

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GARY L. DELGER,

Petitioner-Appellee,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

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UNPUBLISHED  
May 30, 2024

No. 367878  
Tax Tribunal  
LC No. 22-003182

ROBERT BLANZY,

Petitioner-Appellee,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

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No. 367879  
Tax Tribunal  
LC No. 22-003085

Before: MARKEY, P.J., and RIORDAN and CAMERON, JJ.

PER CURIAM.

In these consolidated appeals,<sup>1</sup> respondent, the Michigan Department of Treasury (the Treasury), appeals by right final judgments issued by the Michigan Tax Tribunal (MTT). The MTT ruled that the Treasury lacked the authority to determine that principal residence exemptions (PREs) had been erroneously granted to petitioners, Gary L. Delger and Robert Blanzzy, for tax years 2019 through 2022 with respect to real properties petitioners and their spouses purchased. Petitioners had only contested the assessment of interest on taxes that were not paid but which should have been paid in light of the allegedly improper application of the PREs. Petitioners had

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<sup>1</sup> *Delger v Dep’t of Treasury, Blanzzy v Dep’t of Treasury*, unpublished orders of the Court of Appeals, entered April 9, 2024 (Docket Nos. 367878 and 367879).

fully accepted the Treasury's determinations that their respective properties were not subject to PREs and that back taxes were thus owed. Nevertheless, the MTT, persuaded by an unpublished opinion issued by this Court, not only ruled that petitioners owed no interest, it also vacated, sua sponte, the Treasury's denial of the PREs. On appeal, the Treasury contends that the MTT erred by effectively holding that petitioners were entitled to PREs and by concluding that no interest was due. We reverse the MTT's rulings and remand for further proceedings solely on the issue of whether interest on back taxes should be waived.

## I. FACTUAL AND PROCEDURAL HISTORIES

These cases involved real estate closings wherein petitioners and their spouses executed an array of documents, relevantly including PRE affidavits,<sup>2</sup> for cottages being purchased by Delger and Blanzky and their spouses, which were *not* going to be used as their principal residences. Although their spouses also signed the PRE affidavits, for purposes of this opinion, we shall simply refer to petitioners Delger and Blanzky. Delger had claimed and received a PRE for his home in Middleville that he actually used as his principal residence, and he had no intent to claim a PRE on the cottage. Blanzky had claimed and received a PRE for his home in Worth Township that he actually used as his principal residence, and he had no intent to claim a PRE on his cottage. The PRE affidavits executed by petitioners both stated at the top of the forms as follows:

Read the instructions before completing the form. This form is not valid unless certified by the assessor. Do not submit this form if the property is not your principal residence . . . .

Accordingly, to begin with, simply filling out the form and submitting it necessarily indicated that a PRE was being claimed. But further down on their respective PRE affidavits, both Delger and Blanzky wrote that "0%" of the properties were occupied as their principal residences, thereby reflecting that PREs were not being claimed. Petitioners, however, also indicated on the 2368 forms that the cottages were "owned and occupied" as of certain dates in 2017. Additionally, one of the questions in the PRE affidavits asked whether the property was the affiant's "[p]rincipal residence" or an "[u]noccupied adjoining or contiguous property that is classified residential or timber-cutover." Blanzky crossed out the words "[p]rincipal residence" and checked the box for the latter designation. Delger did not even answer the query one way or the other. Both petitioners further averred that they had claimed PREs on different Michigan properties and that they had not rescinded those PREs. In sum, Delger and Blanzky submitted PRE affidavits that contained contradictions with regard to their principal residences.

Local officials granted PREs on the cottages, and petitioners enjoyed the tax benefit of the exemptions for multiple tax years. Later, the Treasury conducted audits and discovered what it coined as erroneously-granted PREs.<sup>3</sup> The Treasury therefore notified petitioners that corrected

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<sup>2</sup> Treasury form 2368 serves as a PRE affidavit.

<sup>3</sup> MCL 211.7cc(14) provides:

tax bills would be issued and that its decisions could be challenged through a timely request for an informal conference with the Treasury.<sup>4</sup> Delger and Blanzzy did not request an informal conference to challenge the rejection of the PREs. They subsequently did, however, contest the assessments of interest on back taxes for tax years 2019 through 2022. In other words, petitioners accepted that they were not entitled to PREs on the cottages and that they needed to make up the difference between the paid taxes and the amount that they should have paid absent the PREs. But they did not believe that it was fair to make them pay interest on the unpaid taxes considering that petitioners did not actually seek PREs. With respect to petitioners' attempts to have the interest waived, they relied on MCL 211.7cc(8), which provides, in pertinent part:

The department of treasury may waive interest on any tax set forth in a corrected or supplemental tax bill for the current tax year and the immediately preceding 3 tax years if the assessor of the local tax collecting unit files with the department of treasury a sworn affidavit in a form prescribed by the department of treasury stating that the tax set forth in the corrected or supplemental tax bill is a result of the assessor's classification error or *other error* or the assessor's failure to rescind the exemption after the owner requested in writing that the exemption be rescinded. [Emphasis added.]

Both petitioners obtained sworn assessor affidavits.<sup>5</sup> The assessor in Delger's case marked a box for "Other Error" and then averred as follows:

The assessor erroneously enter [sic] a 100% PRE in December of 2017 for 2018. The form 2368 was filed with the assessor but the percentage was filled in as 0%. The assessor did not see this and entered 100%. This was of no fault to the Delger's [sic], and the [a]ssessor requests that all interest and penalty be waived for the affected years. A copy of the original PRE Affidavit as proof that it showed 0% is included.

The assessor in Blanzzy's case also marked the box for "Other Error" and then averred:

Form was filed erroneously [sic] by closing agent. Owner filled out as 0% PRE. The previous assessor granted the PRE at 100%.

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For taxes levied after December 31, 2005, for each county in which the county treasurer or the county equalization director does not elect to audit the exemptions claimed under this section as provided in subsection (10), the department of treasury shall conduct an annual audit of exemptions claimed under this section for the current calendar year.

<sup>4</sup> "An appeal to the department of treasury shall be conducted according to the provisions for an informal conference . . ." MCL 211.7cc(8).

<sup>5</sup> The assessors used a standard Treasury form for their affidavits.

We note that the assessor in Delger’s case quite clearly acknowledged and described his error, while the assessor in Blanzky’s case, although marking the box that identified an error, appeared to place the blame more so on the closing agent.

Despite the assessor affidavits submitted by petitioners, the Treasury declined to waive the assessed interest. In the two letters of denial, the Treasury, using the exact same language in both cases and calling it a final decision, stated that “[b]ased on the information we received, it has been determined that insufficient documentation was submitted to show that an assessor’s error occurred as required by MCL 211.7cc(8).” Petitioners then filed timely appeals in the MTT’s Small Claims Division.<sup>6</sup> These appeals solely concerned the interest on unpaid taxes and the rejected waivers of interest by the Treasury. Petitioners did not ask the MTT to reverse the Treasury’s determinations that the PREs were erroneously granted.

The MTT’s hearing officer rejected the petitions appealing the Treasury’s determinations regarding interest.<sup>7</sup> The hearing officer issued a proposed opinion and judgment in each case that concluded that neither Blanzky nor Delger was entitled to a waiver of interest. In both cases, the hearing officer found (1) that petitioners had received assessment notices and tax bills over the years indicating a 100% PRE yet there was no written request to rescind the PREs, (2) that there was no assessor error as contemplated by MCL 211.7cc(8), (3) that the PRE affidavits should never have been submitted if no PREs were being sought, (4) that the PRE affidavits were conflicting at best and erroneously filed, (5) that there was no statutory basis to grant equitable relief, and (6) that even *if* there had been an assessor’s error, published caselaw revealed that the Treasury had the discretion and final say regarding whether to waive interest.

Blanzky filed exceptions to the proposed opinion and judgment, arguing that the case presented circumstances in which the Treasury should have exercised its discretion in favor of waiving the interest on the unpaid taxes. Blanzky’s exceptions had nothing to do with his obligation to pay the back taxes as determined by the Treasury. Delger did not even file exceptions to the hearing officer’s proposed opinion and judgment.

In both cases, the MTT decided not to adopt the proposed opinion and judgment. The MTT, relying on *Mikelonis v Dep’t of Treasury*, unpublished per curiam opinion of the Court of Appeals, issued June 26, 2012 (Docket No. 304054),<sup>8</sup> concluded that under the circumstances, Delger and Blanzky never made a “claim” for a PRE; therefore, the Treasury lacked the statutory authority to revisit the previously-granted PREs and hold petitioners liable for back taxes. And

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<sup>6</sup> “An owner may appeal a . . . final decision of the department of treasury under subsection (8) . . . to the residential and small claims division of the Michigan tax tribunal within 35 days of that decision.” MCL 211.7cc(13).

<sup>7</sup> The same hearing officer heard both Blanzky’s and Delger’s petition.

<sup>8</sup> We note that “[a]n unpublished opinion is not precedentially binding under the rule of stare decisis.” MCR 7.215(C)(1). Although they do not constitute binding authority, unpublished opinions may be treated as persuasive or instructive. *Kern v Kern-Koskela*, 320 Mich App 212, 241; 905 NW2d 453 (2017).

absent any liability for back taxes, there could be no basis for the assessment of interest or penalties.

In *Mikelonis*, unpub op at 3-4, this Court construed, relied on, and applied the following pertinent language found in MCL 211.7cc(8):

The department of treasury shall determine if the property is the principal residence of the owner *claiming* the exemption. . . . [T]he department of treasury may review the validity of exemptions for the current calendar year and for the 3 immediately preceding calendar years. . . . [I]f the department of treasury determines that the property is not the principal residence of the owner *claiming* the exemption, the department shall send a notice of that determination to the local tax collecting unit and to the owner of the property *claiming* the exemption, indicating that the *claim* for exemption is denied, stating the reason for the denial, and advising the owner *claiming* the exemption of the right to appeal the determination to the department of treasury and what those rights of appeal are. [Emphasis added.]

In *Mikelonis*, the township assessor erroneously classified the petitioner’s property as being eligible for a PRE for several years, and the respondent Treasury later sought to collect unpaid taxes for those years under MCL 211.7cc(8) even though the petitioner had never actually *claimed* a PRE through the filing of an affidavit. *Mikelonis*; unpub op at 1-2.<sup>9</sup> The *Mikelonis* panel held:

[W]e conclude that the tribunal committed reversible error by misinterpreting the scope of respondent’s authority under MCL 211.7cc(8). MCL 211.7cc(8) clearly limits respondent’s authority to review a taxpayer’s PRE status to instances where the taxpayer claimed a PRE, and to deny a claim for a PRE if the property is not the residence of the owner claiming the exemption. Respondent cannot broaden the clear statutory language by denying exemptions under § 7cc(8) that were not claimed by the property owner. In this case, petitioner did not claim a PRE and, therefore, there was no claim for respondent to deny. [*Id.* at 4.]

Here, in the final opinion and judgment in each case the MTT ruled that the assessment rolls were to be corrected to reflect a PRE on the property for the tax years at issue. The MTT subsequently denied the Treasury’s motions for reconsideration in the two cases.

## II. ANALYSIS

### A. UNDERLYING PRINCIPLES

Our review of an MTT decision is limited given that we may reverse a ruling only in the presence of fraud, error of law, the adoption of wrong principles, or factual findings unsupported by competent, material, and substantial evidence. *Mich Props, LLC v Meridian Twp*, 491 Mich

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<sup>9</sup> Under MCL 211.7cc(2), “an owner of property may claim 1 exemption under this section by filing an affidavit[.]” In *Mikelonis*, this Court cited MCL 211.7cc(2) in finding that the petitioner had not claimed a PRE by filing an affidavit. *Mikelonis*, unpub op at 3-4.

518, 527; 817 NW2d 548 (2012). The interpretation and application of tax statutes constitute legal questions that are subject to de novo review. *Danse Corp v Madison Hts*, 466 Mich 175, 178; 644 NW2d 721 (2002). The foremost rule of statutory construction is to discern and give effect to the intent of our Legislature, and we do so by examining the most reliable evidence of that intent, which is the language of the statute itself. *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013). If the language of the statute is clear and unambiguous, we must enforce the statute as written and no further judicial construction is permitted. *Id.* Tax exemptions are strictly construed against the taxpayer because exemptions represent the antithesis of tax equality. *Marie De Lamielleure Trust v Dep't of Treasury*, 305 Mich App 282, 284; 853 NW2d 708 (2014).

“Michigan’s principal residence exemption, also known as the ‘homestead exemption,’ is governed by §§ 7cc and 7dd of the General Property Tax Act, MCL 211.7cc and MCL 211.7dd.” *EldenBrady v Albion*, 294 Mich App 251, 256; 816 NW2d 449 (2011). MCL 211.7dd(c) provides that a principal residence is

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. . . .

Further, MCL 211.7cc(1) provides that a “principle residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section.”

## B. DISCUSSION

For multiple reasons, we reverse the MTT’s rulings that the Treasury lacked the authority to issue corrected tax bills on the basis that the PREs had been erroneously granted to petitioners. With respect to the Treasury’s imposition of back taxes, we note that petitioners never challenged the agency’s actions through an internal appeal and request for an informal conference with the Treasury, nor did they challenge the actions in the Small Claims Division of the MTT. Thereafter, consistently with their previous positions, petitioners did not raise the PRE back-taxes issue with the MTT by way of exceptions to the hearing officer’s proposed opinions and judgments.

The MTT has exclusive and original jurisdiction over “[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.” MCL 205.731(a) (emphasis added). Similarly, the MTT’s powers include “[a]ffirming, reversing, modifying, or remanding a *final* decision, finding, ruling, determination, or order of an agency.” MCL 205.732(a) (emphasis added). In these cases, because petitioners did not seek an informal conference with the Treasury, see MCL 211.7cc(8), and exhaust that administrative remedy with respect to the validity of the PREs and unpaid taxes, the Treasury’s *final* decisions,

as expressly stated in its letters to petitioners, only concerned the waiver of interest.<sup>10</sup> Indeed, the letters stated that petitioners could petition the Small Claims Division of the MTT if they disagreed “with all or a part of this final decision.” And, again, the only “final” decisions pertained to the assessments of interest. Accordingly, there existed an exhaustion-of-remedies, jurisdictional, and power bar to the MTT’s decision to address and resolve a nonexistent issue in these cases, i.e., the validity of the PREs.

With regard to the filing of exceptions to a hearing officer’s proposed opinion and judgment, MCL 205.762(2) provides:

A person or legal entity entitled to proceed under section 31 [MTT’s exclusive and original jurisdiction], and whose proceeding meets the jurisdictional requirements of subsection (1) [residential property and small claims division], may elect to proceed before either the residential property and small claims division or the entire tribunal. A formal record of residential property and small claims division proceedings is not required. *Within 20 days after a hearing officer or referee issues a proposed order, a party may file exceptions to the proposed order. The tribunal shall review the exceptions to determine if the proposed order shall be adopted as a final order.* Upon a showing of good cause or at the tribunal’s discretion, the tribunal may modify the proposed order and issue a final order or hold a rehearing by a tribunal member. A rehearing is not limited to the evidence presented before the hearing officer or referee. [Emphasis added.]

In Delger’s case, there were no exceptions lodged for the MTT to review. And in Blanzky’s case, the filed exceptions that the MTT was required to consider in deciding whether to adopt or modify the hearing officer’s proposed opinion and judgment only concerned Blanzky’s request for a waiver of interest. That said, MCL 205.762(2)’s language giving the MTT “discretion” to modify a proposed order suggests that the MTT can alter or reject a proposed order even if no exceptions are taken or, if taken, the exceptions differ from the final order issued by the MTT. This, however, does not overcome the jurisdictional failure.

In support of its decision to address the issue of the validity of the PREs, the MTT cited MCL 205.735a(2) for the proposition that it provided the MTT with the power of de novo review, thereby allowing it to reject the determinations that the PREs were erroneously granted. MCL 205.735a(2) does provide that “[a] proceeding before the tribunal is original and independent and is considered de novo.” De novo review simply means that the MTT reviews an issue independently, with no required deference to an agency’s determination on the issue. See *People v Beck*, 504 Mich 605, 618; 939 NW2d 213 (2019). Thus, in these cases, the MTT was authorized to independently review the Treasury’s determinations rejecting any waiver of interest, absent the need to show any deference to the Treasury’s decision-making. The power of de novo review,

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<sup>10</sup> “The doctrine of exhaustion of administrative remedies requires that where an administrative agency provides a remedy, a party must seek such relief before petitioning the court.” *Cummins v Robinson Twp*, 283 Mich App 677, 691; 770 NW2d 421 (2009). Similarly, the doctrine of exhaustion of administrative remedies places a limit on the MTT’s jurisdiction. See *Johnson v Michigan*, 113 Mich App 447, 462; 317 NW2d 652 (1982).

however, did not authorize the MTT to completely disregard petitioners' positions and address and rule on an issue that was not presented by anyone and that exceeded the MTT's jurisdiction and powers.

We recognize that it could be argued that in deciding the issue of waiver of interest, it was necessary to examine the issue of back taxes upon which the interest was being calculated; however, the MTT exceeded its jurisdiction and powers by actually ruling that back taxes could not be recovered, instead of simply theorizing that back taxes should not be recoverable—without ordering so—and using that theory as a basis to order the waiver of interest. Nevertheless, a problem that exists in this case is that petitioners did in fact file PRE affidavits that created the confusion from the beginning, distinguishing these cases from *Mikelonis*. See *Marie De Lamielleure Trust*, 305 Mich App at 287 (distinguishing *Mikelonis* on the basis that “De Lamielleure claimed a PRE on the property during her lifetime and . . . benefitted from that claim despite an ineffectual attempt to rescind the PRE”).<sup>11</sup> Of course, the instant cases are also distinguishable from *Marie De Lamielleure Trust* because the PRE affidavits here were ambiguous regarding whether PREs were actually being requested. We conclude that the proper approach is to remand the cases for the MTT to address anew only the issue regarding whether petitioners were entitled to a waiver of interest.

We reverse the MTT's rulings and remand for further proceedings solely on the issue of whether interest on back taxes should be waived. We do not retain jurisdiction. We decline to award taxable costs under MCR 7.219.

/s/ Jane E. Markey  
/s/ Michael J. Riordan  
/s/ Thomas C. Cameron

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<sup>11</sup> We take no position on the soundness of *Mikelonis*.