Id.* at 208. In rejecting the plaintiff's argument that her claims fell within the circuit court's jurisdiction, the *Johnston* Court held:

[P]laintiff is not challenging the use of her taxes or the constitutional validity of the authorizing statute. Rather, plaintiff challenges the validity of the assessment she receives each year which includes an assessment of property she does not own. This we believe involves a factual determination of the accuracy of the assessment and the method of assessing plaintiff's property. As such, it comes within the jurisdiction of the Tax Tribunal. More simply put, while the circuit court has been recognized to have jurisdiction over purely constitutional claims affecting taxation, the mere fact that a particular issue might be framed in constitutional terms does not grant jurisdiction in the circuit court to the exclusion of the Tax Tribunal. If this were the case, virtually every matter submitted to the Tax Tribunal could find its way to circuit court since any inaccurate or improper assessment of a tax could be said to violate the taxpayer's constitutional rights as a taking without due process. Rather, what must be recognized is that the Tax Tribunal has original and exclusive jurisdiction over those tax issues which involve the accuracy and methodology of the property tax assessment. Such issues are involved in the case at bar. [*Id.* at 208.]

We similarly conclude that the Tax Tribunal has exclusive jurisdiction in the present case over plaintiff's claims concerning the defendant's methods of collecting the special assessment. *Id.* Further, the Tax Tribunal has exclusive jurisdiction over proceedings for refunds or redeterminations of tax under the property tax laws. MCL 205.731(b). Therefore, the circuit court properly granted defendant summary disposition of plaintiff's claims regarding the validity of the special assessment itself, defendant's method of imposing and collecting the assessment, and of plaintiff's request for a refund of money paid under the assessment. These matters are all within the exclusive jurisdiction of the Tax Tribunal.

However, plaintiff also included a claim that MCL 41.801 unconstitutionally violated the due process and equal protection guarantees of the federal and state constitutions. As previously noted, the Tax Tribunal does not have jurisdiction over constitutional questions and has no authority to hold a statute invalid. Such a claim is within the jurisdiction of the circuit court, *WPW Acquisition, supra; Meadowbrook, supra* at 596-597, and, accordingly, the circuit court erred in granting defendant summary disposition of plaintiff's constitutional claim. Although the matters of the constitutionality of the statute, defendant's methods of handling of the special assessment, and plaintiff's right to a refund are interrelated, "they need not be addressed by the same tribunal." *WPW Acquisition, supra* at 10.

Defendant argues that this Court should uphold the trial court's grant of summary disposition because plaintiff's constitutional claims are baseless and not supportable. This issue was not reached by the circuit court. This Court need not consider the merits of plaintiff's claims, but must only decide whether the circuit court had jurisdiction over any of plaintiff's claims. See *Romulus City Treasurer v Wayne County Drain Comm'r*, 413 Mich 728, 749, 763; 322 NW2d 152 (1982).

Plaintiff also argues that the Tax Tribunal lacks jurisdiction over the entire matter because the special assessment was enacted through defendant's police power, as part of the government's effort to protect society's health and welfare, not under the property tax laws described in MCL 205.731.

The term “special assessments” refers to “pecuniary exactions made by the government for a special purpose or local improvement, apportioned according to the benefits received.” *Wikman, supra* at 633. In *Wikman*, the Supreme Court noted that most special assessments are levied pursuant to the taxing power. *Id.* at 634. Special assessments that are “in the nature of a property tax” may be “assessed against real property according to the benefits received,” “collected at the same time and in the same manner as other property taxes,” and “may become a lien on the property like other property taxes” if unpaid. *Id.* at 635. “In contrast to these special assessments which are levied under the taxing power, some special assessments are clearly not related to property taxes. Such special assessments are exacted through the state’s police power as part of the government’s efforts to protect society’s health and welfare.” *Id.* Other special assessments “may be collected in connection with a regulatory program to defray the cost of such regulation.” *Id.* “Such assessments are not ones under the property tax laws and are not within the jurisdiction of the Tax Tribunal.” *Id.* at 635-636.

The special assessment at issue in the present case was levied pursuant to MCL 41.801(1), which allows township boards to “provide by resolution for the appropriation of general or contingent funds” for the purchase of police and fire equipment as well as for the maintenance and operation of police and fire departments. Before January 1, 1999, the appropriation for fire or police “vehicles, apparatus, equipment, and housing” could each in a one-year period “not exceed 10 mills of the taxable value of the area in their respective townships for which [fire/police] protection is to be furnished.” MCL 41.801(1). According to the statute, “taxable value” “means that value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.” MCL 41.801(7). The statute also permits local elections on the question of raising money by special assessment or the establishment of special assessment districts. MCL 41.801(3) and (4). The statute further provides for public hearings on the creation of special assessment districts and directs the township boards to “spread the assessment levy on all of the lands and premises in the district that are to be especially benefited by the police and fire protection, according to benefits received, to defray the expenses of police and fire protection.” MCL 41.801(4). The assessment was to “become due and be collected at the same time as other township taxes are assessed, levied, and collected, and shall be returned in the same manner for nonpayment.” MCL 41.801(4).

The special assessment levied by defendant pursuant to this statute was “under property tax laws” as that phrase is used in MCL 205.731. MCL 41.801 grants townships the authority to levy millage against the assessed valuation of all property in the area for which fire or police protection is to be furnished in order to provide for police and fire equipment and housing and for the operation of police and fire departments. The township act, therefore, specifically contemplates that all property in an area will be taxed. The fact that the money collected is used for the maintenance of a police department does not convert the assessment into one undertaken under the police power. The assessment is “in the nature of a property tax” in that it may be “assessed against real property according to the benefits received” and “collected at the same time and in the same manner as other property taxes.” *Wikman, supra* at 635. Therefore, this argument by plaintiff does not serve to deprive the Tax Tribunal of exclusive jurisdiction of plaintiff’s request for a refund or claims regarding defendant’s method of collecting the special assessment.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder

/s/ Karen M. Fort Hood