

State Tax Commission April 9, 2010 Tip
Topic: Mutual Mistake of Fact



Dear STaCy:

I heard there was a court case recently that further defined what a mutual mistake of fact is. Is that true?

Truly yours,
Pay N. Attention

Dear Mr. Attention:

You are correct. The recent court decision in *Briggs Tax Serv, LLC v Detroit Pub Sch* provided even more clarification of what a mutual mistake of fact is. The STC will be changing our form to reflect the following definition:

On March 31, 2010, the Michigan Supreme court clarified the meaning of the term “mutual mistake of fact” found in 211.53a which authorizes the recovery of excess payments not made under protest. The Court previously defined “mutual mistake of fact” in *Ford Motor Co v City of Woodhaven*, 475 Mich 425; 716 NW2d 247 (2006) as follows: “a ‘mutual mistake of fact’ is “an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.” To qualify under the statute, the “mutual mistake of fact” must be one that occurs only between the assessor and the taxpayer. The mutual mistake cannot be imputed to the assessor on an agency theory unless the assessor makes a mistake in performing his/her duties in spreading and assessing the tax.

Sincerely,
STaCy