

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH J. SPEICHER,

Petitioner-Appellant,

v

COLUMBIA TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED

December 21, 2006

Nos. 262828; 262854

Tax Tribunal

LC Nos. 00-304411; 00-304159

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Petitioner appeals as of right the Tax Tribunal's order denying his motion for a rehearing following the entry of a judgment affirming special assessments. Because the Tax Tribunal did not commit an error of law or apply the wrong legal principles in denying petitioner's untimely motion, we affirm.

In March 2004, petitioner Kenneth Speicher filed two petitions under MCL 205.735(2) contesting a special assessment imposed by the respondent township. Respondent failed to answer the petitions within 28 days, as required by 1999 AC, R 205.1332. On December 14, 2004, petitioner moved for a default judgment against respondent. In response, respondent filed an answer to the petitions, and the Tax Tribunal denied petitioner's motion for a default judgment against respondent. On January 20, 2005, the small claims division of the Tax Tribunal held a hearing on the petitions and, on March 10, 2005, the Tax Tribunal issued an opinion and judgment affirming the special assessment. On March 31, 2005, petitioner moved for a rehearing. The Tax Tribunal denied petitioner's motion on the basis that the motion was untimely filed. The Tax Tribunal reasoned:

The Tribunal has no jurisdiction over the Motion filed untimely. When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void. *Fox v Board of Regents of University of Michigan*, 375 Mich 238, 242, 134 NW2d 146, 148 (1965)

Petitioner first contends on appeal that the Tax Tribunal erred in concluding that his motion for a rehearing was untimely. We disagree.

"This Court reviews decisions of the Tax Tribunal only to determine whether the tribunal committed an error of law or applied the wrong legal principles." *Lake Forest Partners 2, Inc v*

Dep't of Treasury, 271 Mich App 244, 247; 720 NW2d 770 (2006). As a general rule, this Court reviews de novo the interpretation and application of unambiguous statutes and administrative rules. *Romulus v Dep't of Environmental Quality*, 260 Mich App 54, 64; 678 NW2d 444 (2003). If the language of the administrative rule or statute is unambiguous on its face, “the drafter is presumed to have intended the meaning plainly expressed and further judicial interpretation is not permitted.” *Id.* at 65. This Court generally defers to the Tax Tribunal’s interpretation of statutes that it is delegated to administer. *Lionel Trains, Inc v Chesterfield Twp*, 224 Mich App 350, 355; 568 NW2d 685 (1997).

Petitioner asserts that his motion for a rehearing was timely under 1999 AC, R 205.1348(1), which provides that, in matters held in the small claims division of the Tax Tribunal,

[a] party may request a hearing or reconsideration of a decision by a hearing officer or referee by filing a written request for a rehearing with the tribunal and submitting a copy to the opposing party within 21 days of the entry of the opinion and judgment by the hearing officer or hearing referee.

Petitioner’s case was held in the small claims division of the Tax Tribunal. MCL 205.762(1). However, petitioner’s reliance on Rule 205.1348(1) is misplaced because the decision was not rendered by a hearing officer or referee. Instead, judgment in petitioner’s case was entered by a tribunal judge, who is considered a “member of the tribunal.” 1999 AC, R 205.1101(1)(i). A tribunal member is a tribunal judge, and not a hearing officer or hearing referee. *Shapiro Bag Co v Grand Rapids*, 217 Mich App 560, 563; 552 NW2d 185 (1996). Thus, Rule 205.1348(1) does not apply in this case. Rather, the timeliness of petitioner’s motion for a rehearing was governed by MCL 205.752, which provides that “[t]he tribunal may order a rehearing upon written motion made by a party within 20 days after the entry of the decision or order.”

The opinion and judgment in this case was entered March 10, 2005, and petitioner filed his motion for a rehearing on March 31, 2005. Because petitioner failed to move for a rehearing within 20 days after the entry of the opinion and judgment, his motion was untimely under MCL 205.752.

Plaintiff next contends that even if his motion for a rehearing was untimely filed, the Tax Tribunal erred in concluding that it lacked jurisdiction to consider the untimely motion. “Jurisdiction is a court’s power to act and its authority to hear and decide a case.” *City of Riverview v Sibley Limestone*, 270 Mich App 627, 636; 716 NW2d 615 (2006). Subject matter jurisdiction describes that types of cases and claims that a court has authority to address. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 375; 689 NW2d 145 (2004).

“Jurisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending”
[*Id.* (citation omitted).]

The Tax Tribunal had jurisdiction over the type of case presented by petitioner, MCL 205.731; MCL 205.762(1), and petitioner properly invoked the jurisdiction of the Tax Tribunal

by filing his petitions within the time limitations set forth in MCL 205.735(2). Contrary to the Tax Tribunal's conclusion, then, petitioner's filing of an untimely motion for a rehearing did not affect its subject matter jurisdiction over petitioner's case. Unlike MCL 205.735(2), which this Court has held is a jurisdictional statute, because it governs when and how a petitioner invokes the Tax Tribunal's jurisdiction (*Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 542-544; 656 NW2d 215 (2002)), MCL 205.752 addresses only the finality of a decision by a tribunal and the timeframe governing motions for rehearing. Thus, unlike an untimely filing under MCL 205.735(2), petitioner's untimely motion for a rehearing did not deprive the Tax Tribunal of jurisdiction. Nevertheless, although the 20-day time limit was not jurisdictional, the Tax Tribunal was not precluded from strictly enforcing the time limit against petitioner.

MCL 205.752 unambiguously states that a party has 20 days after the entry of a decision or order by the Tax Tribunal to move for a rehearing or reconsideration of the decision or order. "The court rules do not provide for 'delayed' motions for rehearing." *Ramsey v Pontiac*, 164 Mich App 527, 538; 417 NW2d 489 (1987). Similarly, the Tax Tribunal Act, MCL 205.701 *et seq.*, does not provide for a "delayed" motion for a rehearing. "[P]rovisions not included by the Legislature should not be included by the courts." *Lake Forest Partners 2, supra* at 248, quoting *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 103; 693 NW2d 170 (2005). Moreover, untimeliness is a valid reason to deny a motion for a rehearing. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). Thus, the Tax Tribunal was justified in refusing to hear petitioner's untimely motion for a rehearing, even though it was incorrect on the matter of jurisdiction.

Finally, petitioner contends that because the Tax Tribunal allowed respondent to answer his petitions more than six months after they were filed, the Tax Tribunal erred in denying his motion for a rehearing, which was filed only one day late. However, the Tax Tribunal's decisions to allow respondent to file an untimely answer and to deny petitioner's motion for a default judgment comported with 1999 AC, R 205.1247. Contrary to plaintiff's argument, the Tax Tribunal's decision was not indicative of any "favoritism" in favor of respondent. In fact, the Tax Tribunal lacked the authority to grant petitioner's untimely request for rehearing under the guise of equity. The Tax Tribunal does not have powers of equity. *Electronic Data Systems, supra* at 547-548. Petitioner failed to file his motion for a rehearing within the 20-day time limit set forth in MCL 205.752. The Tax Tribunal thus did not commit an error of law or apply the wrong legal principles in denying the untimely motion.

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot