

STATE OF MICHIGAN
COURT OF APPEALS

GRETCHEN L. MIKELONIS,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

June 26, 2012

No. 304054

Tax Tribunal

LC No. 00-409984

Before: FITZGERALD, P.J., and MURRAY and GLEICHER, JJ.

PER CURIAM.

Petitioner appeals as of right from a Tax Tribunal order granting summary disposition in favor of respondent pursuant to MCR 2.116(I)(2). We reverse and remand.

In January 2001, petitioner acquired title to residential property located in Tawas City. The Alabaster Township assessor notified petitioner in October 2003 that, as a result of her ownership of the property, the property no longer qualified for a principal residential exemption (PRE)¹ and the value of the property would be uncapped because of the change of ownership. Petitioner did not contest this determination and paid the additional taxes for tax years 2002 and 2003. Petitioner also paid all the taxes levied against the property by the township for tax years 2004, 2005, 2006, 2007, and 2008.

On August 5, 2008, respondent notified petitioner that it was conducting an audit and reviewing whether petitioner's property qualified for a PRE. Although the township was aware that petitioner's property was not qualified for a PRE in 2003, the township erroneously classified the property in their records as eligible for the PRE in 2004 and assessed the property with a PRE from years 2004 through 2008. On November 13, 2008, respondent notified petitioner that it was denying petitioner's "claimed" PRE. Respondent sought to recover the

¹ A PRE allows an owner to claim an exemption for his principal residence from the tax levied by a local school district for school operating purposes. MCL 211.7cc(1).

unpaid tax debt resulting from respondent's denial of the PRE for years 2005 through 2008² ("the additional balance"), based on the three-year clawback provision³ in MCL 211.7cc(8).

Petitioner appealed respondent's determination to a Treasury Department referee. Petitioner argued that MCL 211.7cc did not apply in this case because petitioner never filed a claim for a PRE for the property. Petitioner asserted that she had no knowledge of a mistake in her property taxes until she was contacted by respondent regarding the audit. In response, respondent asserted that MCL 211.7cc applied because this dispute involved the denial of a PRE. A treasury referee concluded that MCL 211.7cc did not apply because petitioner did not "claim" a PRE. However, the referee's decision was reversed by the director of respondent's Bureau of Local Government Services, who opined that petitioner was not entitled to a PRE and that the PRE on petitioner's property was void ab initio for years 2005 through 2008. The director concluded that

[W]hile this Department lacked the statutory authority to deny the principle residence exemption at issue, because no evidence was adduced that Petitioner ever claimed it, for the same reason, Petitioner was not entitled to receive the exemption for the tax years in question. Therefore, Petitioner is not relieved of her obligation to pay the supplemental taxes due, but the supplemental taxes shall be without interest.

On May 5, 2010, petitioner filed a petition with the Tax Tribunal to contest respondent's decision and order. The tribunal sua sponte granted summary disposition in favor of respondent, holding that (1) MCL 211.7cc applied to the facts of this case because the case involves the denial of a PRE and, therefore, respondent could use the three-year clawback provision to collect the taxes from years 2005 through 2007; (2) petitioner had notice of the error by virtue of the tax bills and effectively "claimed" the exemption by taking advantage of the unauthorized benefit without taking "action to have the exemption rescinded"; and (3) no genuine issues of material fact existed to preclude respondent's right to judgment as a matter of law.

Petitioner first argues that the tribunal incorrectly interpreted and applied MCL 211.7cc to the facts of this case. We agree.

In the absence of fraud, this Court reviews the tribunal's decisions for legal errors. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010). The tribunal's factual findings will be conclusive if they are supported by competent, material, and substantial evidence on the record. *Klooster v Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011). Although this Court will generally defer "to the Tax Tribunal's interpretation of a statute that it is delegated to administer," *Beznos v Dep't of Treasury (On Remand)*, 224 Mich App 717, 721; 569 NW2d 908 (1997), questions of law, including the proper application and interpretation

² This appeal does not involve tax year 2008.

³ The three-year clawback provision consists of the current calendar year and the three immediately preceding calendar years.

of tax statutes, are reviewed de novo. *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). Further, the tribunal’s grant of summary disposition to respondent is similarly reviewed de novo on appeal. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

This Court’s goal when interpreting statutes is to give full effect to the expressed intent of the Legislature. *Ford Motor Co*, 475 Mich at 438-439.

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning. [MCL 8.3a.]

Further, statutory language should be construed in such a manner that: (1) the words are considered in context; (2) the words should be given their plain meaning; and (3) the interpretation would not nullify any portion of the statute. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 345; 745 NW2d 137 (2007). Although tax exemptions are never implied in a statute and must be narrowly construed by this Court, the Court cannot “permit a strained construction [of the statute] that is adverse to the intent of the Legislature.” *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 627-628; 752 NW2d 479 (2008).

MCL 211.7cc is titled, “Homestead exemption from tax levied by school district for school operating purposes; procedures; definitions.” At issue in this case is MCL 211.7cc(8), which provides:

[Respondent] shall determine if the property is the principal residence of the owner claiming the exemption. [Respondent] may review the validity of exemptions for the current calendar year and for the 3 immediately preceding calendar years. Except as otherwise provided in subsection (5),⁴ if [respondent] determines that the property is not the principal residence of the owner claiming the exemption, the department shall send a notice of that determination to the local tax collecting unit and to the owner of the property claiming the exemption, indicating that the claim for exemption is denied, stating the reason for the denial, and advising the owner claiming the exemption of the right to appeal the determination to [respondent] and what those rights of appeal are. . . .

The plain language of MCL 211.7cc(8) reveals that the subsection was designed by the Legislature to establish procedures for respondent to evaluate the validity of a taxpayer’s *claim* for a PRE and to deny the *claim* if respondent determines that the property is not the principal residence of the owner *claiming* the exemption. Indeed, the statute references the word “claim” or “claiming” throughout MCL 211.7cc(8). A “claim” for a PRE is not properly filed unless the

⁴ MCL 211.7cc(5) requires a party who had claimed a PRE to rescind the claim when the owner no longer uses the property as a principal residence.

owner submits an affidavit with the taxing unit.⁵ MCL 211.7cc(2). There is no dispute that petitioner did not file an affidavit with the township, nor is it disputed that petitioner did not claim the exemption.⁶ It is not possible for respondent to determine the *validity* of, or to deny, an exemption that was never claimed.

Respondent essentially argues that the word “claim” as used in MCL 211.7cc(2) should be synonymous with “receive the benefit of.” However, interpreting the term in such a manner would contradict the clear statutory language because it would ignore and invalidate the affidavit requirement and it would grant taxpayers PRE status by merely receiving PRE benefits, which is not permitted by statute. Respondent’s suggestion that the tribunal had authority under MCL 211.7cc(2) to correct the assessor’s mistake because petitioner was not entitled to the PRE in years 2005 through 2007 and would therefore “reap a windfall due to the Assessor’s mistake,” sounds in equity. The tribunal “does not have powers of equity” and therefore cannot manipulate the statutory language in order to achieve a preferable result. *Federal-Mogul Corp v Dep’t of Treasury*, 161 Mich App 346, 359; 411 NW2d 169 (1987), citing *Wikman v Novi*, 413 Mich 617, 646-649; 322 NW2d 103 (1982).

Accordingly, we conclude that the tribunal committed reversible error by misinterpreting the scope of respondent’s authority under MCL 211.7cc(8). MCL 211.7cc(8) clearly limits respondent’s authority to review a taxpayer’s PRE status to instances where the taxpayer claimed a PRE, and to deny a claim for a PRE if the property is not the residence of the owner claiming the exemption. Respondent cannot broaden the clear statutory language by denying exemptions under § 7cc(8) that were not claimed by the property owner. In this case, petitioner did not claim a PRE and, therefore, there was no claim for respondent to deny.⁷

Petitioner next argues that the tribunal erred by sua sponte granting summary disposition in favor of respondent, by ruling in the absence of a supporting record, by failing to rule on petitioner’s motion to consolidate a “companion case” with this case, and by denying petitioner’s request to have the case heard before the entire tribunal. In light of our conclusion that the

⁵ Pursuant to MCL 211.7cc(1), the status of property as a PRE shall be determined on the date an affidavit claiming an exemption is filed under MCL 211.7cc(2).

⁶ The tribunal’s finding that petitioner “effectively claimed” the PRE contradicts the clear requirement that a claim cannot be filed without an affidavit. Further, the tribunal’s discussion regarding petitioner’s knowledge of and failure to correct the township’s assessment error was wholly irrelevant to determining whether respondent possessed the authority to correct the township’s assessment error under MCL 211.7cc(8).

⁷ It appears undisputed that petitioner’s receipt of a PRE on the property was an error on the part of the local assessor. MCL 211.53b gives an assessing officer authority to initiate an action to correct a qualified error. A “qualified error” includes, among other things, “an error regarding the correct taxable status of the real property being assessed.” MCL 211.53(b)(8).

tribunal did not have authority under MCL 211.7cc(8) to correct the assessment error in this case, we need not consider these issues.⁸

Reversed and remanded for entry of an order granting summary disposition in favor of petitioner. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray
/s/ Elizabeth L. Gleicher

⁸ Respondent did not offer any other authority to support its position that it possessed the remedial power to correct the township's classification error.