STATE OF MICHIGAN

COURT OF APPEALS

SUE MODZELEWSKI, Petitioner-Appellant, V WAYNE COUNTY TREASURER, Respondent-Appellee.	UNPUBLISHED March 23, 2006 No. 257619 Tax Tribunal LC No. 00-304035

Before: Schuette, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Petitioner appeals as of right the judgment of the Michigan Tax Tribunal ("the tribunal") ordering her to pay back property taxes to respondent for 2000 to 2003 for improperly claiming a homestead exemption. Because the tax tribunal properly affirmed tax assessments levied against petitioner, we affirm.

This Court will reverse the factual findings of the tribunal when they are not supported by competent, material, and substantial evidence on the whole record. *STC, Inc v Dep't of Treasury*, 257 Mich App 528, 533; 669 NW2d 594 (2003). This Court may also overturn the tribunal for committing an error of law or adopting a wrong legal principle. *Id.* at 532. Petitioner misstates in her brief the nature of this case as one of collateral estoppel requiring de novo review. Rather, it is an appeal of the tribunal, which is subject to the "very limited" review of that body that this Court is authorized to undertake. *Stege v Dep't of Treasury*, 252 Mich App 183, 187; 651 NW2d 164 (2002).

Homeowners may claim a principal residence, also called homestead, exemption from property taxes under Michigan tax law. MCL 211.7cc(2) provides in pertinent part:

> [a]n owner of property may claim an exemption under this section by filing an affidavit on or before May 1 with the local tax collecting unit in which the property is located. The affidavit shall 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. The affidavit shall be on a form prescribed by the department of treasury . . . . The affidavit shall require the owner claiming the exemption to indicate if that owner or that owner's spouse has claimed another exemption on property in this state that is not rescinded or a substantially similar

> exemption, deduction, or credit on property in another state that is not rescinded. [MCL 211.7cc(2).]

Further, according to the statute:

> [n]ot more than 90 days after exempted property is no longer used as a principal residence by the owner claiming an exemption, that owner shall rescind the claim of exemption by filing with the local tax collecting unit a rescission form prescribed by the department of treasury. [MCL 211.7cc(5).]

Owners who do not file a rescission form "as required" are subject to a penalty of up to $200. MCL 211.7cc(5).

Our review of the record reveals that the tribunal's finding that petitioner did not comply with MCL 211.7cc(5) is supported by competent, material, and substantial evidence. Such evidence requires more than a scintilla, but less than a preponderance. *Canterbury Health Care, Inc v Dep't of Treasury,* 220 Mich App 23, 28; 558 NW2d 444 (1996). The record is unequivocal that petitioner did not file the proper rescission form within 90 days of her move.

The statute requires that owners shall file with the local taxing unit a rescission form as prescribed by the department of treasury. "The word 'shall' is generally used to designate a mandatory provision." *Mollett v Taylor,* 197 Mich App 328, 339; 494 NW2d 832 (1992). Further, the part of the statute providing for a penalty for noncompliance refers to filing a rescission form "as required." MCL 211.7cc(5). The statute designates use of a specific form. Petitioner did not use the specified form and instead sent a letter to the treasurer of Livonia announcing her move and asking if there was any documentation required to effectuate the change. Plainly, petitioner's letter is not the form specified in the statute. The record clearly demonstrates that petitioner did not comply with the requirements of MCL 211.7cc(5) and the tribunal did not err.

Next, petitioner challenges the tribunal's denial of her claim for equitable relief. Petitioner asked the tribunal to consider the letter the functional equivalent of a rescission form. The tribunal denied that it had equitable powers. The jurisdiction of the tribunal is limited to those authorized by statute. MCL 205.731. According to the statute, the exclusive and original jurisdiction of the tribunal includes only 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 property tax laws.
>
> (b) A proceeding for refund or redetermination of a tax under the property tax laws. [MCL 205.731.]

The tribunal is required to construe and apply clear and unambiguous statutes as written. *EDS v Flint Twp*, 253 Mich App 538, 545; 656 NW2d 215 (2002). The tribunal "does not have powers of equity." *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346, 359; 411 NW2d 169 (1987) citing *Wikman v Novi*, 413 Mich 617, 646-649; 322 NW2d 103 (1982); also see *EDS, supra* at 547-548.

The tribunal in this case simply applied the unambiguous language of MCL 211.77cc. Where a statute is clear and unambiguous this Court must apply the statute as written and no further construction is required or permitted. *Pohutski v Allen Park*, 465 Mich 675, 683-684; 641 NW2d 219 (2002). The statute clearly calls for filing of a specific rescission form within 90 days of moving from property claimed as an exemption. Petitioner's letter to the city treasurer is materially distinct from a rescission form approved by the department of treasury. Petitioner may not invoke equity to convert her noncompliance with the statute into compliance that put tax authorities on notice of her homestead exemption rescission. Nor did the letter somehow shift a burden onto tax authorities to guide petitioner through rescinding her exemption or else risk a claim of equitable estoppel--a proposition for which petitioner has cited no binding authority.

Affirmed.

/s/ Bill Schuette
/s/ Christopher M. Murray
/s/ Pat M. Donofrio