

STATE OF MICHIGAN
COURT OF APPEALS

FRED FRANZEL and SHIRLEY FRANZEL,

Petitioners-Appellants,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

April 26, 2007

No. 268903

Tax Tribunal

LC No. 00-307122

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Petitioners appeal as of right from a Tax Tribunal order upholding respondent’s denial of petitioners’ claim for a homestead exemption regarding real property located at 5489 Green Drive, Harsens Island, during the 2000 through 2003 tax years. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 201-202; 713 NW2d 734 (2006), our Supreme Court summarized as follows the applicable standards governing review of Tax Tribunal decisions:

The standard of review for Tax Tribunal cases is multifaceted. Where fraud is not claimed, this Court reviews the tribunal’s decision for misapplication of the law or adoption of a wrong principle. We deem the tribunal’s factual findings conclusive if they are supported by competent, material, and substantial evidence on the whole record. . . . Const 1963, art 6, § 28 But when statutory interpretation is involved, this Court reviews the tribunal’s decision de novo. [Internal quotation and citations omitted.]

When engaging in statutory construction, a court’s “paramount concern is identifying and effecting the Legislature’s intent. And where a tax exemption is sought, [a court should] recall that because tax exemptions upset the desirable balance achieved by equal taxation, they must be narrowly construed.” *Id.* at 204. A party claiming entitlement to a tax exemption bears the burden of proving his entitlement to the exemption by a preponderance of the evidence. *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 495; 644 NW2d 47 (2002).

The homestead exemption appears within MCL 211.7cc, which in subsection (1) provides, in relevant part, that “[a] principal residence is exempt from the tax levied by a local

school district . . . if an owner of that principal residence claims an exemption as provided in this section.” Subsection (2) explains the relevant requirements for claiming an exemption:

An owner of property may claim an exemption under this section by filing an affidavit on or before May 1 with the local tax collecting unit in which the property is located. *The affidavit shall state that the property is owned and occupied as a principal residence by that owner of the property on the date that the affidavit is signed.* . . . The affidavit shall require the owner claiming the exemption to indicate if that owner or that owner’s spouse has claimed another exemption on property in this state that is not rescinded or a substantially similar exemption, deduction, or credit on property in another state that is not rescinded. . . [Emphasis added.]

In MCL 211.7dd(c), the Legislature has defined “principal residence” for homestead exemption purposes, the applicable portion of which sets forth that “[p]rincipal residence” means the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established.”

The language of § 7cc(8) plainly vests respondent with the authority to “determine if the property is the principal residence of the owner claiming the exemption.” Section 7cc(8) contains no language directing the permissible and proper course of respondent’s investigation or limiting the sources to which respondent may turn in attempting to ascertain the veracity of one’s principal residence claim. We find appropriate respondent’s resort to 1999 AC, 206.5(2) for the purpose of determining the existence of a “principal residence.”¹ According to Rule 206.5(2),

[f]actors to be considered in determining a taxpayer’s residency or domicile [“the fixed, permanent, and principal home to which a person, wherever temporarily located, always intends to return”] include where he keeps his most important possessions, houses his family, *votes*, maintains club and lodge memberships, *buys automobile licenses, maintains a mailing address* and banks, operates a

¹ Contrary to petitioners’ argument, respondent has broad authority to promulgate tax-related rules. See MCL 205.3(b) (providing that “the department may promulgate rules consistent with this act in accordance with the administrative procedures act of 1969 . . . necessary to the enforcement of the provisions of tax and other revenue measures that are administered by the department”). Although respondent promulgated Rule 206.5(2) setting forth how to determine the existence of a “residence” or “domicile” under the Michigan Income Tax Act of 1967 (ITA), MCL 206.1 *et seq.*, we have interpreted together the ITA and the General Property Tax Act, 211.1 *et seq.*, because they “include the same terms” and “they serve the same purpose in that they provide homestead owners with tax exemptions or tax credits.” *Inter Coop Council v Dep’t of Treasury*, 257 Mich App 219, 226-227; 668 NW2d 181 (2003). Consequently, the administrative rule analyzing the existence of a “domicile” or “residence” under the ITA informs the meaning of “primary residence,” which the homestead exemption statute defines in similar terms.

business, or sues for divorce. However, no one of these factors is controlling. . . .
[Emphasis added.]

In light of the rule's clear and unambiguous language, respondent and the Tax Tribunal properly considered the emphasized indicia when deciding whether petitioners stated a valid claim for a homestead exemption regarding 5489 Green Drive.

Furthermore, in ruling on the exemption, the Tax Tribunal properly considered MCL 257.50a and MCL 168.11. As the tribunal recognized, petitioners' maintenance of driver's licenses at their Washington Township address amounts to their legal declarations that the Washington Township home is their "settled or permanent home or domicile at which [they] reside[]" as defined in section 11 of the Michigan election law." And MCL 168.11(1) in turn provides that for voter registration purposes, "residence" "means that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. If a person has more than 1 residence, . . . that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act."

In summary, we accept petitioners' contention that their filing of an affidavit under MCL 211.7cc(2) constitutes evidence that they owned and occupied 5489 Green Drive as their primary residence. Petitioners otherwise have conceded, however, that their driver's licenses and voter registrations list their Washington Township home address and that they also maintain their general mailing address in Washington Township. Given the undisputed existence of these several indicia that petitioners' Washington Township home constituted their primary residence during the 2000 through 2003 tax years, and their failure to introduce any evidence beyond their affidavit, we conclude that the Tax Tribunal correctly held that notwithstanding the affidavit, they did not satisfy their burden of proving entitlement to the homestead exemption in MCL 211.7cc between 2000 and 2003. Competent, material, and substantial evidence on the record supports the Tax Tribunal's finding that petitioners failed to introduce sufficient proof establishing their entitlement to a homestead exemption for 5489 Green Drive, and the tribunal's ruling comported with the law. *Wexford, supra* at 201-202.²

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello

² We decline to consider any facts relating to the prior consent judgment involving petitioners that they proffer as evidence because they failed to present this evidence to the Tax Tribunal. *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005).