

STATE OF MICHIGAN
COURT OF APPEALS

H. JOHN WOJNAROSKI, III,

Petitioner-Appellant,

v

TOWNSHIP OF OSCODA,

Respondent-Appellee.

UNPUBLISHED

May 22, 2007

No. 268486

Tax Tribunal

LC No. 00-312724

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Petitioner appeals as of right from the Michigan Tax Tribunal's judgment denying his request for a principal residence exemption for the tax year 2004. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

After purchasing a residence in Oscoda Township in 2003, petitioner began an extensive remodeling project. To complete the renovation, petitioner moved out of the residence for several months. In May of 2004, the township tax assessor examined the premises and, because she found it uninhabitable, denied the property a principal residence exemption. Petitioner filed an appeal with the small claims division of the tax tribunal. The tribunal upheld the assessor's decision.

On appeal, petitioner asserts that the tax tribunal erred in denying his property the principal residence exemption for 2004. Specifically, he contends that his absence for a temporary period should not disqualify the residence from the exemption because he resided there before May 1, 2004.

Generally, the interpretation or application of statutory provision presents a question of law subject to de novo review. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). But this Court has only limited authority to review a decision of the tax tribunal. *Stege v Dep't of Treasury*, 252 Mich App 183, 187; 651 NW2d 164 (2002).

In the absence of an allegation of fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. The tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial

evidence on the whole record. [*Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490-491; 618 NW2d 917 (2000) (citations omitted).]

The primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc.*, 456 Mich 511, 515; 573 NW2d 611 (1998). “Each word of a statute is presumed to be used for a purpose, and, as far as possible, effect must be given to every clause and sentence.” *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). If the statutory language is clear and unambiguous, the court must apply the statute as written, and judicial construction is neither necessary nor permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

Generally, where a statute levying a tax is ambiguous, we construe the statute against the taxing unit so as not to “extend the scope of tax laws by implication or forced construction.” *Steger, supra*, 188. But special rules apply to the interpretation of statutory exemptions. *Id.*, 189. In *Detroit v Detroit Commercial College*, 322 Mich 142, 148-149; 33 NW2d 737 (1948), our Supreme Court held:

The rule is also well stated in 2 Cooley on Taxation (4th Ed.), p. 1403, § 672:

“An intention on the part of the legislature to grant an exemption from the taxing power of the State will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well-settled principle that, when a specific privilege or exemption is claimed under a statute,... it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms[.]... Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all...”

At issue in the instant case is the principal residence exception. MCL 211.7cc(1) provides:

A principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under [MCL 380.1211] if an owner of that principal residence claims an exemption as provided in this section.

A property owner may claim an exemption “by filing an affidavit on or before May 1 with the local tax collecting unit in which the property is located.” MCL 211.7cc(2). The affidavit must “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.” *Id.* Further, if an owner filed an affidavit for an exemption before January 1, 2004, the affidavit

shall be considered the affidavit required under this subsection for a principal residence exemption and that exemption shall remain in effect until rescinded as provided in this section. [MCL 211.7cc(2).]

Upon receipt of an affidavit, the assessor shall exempt the property “until December 31 of the year in which the property is transferred or is no longer a principal residence as defined in [MCL 211.7dd].” MCL 211.7cc(4).

MCL 211.7dd(C) defines “principal residence” as

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.

In the instant case, because the record contains competent, material, and substantial evidence to support them, the tax tribunal’s factual findings are conclusive. *Stege, supra*, 188. Nevertheless, we find that it erred in applying the law to the facts.

Petitioner claimed an exemption under MCL 211.7cc(2) by filing an affidavit with respondent in June of 2003. The parties agree that petitioner owned and occupied the premises at the time he filed the affidavit. Although petitioner did not qualify for the exemption for 2003 because he did not meet the May 1 deadline, this action qualified the subject property for the exemption going forward. MCL 211.7cc(2). Thus, under MCL 211.7cc(4), respondent was required to exempt petitioner’s property until December 31 of the year in which it is transferred or is no longer his principal residence.

The tax tribunal found that petitioner vacated the subject property from November of 2003 until June of 2004 and that the premises were uninhabitable during this period. It therefore affirmed respondent’s decision to revoke the property’s principal residence exemption. But it is undisputed that petitioner did not establish a new principal residence and no evidence exists to contradict his claim that, despite his absence, he intended to return to the subject property. Further, the tax tribunal found that petitioner did in fact resume living at the property in June of 2004. Petitioner established the subject property as his one true, fixed, and permanent home in 2003. Despite his temporary absence, petitioner intended to return to the property and did not establish a new principal residence. Thus, under the plain language of MCL 211.7dd(C), the subject property continued as his principal residence. Because petitioner did not transfer the property and it remained his principal residence under MCL 211.7dd(C), MCL 211.7cc(4) requires respondent to continue to exempt the subject property.

Contrary to respondent’s assertions, MCL 211.7cc does not require respondent to occupy the subject property before May 1 of the tax year for the property to qualify for the principal residence exception. Rather, it merely requires that a property owner file the affidavit to initially qualify for the exemption by May 1 of a particular tax year in order to take advantage of the

exemption that year. MCL 211.7cc(2). While the taxpayer must have occupied the property as his principle residence when the affidavit was filed, the statute does not require that the occupancy continue at all times; it is enough that the residence is, in fact, the taxpayer's principal residence. Although a court must strictly construe an exemption in favor of the taxing authority, the interpretation urged by respondent and adopted by the tax tribunal would create an occupancy requirement not intended by the Legislature, as evidenced by the unambiguous language of the statute. Consequently, we reverse the tax tribunal's decision and remand the instant case for entry of an order granting petitioner's request to overturn respondent's decision to deny the subject property's principal residence exemption for 2004.

Reversed and remanded for entry of an order granting petitioner a principal residence exemption for the subject property for the tax year 2004. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Henry William Saad

/s/ Christopher M. Murray