

STATE OF MICHIGAN
COURT OF APPEALS

DAVID P. ANDERSON,

Petitioner-Appellant,

v

CITY OF HOUGHTON,

Respondent-Appellee.

UNPUBLISHED
October 9, 2012

No. 306220
Tax Tribunal
LC No. 00-412401

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Petitioner appeals by right the Tax Tribunal decision dismissing his petition for lack of jurisdiction and denying his motion for default judgment. We affirm.

In March 2007, petitioner, a practicing dentist, and his wife were under investigation for failure to file tax returns. In May 2007, petitioner and his wife were interviewed by state police. In a supplemental police report, it was concluded that petitioner's wife was in charge of the couple's finances and petitioner was unaware of his wife's deception. In 2010, petitioner prepared personal property statements to be filed with respondent for tax years 2008, 2009, and 2010. The board of review accepted and reduced the assessable and taxable value for 2010, but rejected the statements for the other years as untimely. Petitioner filed his request for a reduction before the Tax Tribunal, and respondent did not timely file an answer. He filed a motion for default judgment, seeking a reduction in his personal property assessments for years 2007, 2008, and 2009. The Tax Tribunal denied the motion for default judgment and dismissed the petition for lack of jurisdiction.

Appellate review of Tax Tribunal decisions is very limited. *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). Absent a claim of fraud, the Tax Tribunal's decision is reviewed for misapplication of the law or adoption of a wrong legal principle. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010). When a petitioner fails to timely file a claim within the period set forth in the Tax Tribunal Act and cannot identify an applicable provision granting an extension of time to file, the Tax Tribunal does not have jurisdiction. *Szymanski v City of Westland*, 420 Mich 301, 305; 362 NW2d 224 (1984). Even if a petitioner asserts that the applicable period should not apply because of the soundness of the claim on the merits or the fact that the underlying claim may have a constitutional dimension, it cannot excuse the petitioner's failure to "assert [the] claim

within the applicable statutory period of limitation.” *Id.* at 303. The time provisions governing the period for filing a claim with the Tax Tribunal are clearly jurisdictional. *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 542-543; 656 NW2d 215 (2002). The Tax Tribunal may sua sponte raise the issue of jurisdiction on its own:

Defects in subject-matter jurisdiction cannot be waived and may be raised at any time. The lack of subject-matter jurisdiction is so serious a defect in the proceedings that a tribunal is duty-bound to dismiss a plaintiff’s claim even if the defendant does not request it. Indeed, having determined that [it] has no jurisdiction, a court should not proceed further except to dismiss the action. [*Id.* at 544 (citations omitted).]

The Tax Tribunal does not have equitable powers to entertain untimely claims or grant delayed appeal. *Id.* at 547-548. Accordingly, the argument that the respondent will suffer no prejudice as a result of the untimeliness is of no consequence. *Id.* at 548. Dismissal of a petition is appropriate when the petitioner fails to properly invoke the jurisdiction of the Tax Tribunal. *Id.*

In the present case, petitioner does not contest the Tax Tribunal’s conclusion that the petition was untimely filed. Rather, he contends that he did not receive notice of the assessment and it is not clear whether respondent sent the notice of the assessment. However, petitioner failed to present documentary evidence with the petition to support the assertion of lack of notice. Petitioner also asserts that he will be deprived of due process of law if the Tax Tribunal does not review his increased assessments because respondent’s assessor becomes the final arbiter of assessment valuations. However, the fact that a claim may have merit or has a constitutional dimension is irrelevant. *Szymanski*, 420 Mich at 303. The time provisions governing the period for filing a claim are jurisdictional, and if the Tax Tribunal lacks jurisdiction, the tribunal cannot act except to dismiss the petition. *Electronic Data Sys Corp*, 253 Mich App at 544. Consequently, in light of the lack of jurisdiction, petitioner was not entitled to a default judgment and the Tax Tribunal appropriately dismissed his petition.

Affirmed. Respondent, the prevailing party, may tax costs.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Douglas B. Shapiro