

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS CRAIG and LORI CRAIG, Trustees

Petitioners-Appellants,

v

COUNTY OF GRAND TRAVERSE,

Respondent-Appellee.

UNPUBLISHED

April 16, 2019

No. 342780

Tax Tribunal

LC No. 17-002925-TT

Before: SWARTZLE, P.J., and CAVANAGH and CAMERON, JJ.

PER CURIAM.

Petitioners appeal as of right an order of the Michigan Tax Tribunal dismissing their appeal petition as untimely. We affirm.

The principal residence exemption (PRE) applies to properties owned and occupied as the owner's principal residence. MCL 211.7cc(2). Petitioners had received the PRE for a residential property in Williamsburg, Michigan, which they owned through their trust, prior to the relevant events. On September 6, 2016, the Grand Traverse Equalization Office issued a denial of petitioners' PRE for the years 2015 and 2016. Petitioners received notice of the denial on September 9, 2016. The denial form set forth the homeowner's right to appeal the decision, stating: "If you disagree with this denial, you may appeal to the Residential/Small Claims Division of the Michigan Tax Tribunal within 35 days of the denial." However, on the date they received notice, petitioners contacted the Grand Traverse County Equalization Department and spoke to an appraiser. The appraiser informed them that "setting aside the denial would be easy to do" and, according to petitioners, he agreed to facilitate that action. All parties agree that he did not advise petitioners to appeal the denial. According to petitioners, after speaking with the county appraiser they concluded that the matter was resolved and that the appraiser would take the necessary actions to cancel the denial without further action on their part. They did not appeal the denial as instructed in the Notice of Denial.

On April 24, 2017, petitioners received tax bills for the years 2015 and 2016, totaling over \$21,000 in taxes, penalties, and interest because of the PRE denial. On May 22, 2017, petitioners filed their admittedly untimely appeal with the Residential/Small Claims Division of

the Tax Tribunal. On October 3, 2017, the Tax Tribunal issued a proposed opinion and judgment finding that, because petitioners failed to appeal the denial within 35 days, it did not have authority to hear their appeal. Further, it explained that it had no equitable powers that would allow it to waive statutory requirements or filing deadlines. Petitioners filed exceptions to the proposed judgment, arguing that the tribunal did have equitable powers and the authority to waive filing deadlines “where doing so is compelled by fairness and due process.” On December 7, 2017, the Tax Tribunal dismissed petitioners’ appeal, finding “no doubt that the Tribunal has no equitable powers” to hear the case because of the untimely filing. This appeal followed.¹

Petitioners agree that their petition was untimely, but argue that the Tax Tribunal erred by failing to exercise its equitable powers to waive the filing deadlines. We disagree.

“This Court’s authority to review a decision of the Tax Tribunal is very limited.” *Inter Coop Council v Dep’t of Treasury*, 257 Mich App 219, 221; 668 NW2d 181 (2003) (quotation marks and citation omitted). “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.” *Id.* (quotation marks and citation omitted). “Statutory interpretation is a question of law that is reviewed de novo.” *Id.* at 222. This Court’s primary goal in interpreting statutes is to determine and give effect to the Legislature’s intent. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 76; 780 NW2d 753 (2010). The most reliable evidence of the Legislature’s intent is the language it uses in a statute and, where that language is unambiguous, judicial interpretation is not required or permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

The central function of the Tax Tribunal is to “find facts and review the decisions of agencies within its jurisdiction.” *Wikman v Novi*, 413 Mich 617, 629; 322 NW2d 103 (1982). Its jurisdiction is defined by statute. MCL 205.731; see also *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239; 477 NW2d 492 (1991). Pursuant to MCL 205.735a(6), “the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination.” This time requirement is jurisdictional in nature. See *Szymanski v Westland*, 420 Mich 301, 303-305; 362 NW2d 224 (1984) (discussing that the filing deadlines of MCL 205.735, the precursor to MCL 205.735a, were jurisdictional). In other words, the Tax Tribunal is without jurisdiction to consider appeals filed outside the deadlines imposed by statute. *Electronic Data Sys Corp v Twp of Flint*, 253 Mich App 538, 544; 656 NW2d 215 (2002).

In this case, the PRE denial was issued on September 6, 2017. Under MCL 205.735a(6), petitioners had 35 days after that date to file an appeal to the Tax Tribunal.² However,

¹ After filing their claim of appeal, petitioners and respondent filed a joint motion for peremptory reversal. This Court denied the motion, stating that jurisdiction cannot be conferred to the tribunal by consent of the parties. *Craig v Co of Grand Traverse*, unpublished order of the Court of Appeals, entered September 14, 2018 (Docket No. 342780).

² Petitioners’ appeal focuses solely on the jurisdiction of the Tax Tribunal under the Tax Tribunal Act. However, under the GPTA, the proper way to seek review of a denial of the PRE

petitioners did not file an appeal until May 2017, more than 8 months after the denial. This untimely appeal deprived the Tax Tribunal of subject-matter jurisdiction, requiring that it dismiss the appeal. See *WA Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 338; 686 NW2d 9 (2004) (“An untimely filing . . . deprives the Tax Tribunal of jurisdiction to consider the petition and it is therefore properly dismissed.”).

Petitioners contend that the Tax Tribunal has equitable powers to waive filing deadlines set forth by statute and that the tribunal erred by failing to invoke those equitable powers. This Court has clearly held: “The Tax Tribunal’s powers are limited to those authorized by statute . . . and *the Tax Tribunal does not have powers of equity.*” *Electronic Data Sys Corp*, 253 Mich App at 547-548 (emphasis added); see also *Marie De Lamielleure Trust v Dep’t of Treasury*, 305 Mich App 282, 288; 853 NW2d 708 (2014) (“[T]he express powers of the Tax Tribunal are those authorized by statute, and the Tribunal has not been invested with equitable powers.”). Petitioners argue that this is an inaccurate statement of the law, relying on *In re Quality of Serv Standards for Regulated Telecommunication Servs*, 204 Mich App 607; 516 NW2d 142 (1994). However, beyond citing this particular case, petitioners do not explain *how* it supports their position. “An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant’s claims” *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015). Further, we do not agree that this case supports petitioners’ position.

In *In re Quality of Serv Standards*, the Michigan Bell Telephone Company argued that the Public Service Commission (PSC) imposed regulations that were beyond its statutory authority. *In re Quality of Serv Standards*, 204 Mich App at 609-610. The standards mandated that local telephone companies provide a printed telephone directory and, in the event the directory contained a misprint, the company was required to intercept all calls to that number. *Id.* at 609. Michigan Bell argued that these standards were outside the authority granted to the PSC in its governing statute. *Id.* at 611. This Court explained that “although statutes granting authority to administrative agencies generally are construed strictly, due regard must always be had to legislative intent, and powers necessary to a full effectuation of authority expressly granted will be recognized as properly appertaining to the agency.” *Id.* at 613. Accordingly, although not explicit in the statute, the PSC was able to enact the aforementioned regulations because the PSC’s mandate to regulate rates and quality of service implicated “some foundation level of service accuracy” in phone directories. *Id.* at 614. This Court explained that “[b]ecause the assurance of certain qualitative standards in printed directory service is reasonably necessary to effectuation of the PSC’s plenary power over rates and quality of service for local directory assistance, the PSC’s power over the latter implies jurisdiction over the former.” *Id.*

This case deals with the Tax Tribunal, not the PSC. Petitioners have failed to identify any evidence of legislative intent for the Tax Tribunal to have equitable powers like that

is also to appeal the denial to the Tax Tribunal within 35 days of the notice of denial. MCL 211.7cc, (6), (11), (13). Accordingly, petitioners’ appeal was untimely under the GPTA as well as the Tax Tribunal Act.

identified in *In re Quality of Serv Standards*. The most reliable indicator of legislative intent is the plain language of the statute. *Kincaid v Flint*, 311 Mich App 76, 82; 874 NW2d 193 (2015). The plain language of MCL 205.735a(6) indicates that the Legislature intended the Tax Tribunal to have jurisdiction over tax appeals filed within 35 days of a denial. Petitioners have not identified any provision of the statute that suggests that the Tax Tribunal may waive that deadline. In fact, in MCL 205.732, a provision of the Tax Tribunal Act outlining the powers of the tribunal, there is no mention of equitable powers. And, unlike this Court's holding in *In re Quality of Serv Standards*, 204 Mich App at 614, equitable powers are not "reasonably necessary" to the tribunal's jurisdiction over appeals. Put simply, the Tax Tribunal's statutorily outlined powers do not imply equitable jurisdiction.

We recognize that there are situations where the exercise of equity was proper in certain Tax Tribunal cases; however, those cases all involved factual scenarios in which a governmental agency or the tribunal itself deprived the petitioner of notice or an opportunity to be heard. See *Parkview Mem Ass'n v Livonia*, 183 Mich App 116, 120; 454 NW2d 169 (1990) (concluding that the petitioners received defective notice, denying them the opportunity to be heard and requiring that the tribunal hear their delayed claims); *Bickler v Dep't of Treasury*, 180 Mich App 205, 211-212; 446 NW2d 644 (1989) (concluding that the petitioner did not receive adequate notice, requiring the tribunal to hear the claim).³ That is not what occurred here.

While petitioners imply that the delay in filing the petition was the fault of the county official, it is undisputed that they received notice, which adequately instructed them on how to appeal the decision. The notice did not advise them to contact the County Equalization Office; it instructed them to file an appeal with the Tax Tribunal within 35 days. Therefore, petitioners had notice and their missed opportunity to be heard was the result of their failure to follow the instructions printed on the denial. While sympathetic to petitioners' plight, especially in light of the fact that the county agrees the denial was in error, in light of the unambiguous jurisdictional statute, there is no relief that this Court may grant. The Tax Tribunal did not err when it dismissed petitioners' appeal because it lacked jurisdiction based on the untimely filing.

Affirmed.

/s/ Brock A. Swartzle
/s/ Mark J. Cavanagh
/s/ Thomas C. Cameron

³ *Bickler* also concluded that the Tax Tribunal erred when it declined to exercise its equitable powers. *Bickler*, published in 1989, is not binding, see MCR 7.215(J)(1). Furthermore, this Court in *Curis Big Boy, Inc v Dep't of Treasury*, 206 Mich App 139, 142-143; 520 NW2d 369 (1994), declined to follow *Bickler* because it was nonbinding and "because its statement as to the equitable powers of the Tax Tribunal [was] mistaken" and constituted dicta. *Curis Big Boy*, 206 Mich App at 143 n 4.