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STATE OF MICHIGAN

COURT OF APPEALS

KNIER, POWERS, MARTIN, & SMITH, LLC, Petitioner-Appellant, v CITY OF BAY CITY, Respondent-Appellee.	UNPUBLISHED October 27, 2026 11:04 AM No. 366114 Tax Tribunal LC No. 22-001900-TT

ON REMAND

Before: MALDONADO, P.J., and REDFORD and TREBILCOCK, JJ.

PER CURIAM

This case returns to this Court on remand of our opinion issued August 8, 2024. *Knier, Powers, Martin, & Smith, LLC v Bay City*, ___ Mich App ___; ___ NW2d ___ (2024) (*KPMS I*). In *KPMS I*, we affirmed a Tax Tribunal's order deciding competing motions for summary disposition in favor of respondent-appellee, the City of Bay City (Bay City). *KPMS I*, ___ Mich App at ___, slip op at 1. The primary issue on appeal is whether the Tribunal was correct in determining that Bay City appropriately assessed the property of Knier, Powers, Martin, & Smith, LLC (KPMS) at a taxable value increased beyond the cap in MCL 211.27a(2) because its replacement roof qualified as "new construction" and, therefore, an "addition" for purposes of the General Property Tax Act (GPTA). *Id.*

The factual background in Part I of our August 8, 2024 opinion is not in dispute. Nor does the order on remand instruct this Court to reconsider its analysis of its appellate jurisdiction in Part II, or the statutory interpretation in Part III(B) which led to the conclusion that the replacement roof was new construction and not replacement construction and, therefore, was appropriately considered an "addition" for purposes of the GPTA. We readopt these parts of our August 8, 2024 opinion except as expressly discussed herein.

The order on remand instructs this Court to reconsider KPMS's constitutional questions and to determine what effect, if any, this has on our August 8, 2024 opinion. Specifically, our Supreme Court instructs us to reconsider KPMS's claim that "the roof replacement was not an

'addition[]' within the meaning of Const 1963, art 9, § 3" and that the "statutory definition of 'additions' impermissibly conflicted with Const 1963, art 9, § 3." *Knier, Powers, Martin, & Smith, LLC v Bay City*, 32 NW3d 456, 456 (2026). Specifically, our Supreme Court states as follows:

> On remand, the Court of Appeals shall reconsider whether the Tax Tribunal possessed jurisdiction to decide the constitutional question and determine the impact, if any, the resolution of that issue has on Part III(B) of the judgment of the Court of Appeals. . . . To resolve this issue, the Court of Appeals must determine whether petitioner was required to raise the above-stated argument in a circuit court action. [*Id.*]

Having reconsidered these matters, we conclude that the Tax Tribunal had jurisdiction to determine whether the roof replacement was an "addition" within the meaning of Const 1963, art 9, § 3, because this is answered by MCL 211.34d, a law squarely within the Tribunal's exclusive and original jurisdiction. Specifically, the Tribunal's "exclusive and original jurisdiction" extends to a direct review of Bay City's determination that the roof replacement on this commercial building was an "addition" under the property tax laws of this state. MCL 205.731(a). MCL 211.34d(1) defines "addition" for purposes of this section of the GPTA and, *also,* as this term is used in Const 1963, art 9, § 3. The Tax Tribunal's determination that the replacement roof constitutes an "addition" under MCL 211.34d is necessarily, by legislative mandate, also a determination that the replacement roof constitutes an "addition" as this term is used in Const 1963, art 9, § 3.

We also conclude that the Tax Tribunal does not have jurisdiction to consider KPMS's position that the definition of "additions" impermissibly conflicts with Const 1963, art 9, § 3. "Generally speaking, an agency exercising quasi-judicial power does not undertake the determination of constitutional questions or possess the power to hold statutes unconstitutional." *Wikman v Novi*, 413 Mich 617, 629; 322 NW2d 103 (1982).

Upon reconsideration, then, we readopt Parts I, II, III(A), and III(B) of our August 8, 2024 opinion. We vacate Part III(C) of our August 8, 2024 opinion to the extent it is inconsistent with this opinion and adopt, instead, the analysis set forth in this opinion. The Tribunal's jurisdiction extended to determining whether the roof replacement constituted an "addition" under Const 1963, art 9, § 3 because this question is answered by a property tax statute within the Tax Tribunal's original and exclusive jurisdiction. The Tribunal does not have jurisdiction to determine whether the statutory definition of "additions" conflicts with Const 1963, art 9, § 3. This issue could be resolved only through a circuit court action. We affirm the Tribunal's April 24, 2023 order.

I. JURISDICTION OF THE TAX TRIBUNAL

The Tax Tribunal is a "quasi-judicial agency" created by statute as "a forum in which taxpayers may obtain relief from adverse agency decisions." *Id*. While lacking equitable power, the Tax Tribunal has "broad statutory powers" over those matters within its jurisdiction. *Johnston v Livonia*, 177 Mich App 200, 205; 441 NW2d 41 (1989). Its "exclusive and original jurisdiction" includes, but is not limited to, the following:

> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state.
>
> (b) A proceeding for a refund or redetermination of a tax levied under the property tax laws of this state. [MCL 205.731(a), (b).]

The Tribunal's primary function is to find facts and review agency decisions within its jurisdiction and expertise. Such expertise "relates primarily to questions concerning the 'factual underpinnings' of taxes including questions that relate "to the bases for taxes and questions concerning the lawfulness of those bases." *Johnston*, 177 Mich App at 205.

Generally speaking, the Tribunal "does not undertake the determination of constitutional questions or possess the power to hold statutes unconstitutional." *Wikman*, 413 Mich at 646-647. However, an exception arises with respect to "claims couched in constitutional terms" which essentially claim that a tax assessment was "arbitrary and without foundation." *Kostyu v Dep't of Treasury*, 170 Mich App 123, 128-129; 427 NW2d 566 (1988). The Tribunal's jurisdiction extends to claims that do not involve the constitutional validity of the statute or when resolution of the claim involves many fact determinations. In fact, Michigan courts recognize the Tribunal as the preferred adjudicator of factual determinations related to determinations under the tax laws because "the membership of the Tax Tribunal is structured to provide it with the experience in resolving these fact issues" and its "*de novo* review gives it the opportunity to rectify any errors in the agency's determination." *Wikman,* 413 Mich at 647.

II. TRIBUNAL APPROPRIATELY EXERCISED JURISDICTION IN DETERMINING WHETHER ROOF REPLACEMENT QUALIFIED AS AN "ADDITION" UNDER MCL 211.34d.

The Tribunal had jurisdiction in this case to determine that the roof was an "addition" for purposes of calculating the taxable value of KPMS's property under MCL 211.27a. Specifically, MCL 211.27a(2) describes a property's taxable value as the lesser of the "taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions" or "[t]he property's current state equalized value." "Addition" as used in this section is defined by MCL 211.34d(1)(a), as "all increases in value caused by new construction or a physical addition of equipment or furnishings, and the value of property that was exempt from taxes or not included on the assessment unit's immediately preceding year's assessment roll." The roof qualifies as "new construction" as defined in MCL 211.34d(1)(b)(*iii*) because it is "property not in existence on the immediately preceding tax day and not replacement construction." As explained in our August 8, 2024 opinion, all parties and the Tribunal agree that the roof did not qualify as "replacement construction, as defined in MCL 211.34d(1)(b)(*v*) because it did not replace "property damaged or destroyed by accident or act of God."

Having reviewed Part III(B) in light of the Supreme Court's order of remand, we readopt the analysis and conclusion set forth therein. We affirm the Tribunal's determination that Bay City appropriately treated the replacement roof as an "addition" under MCL 211.34d and increased the assessment based on the increased taxable value of the property resulting from this roof. We

also readopt the analysis in Part III(B) interpreting MCL 211.34d to this extent. See *KPMS I*, ___ Mich App at ___; slip op at 4-8.

III. "ADDITION" IN CONST 1963 ART 9, § 3 IS DEFINED IN ACCORDANCE WITH "ADDITION" AS USED IN MCL 211.34d

The Tribunal's jurisdiction to determine whether the roof replacement was an "addition" as used in MCL 211.34d necessitates a finding that the Tribunal had jurisdiction to determine whether the replacement roof was an "addition" as this term is used in Const 1963, art 9, § 3. This question requires no constitutional analysis. MCL 211.34d(1) instructs the Tribunal to define "additions" "[a]s used in section 3 . . . of article IX of the state constitution" by the criteria provided in this section of the GPTA. MCL 211.34d(1). It is undisputed that the Tax Tribunal holds "exclusive and original jurisdiction" over this direct review of Bay City's determination that the roof replacement was an "addition" under MCL 211.34d. MCL 205.731(a). The determination that the replacement roof qualified as an "addition" under MCL 211.34d necessarily results in a determination that the replacement roof is an "addition" for purposes of Const 1963, art 9, § 3. MCL 211.34d(1). The terms are inextricably connected.

Moreover, the determination of whether the roof replacement constitutes an "addition" under MCL 211.34d and under Const 1963, art 9, § 3, requires factual determinations such as the reason for the roof replacement, the value to be assigned to it, etc., which have traditionally been recognized to be within the Tribunal's jurisdiction. See *Wikman,* 413 Mich at 647. Having reviewed this matter in light of our Supreme Court's instructions on remand, we find that the Tax Tribunal had jurisdiction to consider whether the roof replacement fell within the definition of "addition" for purposes of both MCL 211.34d and, also, Const 1963, art 9, § 3. We readopt this Court's analysis and conclusions in Part III(B) of the August 8, 2024 opinion in its entirety, as well as the portions of Part III(C) that are consistent with this.

IV. THE TRIBUNAL LACKS JURISDICTION TO DETERMINE WHETHER MCL 211.34d IMPERMISSIBLY CONFLICTS WITH CONST 1963, ART 9, § 3.

However, we vacate Part III(C) of *KPMS I*, ___ Mich App at ___, slip op at 8-10, to the extent this Court previously held that the Tax Tribunal had jurisdiction to consider whether the statutory definition of "addition" impermissibly conflicts with our Constitution. This consideration involves a constitutional question that is outside the Tax Tribunal's jurisdiction and must have been raised in the circuit court in a separate action.

Meadowbrook Village Assoc v City of Auburn Hills, 226 Mich App 594, 597-598; 574 NW2d 924 (1997), is instructive here. As in this case, *Meadowbrook* involves a petitioner-taxpayer's challenge to a local authority's determination of a property's taxable value on the grounds that such valuation violated Const 1963, art 9, § 3. No factual determinations were needed to decide this issue, nor was there any claim of a procedural irregularity. The plaintiff, however, sought an interpretation of terms within Const 1963, art 9, § 3, which could have invalidated the statutes implementing this constitutional provision. Such a determination was outside of the Tribunal's jurisdiction. *Id*.

In this case, KPMS's argument that defining "addition" according to the criteria in MCL 211.34d, as the Legislature has instructed, impermissibly violates Const 1963, art 9, § 3, presents a similar question. The resolution of this question could invalidate MCL 211.27a or MCL 211.34d, or at least require a determination of the constitutionality of these statutes. The circuit court has jurisdiction over claims such as this. *Meadowbrook Village Assoc*, 226 Mich App at 597. Because this case involved an appeal from the Tribunal, which lacked jurisdiction over the constitutional claim, this Court is also without jurisdiction to consider the constitutional challenges on appeal. *In re Estate of Fraser*, 288 Mich 392, 395; 285 NW1 (1939). We, therefore, vacate Part III(C) in the August 8, 2024 opinion to the extent it is inconsistent with the analysis in this opinion.

V. CONCLUSION

Upon reconsideration, then, we readopt Parts I, II, III(A), and III(B) of our August 8, 2024 opinion. We vacate Part III(C) of our August 8, 2024 opinion to the extent it is inconsistent with this opinion and adopt, instead, the analysis set forth in this opinion. The Tribunal's jurisdiction extended to determining whether the roof replacement constituted an "addition" under Const 1963, art 9, § 3 because this question is answered by a property tax statute within the Tax Tribunal's original and exclusive jurisdiction. The Tribunal does not have jurisdiction to determine whether the statutory definition of "additions" conflicts with Const 1963, art 9, § 3. This claim could be resolved only by filing a complaint in the circuit court, which to our knowledge, KPMS has not done. We affirm the Tribunal's April 24, 2023 order.

/s/ Allie Greenleaf Maldonado
/s/ James Robert Redford
/s/ Christopher M. Trebilcock