STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

James Winstanley and KDUB Enterprises, LLC
Petitioner,

v

MTT Docket Nos. 15-006901 & 16-000026

City of Grand Ledge,
Respondent.

Tribunal Judge Presiding
David B. Marmon

SUA SPONTE ORDER CONSOLIDATING APPEALS

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioners, James Winstanley and KDUB Enterprises, LLC, appeal ad valorem property tax assessments levied by Respondent, City of Grand Ledge, against an aviation hangar facility located on leased land on Parcel No. 700-836-400-005-00 for the 2015 tax year. Laura Genovich and Michael Homier of Foster, Swift, Collins & Smith PC represented Petitioners, and David Revore and Robert Thall of Bauckman, Sparks, Thall, Seeber & Kaufman PC, represented Respondent.

In lieu of a hearing in this matter, and per the request of the parties, this matter was heard on briefs. A joint stipulation of facts was filed by the parties on May 16, 2017, and briefs were filed on June 6, 2017. Per Motion, the Tribunal allowed Petitioners to file a supplemental brief limited to the issue of our jurisdiction in this matter, which was raised for the first time by Respondent in its June 6, 2017 filing. The Tribunal granted Petitioners' Motion for Supplemental Brief and accepted its brief regarding jurisdiction on June 15, 2017.

Based on the joint stipulation of facts, briefs, attached exhibits and case file, the Tribunal finds that the taxable values ("TV") of the subject property for the 2015 tax year is as follows:

Parcel No.	Year	TV
700-836-400-005-00	2015	$39,400

PETITIONERS' CONTENTIONS

Petitioners contend that the subject property, an airplane hangar it built on leased land is exempt under MCL 211.27m because the bundle of rights of ownership analysis shows that the building is owned by the airport, upon whose leased land the building sits, rather than Petitioners. Additionally, Petitioners contend that the subject is not subject to the Tax Exempt Property Act ("TEPA") under MCL 211.181, because part of the hanger is for storage, and the portion sublet by Petitioners is used to operate a concession and is exempt from TEPA under MCL 211.181(2). Petitioners also contend that the Tribunal's jurisdiction was properly invoked by filing their petition within 35 days of Respondent's denial letter. Alternatively, the Tribunal's jurisdiction was properly invoked by timely appealing the December Board of Review's denial of a qualified error.

RESPONDENT'S CONTENTIONS

Respondent first contends that the Tribunal lacks jurisdiction to hear this appeal because the appeal was not filed by May 31, 2017. Respondent further contends that because the land lease charges rent based on front footage, and because per the terms of the lease, Petitioner is required to remove the improvements, said hangar is owned by Petitioner and is therefore not exempt. Respondent further contends that even if the Tribunal finds that the airport owns the improvements, Petitioner is still subject to tax under TEPA, as Petitioner is not organized as a not for profit entity, and is not subject to the concessionaire exception to TEPA.

STIPULATION OF FACTS

The parties stipulated to the following facts:

1. Petitioner James Winstanley is an individual whose mailing address is 11641 Woodland Strasse, Eagle, Michigan 48822. Petitioner KDUB Enterprises LLC is a Michigan Limited Liability Company whose mailing address is 11641 Woodland Strasse, Eagle, Michigan 48822. James Winstanley is the sole member of KDUB Enterprises, LLC.

2. This appeal concerns a building on leased land (aviation hangar facility) located at 1222 Hangar Way in the City of Grand Ledge, which has been assigned Parcel No. 700-836-400-005-00 ("Hangar Parcel"). The real property on which the hangar facility is located is owned by Respondent, City of Grand Ledge.

3. The hangar was constructed by KDUB Enterprises, LLC or those under its control.

4. Petitioner James Winstanley is the taxpayer of record for the Hanger Parcel on behalf of KDUB Enterprises, LLC.

5. Petitioner KDUB Enterprises LLC is a lessee pursuant to a Property Lease Agreement with the City of Grand Ledge, under which Petitioner KDUB Enterprises, LLC leases the Hangar Parcel. **(Exhibit A, Lease.)**

6. Respondent, City of Grand Ledge, levies and collects property taxes on the Hangar Parcel.

7. The Hangar Parcel is classified as a commercial building on leased land. The Hangar Parcel is presently used as the site of an aviation repair facility.

8. The Hangar Parcel is located in Clinton County and in the Grand Ledge School District. The City of Grand Ledge operates the Grand Ledge Airport, Abrams Municipal, under an Act 425 Agreement with Eagle Township.

9. This matter involves a claim for a property tax exemption. Petitioners contend the Hangar Parcel should be exempt from property taxes. Respondent contends that the Hangar Parcel is taxable.

10. For tax year 2015, Respondent did not treat the Hangar Parcel as exempt and determined that the taxable value was $39,400 and that the state equalized value was $39,400.

11. The total amount of state equalized value in contention is $39,400.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.[1]

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of

[1] See MCL 211.27a.

> true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .[2]

A proceeding before the Tax Tribunal is original, independent, and de novo.[3] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[4] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[5]

Where a tax exemption is sought, because tax exemptions upset the desirable balance achieved by equal taxation, they must be narrowly construed.[6]

I. Jurisdiction of the Tribunal

Respondent's first contention is that the Tribunal lacks jurisdiction to hear this matter, and must therefore dismiss the appeal because Petitioners did not file their petition by May 31, 2015. In support of this contention, Respondent relies upon the Tribunal's order in *Life Training Campus v City of Norton Shores* partially vacating an earlier order and dismissing the exemption portion of a case.[7] The Tribunal opined:

> Further, this section references that an appeal of a valuation and/or exemption issue may be filed in accordance with subsection (6) which states:
>
> > The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 21l.34c, as commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property is invoked by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved.
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> As such, Petitioner failed to invoke the Tribunal's jurisdiction as it failed to file its assessment appeal regarding the valuation and exemption of the subject property on or before May 31, 2016.

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[2] Const 1963, art 9, sec 3.
[3] MCL 205.735a(2).
[4] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[5] *Jones & Laughlin Steel Corp, supra* at 352-353.
[6] *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 665; 378 NW2d 737 (1985),. See also *Michigan Baptist Homes & Dev Co v City of Ann Arbor*, 396 Mich. 660, 669–670; 242 NW2d 749 (1976).
[7] *Life Training Campus v City of Norton Shores*, MTT Docket No. 17-000083 (May 18, 2017). This matter began as a Small Claims case, which the Tribunal transferred to its Entire Tribunal division, when we determined that the amount in controversy was over the jurisdictional limit for Small Claims involving a commercially classified parcel. Petitioner, in pro per never articulated in its small claims petition the statutory basis for its claim of exemption.

> As the Tribunal's jurisdiction was not timely invoked under MCL 205.735a, the Tribunal has no authority to consider Petitioner's claims or grant it the relief requested.

In response, Petitioners first point out that they were unaware that the property, which was not leased until July 2014, was to be taxed until they received its 2015 summer tax bill, and because tax bills are issued after May 31, this filing deadline should not apply.[8] Rather, Petitioners argue they were entitled to rely upon the assessor's denial letter, dated October 26, 2015, and their Petition filed on November 30, 2015, is properly before us under MCL 205.735a(6), which states in relevant part:

> In all other matters, 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.

Assuming that Petitioners did not timely receive a Notice of Assessment, the problem with this argument is that Petitioners had notice of the assessment when the tax bill was sent out, (presumably July 1, 2015), and the 35 day filing period would commence from the date of issuance of the bill, and expire prior to November 30.[9]

Petitioners also contend that the short order in *Life Training Campus* is not instructive, as the Order does not contain a recitation of facts, but from the file, it appears that Petitioner in *Life Training* had notice of the assessment in that matter prior to the May 31, 2017 deadline. The Petitioners are correct, in that the facts appear to be different than those in the present case. Further, the Tribunal's ruling is not precedential. Nonetheless, *Life Training* answers the question in the affirmative as to whether the May 31 deadline applies to exemption appeals.

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[8] Petitioners cite *Parkview Memorial Assn v City of Livonia*, 183 Mich App 116; 454 NW2d 169 (1990) for the proposition that another statutory prerequisite, the board of review protest requirement, could be set aside where notice was not timely given. The *Parkview* panel cited the Supreme Court's summary reversal in *W&E Burnside v Bangor Twp,* (memorandum opinion) 314 NW2d 196 (1978), reversing *W&E Burnside v Bangor Twp,*77 Mich App 618; 259 NW2d 160 (1977), as well as the Tribunal decision of *Paisley v Mullett Twp*, 4 MTTR 471 (Docket No. 100389 September 23, 1986). In *Paisley*, the Tribunal also set aside the June 30 filing date applicable at the time, because of lack of timely notice of the assessment. Subsequent to *Parkview*, the Court of Appeals decided *Michigan State University v City of Lansing*, opinion per curiam unpublished of the Court of Appeals issued February 15, 2005 (Docket No. 250813). In this decision, the Court of Appeals also held that the deadline for filing did not apply, because of lack of timely notice of the assessment.

[9] Not addressed in either brief on this issue is whether the assessor, or the Board of Review is responsible for a final determination regarding exemptions under MCL 211.7m. While the assessor has the authority to determine various exemptions, e.g., the Principal Residence Exemption under MCL 211.7(cc)(4), there is no explicit authority given to him or her to determine MCL 211.7m exemptions. Accordingly the Board of Review likely retains this authority for assessments under MCL 211.7m. Therefore, the assessor's letter would not be a final determination.

Even if the rationale for the holding in *Life Training* is incorrect,[10] Petitioners still have the problem discussed above of having actual notice of the assessment when the tax bill came out, and the 35 day period counting down from that date.

Respondent also states its position that an exemption can be, and should have been brought forth the July or December Board of Review pursuant to MCL 211.53b(10)(f), and a BOR denial could potentially be appealed to the Tribunal. We agree. However, Petitioners in fact *did protest* this same issue, parcel and tax year to the December Board of Review, and timely appealed that decision to the Tribunal in MTT Docket No. 16-000026. As Petitioner points out, the Tribunal has previously held in *Carl F. Mengeling v City of Brighton*,[11] that errors regarding exempt status may be appealed from the December Board of Review if a Petition is filed within 35 days. In *Mengeling*, the Tribunal explained:

> Respondent's rhetorical claim that Petitioner seeks a back-door appeal is accurate. Much like its statutory counterparts, MCL 211.53a and MCL 211.154, the statutory relief in MCL 211.53b provides a limited retroactive period in which to correct specified errors. These errors would otherwise be subject to appeal only for the current tax year and would be required to have been raised through the procedure normally applicable to property tax appeals. MCL 205.735a. The relief in 53b extends a back door to the year in which the error was made or in the following year.
>
> While normally a 53b claim would be discovered after the March Board of Review, it need not be raised at the time. The test under 53b is not when the taxpayer should have discovered the error, but rather a simple claim that the error exists. Late discovery harms the taxpayer, however, as the taxpayer cannot recover accrued interest if relief is obtained. In sum, there is no statutory support for Respondent's interpretation of 53b. Respondent's interpretation conflicts with the plain language of 53b. Respondent's interpretation would be nearly impossible to administer and is contrary to the purpose and function of section 53b.[12]

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[10] While also not briefed, an argument of statutory construction can be made that when MCL 205.735a references "an assessment dispute as to the valuation or exemption of property" it does not mean an "assessment dispute," referring to both valuation or exemption. Different exemptions have different deadlines in which they may be appealed to the Board of Review. Further, Subsection four refers to each separately; § (4)(a) "for an assessment dispute as to the valuation or exemption of property" and §(4)(c) "for an assessment dispute as to the valuation of property" without reference to exemption. This indicates that the legislature's intent was to differentiate between the two. Thus, in §(6), the legislature referred to an assessment dispute – and left off "as to the valuation." It is therefore ambiguous as to whether an assessment dispute includes both valuation and exemption for purposes of the May 31 filing deadline found in subsection 6. However, the Tribunal need not decide this issue, as our jurisdiction was properly invoked in MTT Docket No. 16-000026.

[11] *Carl F Mengeling v City of Brighton*, 16 MTT 238 (Docket No. 329879 July 27, 2007).

[12] *Id*., at 243. While proceeding under MCL 211.54b will deprive Petitioners of the opportunity to recover interest, the amount of interest at stake is relatively *de minimus*, considering that the subject's taxable value in dispute is only $39,400.

Per Exhibit A attached to Petitioners' Petition in MTT Docket No. 16-000026, the December Board of Review affirmed the taxable value on the roll on December 15, 2015. Petitioners timely filed their Petition on January 22, 2016. Rather than dismissing this appeal, and starting over with Docket No. 16-000026, (which is on the October 2, 2017 Prehearing General Call), in the interest of judicial economy and efficiency, the Tribunal will consolidate Docket No. 16-000026 with the present case, thus avoiding redundancy on the Tribunal's part, and further duplication of effort and expenses by the parties. Accordingly, it cannot be disputed that the Tribunal has jurisdiction, properly invoked by the parties, over the parcel and the tax year.

II. Exemption under MCL 211.7m

The exemption claimed in this case stems from MCL 211.7m, which states:

> Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act. Parks shall be open to the public generally. This exemption shall not apply to property acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the property is located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition.

It is undisputed that the land upon which the improvement sits is owned solely by a political subdivision at Abrams Municipal Airport. What is disputed is whether or not the improvement built upon this leased parcel, is owned by Petitioners, or by a political subdivision. Both parties cite *Air Flite and Serv-A-Plane v Tittabawassee Twp,* [13] and *Skybolt Partnership v City of Flint*[14] as authority in determining whether or not a hangar built on leased land is owned by the lessor or the lessee, and each party points to various provisions of the lease for the underlying land as determinative of this issue. The Court of Appeals stated as follows in *Air Flite*:

[13] *Air Flite and Serv-A-Plane v Tittabawassee Twp,* 134 Mich App 73; 350 NW2d 837 (1984)
[14] *Skybolt Partnership v City of Flint,* 205 Mich App 597; 517 NW2d 838 (1994)

> Employing the "bundle of sticks" concept of property as described by the Wisconsin Supreme Court in Mitchell Aero, Inc. v. Milwaukee, 42 Wis.2d 656, 168 N.W.2d 183 (1969), respondent argues that the lease agreement gives the majority of the rights of ownership to the petitioner.
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> "We think the ownership of property by a municipality to qualify for exemption under s. 70.11(2), Stats., means real or true ownership and not paper title only. Ownership is often referred to in legal philosophy as a bundle of sticks or rights and one or more of the sticks may be separated from the bundle and the bundle will still be considered ownership. What combination of rights less than the whole bundle will constitute ownership is a question which must be determined in each case in the context of the purpose of the determination. In this case for exemption one needs more than the title stick to constitute ownership." 42 Wis.2d 662, 168 N.W.2d 183.
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> ***
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> We do not find adoption of wrong principles. Both at common law and by statute, buildings placed upon real property become a part of the real property. Pangborn v. Continental Ins. Co., 62 Mich. 638, 29 N.W. 475 (1886), M.C.L. § 211.2; M.S.A. § 7.2. (p 839)
>
> Even under the "bundle of sticks" theory, we find that the lessor was given the bulk of the rights of ownership. Lessee agreed to provide "the necessary management for the operation of the facilities at all times in a manner and quality acceptable to lessor"; lessee could engage in secondary commercial support services "subject to the approval of the lessor". Improvements could not be made without the written consent of the lessor. Insurance coverage was required in such amount as may be approved by the lessor and lessor was given the right to adjust the rent every three years and to terminate the lease if agreement on the new rent could not be reached. The lease provision that the lessor would pay plaintiff $1,150 per month for each month remaining in the base term was merely an equitable provision to assure that Tri-County would not realize a windfall by the early termination of the lease. Neither do we agree with appellant that the addendum to the lease made petitioner the beneficial "owner" of the property. Indeed, without the addendum, the hangar would not have been built and would not have become a part of the realty with title vested in the lessor. Viewed in this light, the addendum worked to put title in the lessor rather than the lessee.[15]

The Court of Appeals also reviewed the following provisions, and found that these favored ownership by the municipality:

> No rent was charged for the space in the hangar which the lessee agreed to build, there was no provision for periodic increases in rent, and the lease included an

[15] *Air Flite*, 134 Mich App at 76-78.

> amortization formula which assured the lessee of recovery of its investment. It is not surprising, therefore, that the majority opinion concluded that the arrangement was not a bona fide conveyance of buildings to the airport, but was "a hybrid arrangement, possibly to obtain both a tax exemption and the amortization of the cost of the buildings".[16]

In *Skybolt*, the Court of Appeals reiterated the "bundle of sticks" test under the lease to determine ownership. In finding that the city owned the improvements, the Court of Appeals stated:

> The Tax Tribunal in this case also applied these principles to the parties' lease provisions and determined that, because the city exerted ultimate control over the property and Skybolt's rights as lessee were strictly limited, the improvements were the property of the city. This determination was in accord with *Air Flite*, supra. We therefore affirm the Tax Tribunal's holding that the improvements were not owned by Skybolt and thus were not taxable as its personal property.[17]

A more recent case, albeit unpublished is *Emery Worldwide v Cascade Twp*.[18] The *Emery* Court implicitly accepted the Tribunal's determination of ownership based upon the "bundle of sticks" metaphor. Accordingly, the Tribunal must go through each term of the lease and count the sticks. The relevant provisions are as follows:

> 1. **Premises**. The Lessor hereby agrees to lease to the Lessee a parcel of land situated on the Abrams Airport located in the City of Grand Ledge, County of Eaton, State of Michigan, designated B-4 and as more specifically described in Attachment A (hereinafter the "Leased Premises"). Lessee(s) and their invitees shall have free use of a right-of-way for ingress and egress of aircraft and personal vehicles to the Leased Premises. The location of such right-of-way shall be determined and designated by Lessor.[19]

This term favors ownership by lessor, rather than Petitioner, as the airport determines ingress and egress. This exercise of control is akin to the findings in *Air Flite* and *Skybolt*.

> 2. **Rental.**
> A. As consideration for the interest granted herein and for authorization of the operations and permitted uses herein, Lessee shall pay to the Lessor as rent the sum of Six and 51/100 Dollars ($6.51) per front foot per year, rounded to the

[16] *Id.*, at 78.
[17] *Skybolt Partnership v City of Flint*, 205 Mich App at 600.
[18] *Emery Worldwide v Cascade Twp*, unpublished opinion per curiam of the Court of Appeals issued March 10, 2005 (Docket No. 251416).
[19] Lease Agreement at 1.

> nearest dollar. Lessee is leasing 84.0 front feet; accordingly, the annual lease payment due is …$546.84 for the first five (5) full calendar years. Rentals shall be paid annually payable on the effective date of this Lease, prorated the first partial year, and then by January 10 every year thereafter. [20]

Respondent argues and the Tribunal agrees that renting the land on a front-foot basis, rather than on a square footage basis of the building favors ownership by the lessee Petitioner. An owner of the building would normally would calculate rent based upon the square footage of the building. Paragraph 2 continues as follows:

> For each five (5) year Renewal Term the annual lease payment shall be calculated by applying the rate of inflation utilized for computation of Michigan property tax assessments to each of the previous five (5) years, and the resulting compounded rate and lease payment shall be the Renewal Term front foot rate and annual payment. [21]

This term also points to ownership by the lessee, as the renewal rate increase is based upon the consumer price index, rather than on the value of the structure. The term of the lease, found in paragraph 3 is for six successive 5 year terms, or 35 years. As to the length of the lease, it is similar to the leases in *Skybolt* and *Air Flight*, and is not determinative.

> 4. **Renewal/Non-Renewal**. In further consideration of the rent, covenants and conditions to be paid, performed and observed by Lessee, and Lessor agrees and shall reserve to Lessee the option to renew the Lease for the Leased Premises after the expiration of the final automatic Renewal Term provided for in paragraph 3, upon such terms and conditions as agreed upon between the parties hereto, and said option shall otherwise be subject to the terms, covenants and conditions of this Lease. Lessee shall notify the Lessor of its intent to renew or not to renew the Lease for the Leased Premises a minimum of four months prior to the end of the original or any subsequent Renewal Term specified in Section 3. The option to renew is conditioned upon the Lessee's full compliance without default with the terms and conditions of this Lease. [22]

The "full compliance" term at the end of the paragraph favors an interpretation that the property is owned by the lessor. A default on any term allows the lessor to not renew the lease. Ownership by the lessee would require a redemption period under Michigan law.

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[20] Lease Agreement at 2. Note there are several hand-written amendments to this provision.
[21] Lease Agreement at 2.
[22] Lease Agreement at 3.

The following subparagraphs under paragraph 4 are heavily relied upon by Respondent in its contention that the subject is owned by Petitioner:

> A. Lessee shall, at the end of the Lease Term, remove any and all buildings, structures or other improvements placed or erected on said premises by the Lessee and restore the premises to a graded and level condition. All expenses connected with such removal shall be borne by Lessee.
>
> B. If Lessee offers and Lessor accepts, the improvements may remain and become the sole and exclusive property of Lessor. All equipment and fixtures, other than lights, mechanical equipment, door opening apparatus, plumbing and electrical appurtenances, shall remain the property of the Lessee.
>
> C. In the alternative, Lessor may require Lessee to remove all buildings, structures and other improvements. Notice for same shall be given by Lessor to Lessee in writing not less than one (1) month prior to the end of the term of this Lease Agreement. If Lessee fails to remove the structures and improvements and leave the site clean and free of all debris by the end of the Lease Term, then Lessor may remove all structures and/or debris and the Lessee shall be responsible for all costs incurred by Lessor. [23]

In relying upon this term to support its argument that lessee is the owner of the improvements, Respondent points out that this term is distinguishable from the *Skybolt* and *Air Flite* leases, where the improvements are ceded to the lessor at the expiration of the lease. However, it is unlikely that Lessee Petitioner would carry off the improvements at the end of the lease. The building is approximately 5,000 square feet in area with 14 foot high ceilings, containing a floor heated with radiant heat, along with a 1,700+ square foot pole barn.[24] Carrying off the poured concrete floor is unlikely. Even if the hangar could be economically disassembled and moved, there is the problem of where it could be reused, if reassembled, (presumably, on a new concrete pad). As the property is owned by an LLC, it is far more likely that the owner of the Lessee would walk away at the end of the lease, rather than go to the expense of moving or demolishing the improvements. There is no provision in the lease providing for a guarantee or other recourse against Petitioner as an individual. Accordingly, the Tribunal does not rely upon this provision as conclusive proof of ownership by Petitioners.

[23] Lease Agreement at 3-4.
[24] See Respondent's record cards and sketches found in Exhibit F attached to Respondent's Brief in Lieu of Hearing.

Paragraphs 5 and 6 set forth additional restrictions on use of the leased land. Paragraph 5 states:

> 5. **Purpose.** The Leased Premises shall be used by Lessee for the primary purpose of construction and/or occupying a hangar building for the housing and storage of aircraft and related equipment which shall be located on the above-described premises. Storage of other items may be permitted within the fully enclosed hangar structure; however, such storage is deemed to be ancillary and will not be permitted as the hangar's primary use. No portion of the Leased Premises shall be used for a purpose which, in the opinion of Lessor, may interfere with the proper use of the airport by others or which constitutes a nuisance or which violates written rules, regulations and policies of the Lessor or other competent authority or agency having jurisdiction. A violation of this section by Lessee which continues after thirty (30) days written notice shall be considered a default of the conditions of the Lease by Lessee. [25]

The building's use is determined by the lessor, and not Petitioners. The lease goes further than prohibiting illegal use. It specifies a specific use, and in general, allows Lessor to approve or disapprove of items stored in the building. Paragraph 6 requires prior written approval of the addition of fixtures and appurtenances on the property. Both of these paragraphs place the sticks of ownership on the lessor's side.

Paragraph 7 requires Petitioners to construct at their own expense, "new building, structures and improvements" that must comply with all applicable building codes and requirements of Respondent. [26] Standing alone, that provision would be in favor of Petitioners being the owners of the improvements. However, the Airport Manager has to give his approval to the improvement plans and all construction must be completed within one year. Those additional clauses indicate that the lessor is the actual owner.

Paragraph 8 sets forth what happens upon a default by the Petitioner. There is no analogous paragraph setting forth Petitioner's rights and remedies in the event of default by the lessor. Paragraph 8 reads as follows:

> 8. **Default.** Upon any breach of any of the terms and conditions herein (except for non-payment of rent), Lessee shall have thirty (30) days in which to cure any default following written notification from Lessor. If more than thirty (30) days is required to complete the cure, upon written request by the Lessee, Lessor may, in its sole discretion, and without waiver of any of its rights, extend the time

[25] Lease Agreement at 4.
[26] Lease Agreement at 4.

> permitted to complete the cure. If said breach continues to exist at the end of any time allowed to cure, this Lease shall be deemed forfeited by Lessee and canceled by Lessor. Should this Lease be terminated, canceled or forfeited due to breach by Lessee, the Lessee shall peaceably give up to Lessor the Leased Premises in as good condition as at the beginning of the term hereof, reasonable use and wear thereof and damage by the elements excepted. *Failure of Lessee to remove improvements, additions or other construction made thereon by Lessee shall result in forfeiture of same to Lessor.* Except as provided in paragraph 4B, all equipment and moveable fixtures shall remain the property of the Lessee. If Lessee fails to remove structures and leave the site clean and free of all debris, and if Lessor determines that it will not accept ownership of the improvements, the Lessor may remove all structures and/or debris and the Lessee will be liable for all costs incurred. [27]

This clause clearly gives control of the premises to lessor. A non-monetary default results in the premises being forfeited to lessor, or in Petitioners having to pay for the removal of the improvements. Again, as a non-recourse transaction, it is hard to conceive of a situation where Petitioners pay to remove the improvements, when the Principal(s) of the LLC can simply walk away.

Paragraph 9 contains subparagraphs A through L, detailing "conditions of use." [28] Subparagraph A requires Lessor's prior consent for any advertising to be "painted posted or displayed." Subparagraph B forbids unlawful use of the premises, which subparagraph C requires observance of all federal, state, local laws, FAA regulations, and Abrams Airport regulations. Subparagraph D forbids annoying, disturbing or offensive behavior. Subparagraph I requires Lessee to keep the premises neat, clean and orderly and "free of weeds, rubbish or any unsightly accumulation of any nature whatsoever."[29] Once again, this indicates ownership rights in the hands of the Lessor, rather than the lessee.

Respondent makes much of Subparagraph 9G, which states:

> Lessee shall pay when due all taxes, assessments, license fees or other charges levied or assessed against the Leased Premises, and the buildings, structures and their contents during the term of this Lease or any renewal thereof. [30]

In discussing this provision, Respondent states in its brief as follows:

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[27] Lease Agreement at 5-6 (emphasis added).
[28] Lease Agreement at 6.
[29] Lease Agreement at 7.
[30] Lease Agreement at 7.

> As a matter of contract, Petitioner is bound to pay the taxes assessed against the leased land, as understood by the parties. Petitioner's attempt to gain exemption from taxation amounts to rewriting the Lease Agreement for terms more favorable to Petitioner.[31]

Respondent is, in effect, arguing that although it believes Petitioners are the owners of the improvements under the bundle of rights theory, Petitioners do not possess the right to contest the taxes assessed on the building. This argument is totally inconsistent with its argument that Petitioner holds most of the bundle of rights of ownership, and tends to prove the opposite. Further, the Tribunal does not find convincing Respondent's argument that a provision making Petitioner liable for taxes on the property is a waiver of an exemption under law. Rather, such a clause is designed to protect a typical owner of property from loss via forfeiture to a municipality because of its tenant's failure to pay taxes. Again, such a clause is consistent with the lessor owning the property, rather than Petitioners.

Paragraph 10 gives lessor the right to enter and inspect the premises. Paragraph 12 prohibits transfer of the lease without written consent of lessor, and Paragraph 13 prohibits the subletting of the premises without written consent. Petitioners are left with the comfort of knowing that the consent will not be unreasonably withheld. Again, these sticks are in lessor's hands, rather than Petitioners.

Paragraph 14, titled "**Compliance With State and Federal Law**" appears neutral, except for the fact *it restricts who Petitioners can hire in constructing the improvements*. While non-discrimination is a laudable goal and policy, it adds another set of restrictions onto the lessee, and the penalty for breach *is termination of the lease*.[32] Similarly, Paragraph 15, requiring compliance with state and federal agreements at first glance appears to be neutral, providing in part that "any right title and interest of Lessee to the Leased Premises shall not be taken (except upon Lease termination) without just compensation therefore being first made." [33] Aside from the difficulty in determining what just compensation might mean for its interest, the apparent neutrality of this provision is tempered by the remainder of Paragraph 15:

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[31] Respondent's Brief in Lieu of Hearing filed June 6, 2016, at 16-17.
[32] Lease Agreement at 8-9.
[33] Lease Agreement at 9.

> B. Lessee hereby grants the right to Lessor to, and Lessor hereby reserves the right to, subordinate this Lease at all times to any and all present and future obligations of Lessor arising from any government grants or loans. Lessee also covenants and agrees to execute and deliver upon demand such further instrument or instruments as may be required to carry out the intent of this paragraph, and *hereby irrevocably appoints Lessor the attorney-in-fact* of Lessee to execute and deliver any such instrument or instruments for and in the name of Lessee. Lessor shall notify Lessee in writing of any such obligations and instruments.
> C. Lessor may assign this Lease to its successor in interest.[34]

Again, as to lessee's control of the property, *the big print giveth and the small print taketh away*. Appointing lessor as the attorney in fact is a significant right ceded to the lessor.

Further tilting the ownership in favor of lessor is Paragraph 17, which reads as follows:

> 17. **Non-Limitation Of Lessor's Rights**. Nothing in this Lease limits the right of the Lessor to further develop the Airport and to lease the same for any lawful purpose or to provide or discontinue *services it deems necessary or desirable in its sole and absolute discretion, regardless of the Lessee's wishes*. Except as provided in paragraph 15A, if the Lessor's exercise of said rights results in a loss of right-of-way for greater than fifteen (15) days continuously, Lessee's damages shall be limited to a pro rated refund of payments made for the duration of the loss.[35]

The title of this paragraph accurately sets forth who controls the improvements. The non-limitation of lessor's rights is clearly a limitation of lessee's rights.

While Paragraph 18 gives lessor the right to relocate Petitioners, it is responsible for Petitioners' costs, and gives it the right to terminate the lease if it deems the new location unacceptable. Again, lessor controls the location of the improvements.

Paragraph 19 requires Petitioners to indemnify lessor. Notably, there is no analogous provision giving the lessee similar rights against the lessor. Paragraph 20 requires Petitioners to carry liability insurance in the amounts of $1 million for property damage and $1 million for public liability, naming the airport and Respondent as additional named insureds. Again, this is typical of leases where the lessor owns the improvements, and was cited in *Air Flite* as a stick of ownership in the lessor's hands.

The final provision of the lease is Paragraph 25, which states:

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[34] Lease Agreement at 9-10 (emphasis added).
[35] Lease Agreement at 10 (emphasis added).

> 25. **Mutual Draftsmanship**. This Lease will be construed for all purposes as having been drafted jointly by the parties hereto. [36]

The Tribunal finds this provision to be a fiction, since the lease form is identical to the one Respondent used in MTT Docket No. 15-006092, which involves a different petitioner, but the same respondent, and is being considered concurrently with the present appeal. It is noteworthy that both leases were drafted by the same attorney.

Even though the lease contains language requiring Petitioners to take the building with them upon the lease's termination, this provision as a practical matter is also a fiction; a result of clever drafting,[37] without changing any meaningful measure of control. In reviewing each provision above, control of the building, its operation, and the operations allowed inside the building are clearly in the hands of the lessor. As each right to control may be considered metaphorically a stick, it is obvious that most of the sticks of ownership are clearly in the lessor's pile. Accordingly, lessor is the owner of the improvements, which are exempt under MCL 211.7m, and the property is therefore exempt from ad valorem property tax.

III a. Application of TEPA

Our inquiry however does not end with this holding. As both parties point out, the Taxation of lessees or users of Tax Exempt Property Act ("TEPA") applies to certain lessees of exempt property. TEPA is found in MCL 211.181, and states in relevant part as follows:

> **211.181 Taxation of lessees or users of tax-exempt real property; business conducted for profit; exceptions.**
> Sec. 1.
> (1) Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation *in connection with a business conducted for profit*, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.
> (2) Subsection (1) does not apply to all of the following:
> (a) Federal property for which payments are made instead of ad valorem property taxes in amounts equivalent to taxes that might otherwise be lawfully assessed or property of a state-supported educational institution, enumerated in section 4 of article VIII of the state constitution of 1963.

[36] Lease Agreement at 13.
[37] Respondent characterizes the lease as being "well-crafted." See Respondent's Brief in Lieu of Hearing, at 7.

> (b) Property that is used as a concession at a public airport, park, market, or similar property and that is available for use by the general public. [Emphasis added].

In dispute in this appeal is the italicized phrase, use "*in connection with a business conducted for profit."* Respondent argues that because Petitioners are not formed to operate on a non-profit basis, it is a business conducted for profit. Petitioners counter that they are using a portion of the hangar parcel for storage, and TEPA does not apply. Further, an unspecified portion of the subject is subleased to Beacon Aviation, which repairs and services aircraft, and accordingly, is exempt from TEPA as a concession.

The lead case discussing the meaning of the above-italicized phrase is *Nomads v City of Romulus*.[38] The Court of Appeals stated:

> M.C.L. § 211.181(1) imposes a tax only on a lessee of tax-exempt property used in connection with a "business conducted for profit". The qualifying language is not an exemption; rather it defines the taxpayers on whom the lessee-user tax is imposed, *i.e.*, lessees of tax-exempt property used in connection with businesses conducted for profit. Exemptions to the lessee-user tax are set forth in subsection (2) of the statute, which is not applicable to petitioner. *Thus while the exemptions set forth in subsection (2) must be strictly construed in favor of the taxing authority, the pertinent language set forth in subsection (1), i.e., "business conducted for profit," must be strictly construed in favor of the petitioner taxpayer.* We conclude that the Tax Tribunal erred in giving the language in question a broad interpretation. We therefore conclude, resolving the uncertainty in the language in favor of petitioner, that petitioner is not subject to the lessee-user tax.[39]

Subsequent to its decision in *Nomads*, the Court of Appeals decided *UAW-Ford Nat Educ Dev and Training v City of Detroit.*[40] Key portions of this decision relevant here states as follows:

> It is "intended to ensure that lessees of tax-exempt property will not receive an unfair advantage over lessees of privately owned property." *Detroit v. Nat'l Exposition Co., supra,* p. 546, 370 N.W.2d 397.
>
> ***
>
> Because MCL 211.181(1) *imposed* taxes, any ambiguity is to be construed against the imposition of a tax. *Nomads, supra* at 55. Accordingly, the Court decided that the tribunal applied the wrong standard by interpreting "profit" in a broad sense.

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[38] *Nomads v City of Romulus,* 154 Mich App 46, 55-56;397 NW2d 210 (1986).
[39] *Id*, at 55-56 (emphasis added).
[40] *UAW-Ford Nat Educ Dev and Training v City of Detroit* per curiam unpublished opinion of the Court of Appeals issued March 11, 2004 (Docket No 242809).

> This Court held that the property was not being used in connection with a business conducted for profit and, therefore, was not subject to tax. *Id.* at 56. [Emphasis in original].
>
> Applying the rationale of *Nomads,* UAW-Ford is not a business operated for profit. As in *Nomads, Inc,* UAW-Ford was incorporated as a nonprofit company for charitable purposes consistent with § 501(c)(3) of the Internal Revenue Code. It is true that in *Nomads,* the travel club was actually approved as tax exempt by the IRS, *Nomads, supra* at 49, whereas UAW-Ford here has not shown that it has received IRS approval. Nonetheless, MCL 211.181(1) does not define an organization by its IRS approval. *Rather, the statute looks to the use of the property and whether it is used in connection with a business conducted for profit. The city has not shown that UAW-Ford is conducting a business for profit.* The absence of § 501(c)(3) certification is not a dispositive consideration in the Michigan property tax statute. *American Concrete Inst v. State Tax Comm,* 12 Mich.App 595, 605-606; 163 NW2d 508 (1968). [Emphasis added].
>
> Although the city argues that the land is used in connection with a business conducted for profit because one of UAW-Ford's principal benefactors (Ford) is a for-profit corporation, it does not matter that Ford and Ford Land Development, as owners of UAW-Ford organization, may be for-profit ventures. Indeed, the membership or ownership of Nomads presumably was comprised of for-profit ventures (individuals whose income was not tax-exempt). *Nomads, supra. The statute focuses on the structure of the organization leasing the property and the use of the property, not the tax-paying characteristics of the shareholders or benefactors.* In this regard, respondent is urging this Court to impose an additional test not contained in the statute, which we decline to do. The Legislature intended that UAW-Ford's nonprofit status carry into the tax code via the provision of MCL 211.181(1) addressing "business conducted for profit." [Emphasis added].

According to *Nomads* and *UAW-Ford,* the uncertainty in the language of MCL 211.181(1) is to be construed in favor of Petitioner. Further, those subject to tax under TEPA must not only be for profit, but the use of the property at issue be part of the generation of income. The parties have stipulated that the Hangar Parcel is presently used in part as the site of an aviation repair facility, subletted by Petitioners.[41] Accordingly, Section 1 of TEPA applies. The facility is clearly used in connection with a business conducted for profit. In fact, there are two businesses; Petitioners' subletting of the property, as well as the aircraft maintenance and repair facility. While Petitioners concede that the property is used in connection with a business

[41]Paragraph 7, Stipulation of Facts.

conducted for profit, they contend that they are exempt as a concessionaire under subsection 2 of TEPA.

III b. Application of Exemption as a concession from TEPA

While the application of a tax such as TEPA is construed in favor of the tax payer, an exemption from a tax is narrowly construed, in the government's favor. It is well settled that tax exemptions are disfavored and are strictly construed against the taxpayer.[42] Section 2(b) of the statute quoted above allows an exemption from TEPA for property used as a concession at a public airport, and that is available for use by the general public. The lead case regarding this exemption in its current form is *Skybolt*, which states:

> The lessee-user tax is intended to ensure that lessees of tax-exempt property will not receive an unfair advantage over lessees of privately owned property. Detroit v. Nat'l Exposition Co., 142 Mich.App. 539, 546, 370 N.W.2d 397 (1985). Although a number of cases have formulated a definition of "concession" for purposes of the tax's concession exemption, see, e.g., *Air Flite*, supra; Detroit v. Tygard, 381 Mich. 271, 161 N.W.2d 1 (1968); Kent Co. v. Grand Rapids, 381 Mich. 640, 167 N.W.2d 287 (1969); Seymour v. Dalton Twp., 177 Mich.App. 403, 442 N.W.2d 655 (1989); Clinton Co. v. Francis, 73 Mich.App. 102, 250 N.W.2d 559 (1976), each of those cases was decided in the context of earlier versions of the statute. We have found no cases construing the subsection 2(b) concession exemption as it is presently written.
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> ***
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> Applying these principles to the plain language of the concession exemption provided in M.C.L. § 211.181(2)(b); M.S.A. § 7.7(5)(2)(b) as presently written, it is apparent that in order for the exemption to apply, two requirements must be satisfied: *(1) the property must be used as a concession, and (2) it must be available for use by the general public.* The Legislature's use of the conjunctive "and" in subsection 2(b) must be given effect and indicates that both of these conditions must be satisfied before the exemption will apply. Further, requiring the two conditions to be satisfied is consistent both with the purpose of the user-lessee statute and with tax exemption statutes in that it favors the taxing authority and discourages unfair advantage over lessees of private property. *Nat'l Exposition,* supra*; Nomads, Inc.*, supra.[43]

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[42] *Guardian Industries Corp v. Dep't of Treasury*, 243 Mich App 244, 249; 621 NW2d 450 (2000). Said statement was cited *in Emery Worldwide v Cascade Twp*, per curiam unpublished decision of the Court of Appeals issued March 10, 2005 (COA # 251416), which ruled specifically on this particular exemption.

[43] *Skybolt*, 205 Mich App at 601-602, (emphasis added).

The Court of Appeals ultimately reversed the Tribunal's granting of an exemption under MCL 211.181(2)(b) where Skybolt used part of the hangar for its own operations which was available to the public, and sublet a portion to Simmons, which was not open to the public; a situation arguably similar to the case before us.[44] The first of *Skybolt's* two requirements is use as a concession. That term, as it was found in a previous version of the act was ruled upon by the Supreme Court in two cases, decided within nine months of each other.

> In *Detroit v Tygard*[45] the Supreme Court stated:
>
> Next, we believe the concept of specific obligations on the part of the privileged party to *maintain particular services at specified times* is an incident of a concession. We find no such obligations imposed by the agreement here under consideration. No *minimum hours* during which the services offered must be made available to the public are required. No *standards of service* are mandated. Of course, the *services offered must bear a reasonable relationship to the purposes of a public airport.* That element in part is present here, particularly the storage and servicing of aircraft. We are not furnished any figures as to what percentage of appellants' business is concerned with the storage and servicing of transient aircraft, certainly one of the most important uses of a public airport. We would not be understood to mean that we negate as a proper use of a public airport the storage of locally based aircraft.
>
> We think that a further indication of legislative intent can be found in the related Aeronautics Code which specifically empowers political subdivisions the right to 'confer concessions * * * upon its airports' bespeaks an intention to assure that the services customarily and needfully required at airports will be assured. It follows that in return for the privilege granted a corresponding obligation necessarily arises. That is the nature of a concession as we believe the legislature used the term.
>
> Applying all of the foregoing incidents of a concession to the relationship between the Aviation Commission and appellants, and those identically situated as established by the rental agreement, we cannot but conclude that the city of Detroit did not grant one or any of them a 'concession' within the meaning of the statute.[46]

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[44] *Id*., at 603.
[45] *Detroit v Tygard*, 381 Mich. 271; 161 NW2d 1 (1968).
[46] *Id*., at 275-276 (emphasis added).

Subsequently, in *Kent County v City of Grand Rapids*,[47] the Justice Adams set forth the four tests he gleaned from *Tygard*:

> (1) A concession is something more than the mere leasing, renting or otherwise making available real property to a private individual, association or corporation in connection with a business conducted for profit.
> (2) A concession embraces the concept of exclusivity but this concept alone is not controlling.
> (3) A concession embodies specific obligations on the part of the privileged party to maintain particular services at specified times.
> (4) A concession imposes on the concessionaire the assumption of a responsibility to perform a service customarily or needfully required in the operations to which the concession pertains.[48]

Both the majority and the dissent in *Kent County* reviewed the terms of the leases in part to determine if the operation of the fixed base operator was a concession. The majority held:

> The lease between the Kent County Aeronautics Board, acting for and on behalf of the the [sic] County of Kent, and Northern Air Service, Inc., provided that lessee will agree to observe and obey lessor's rules and regulations with respect to the use of the airport, protecting the safety of those using the airport; that lessee will furnish any services to be provided by it on a fair, equal and not unjustly discriminatory basis to all users thereof, and that it will charge fair, and not unjustly discriminatory prices for each unit of service; that lessee will under date of the commencement of the term of this lease file with the lessor a schedule of the rates and charges covering hangar rental fees, charges for tie-downs and charges for fuel. The lease provided further that any charges, revisions or additions to the original schedule so filed should immediately be filed with the lessor; also that in the event lessor should determine such rates or charges are unreasonable, and no agreement in relation thereto is reached between lessor and lessee, either party could by notice in writing to the other, submit the controversy or claim to arbitration.[49]

Interestingly, the Supreme Court included the leases in its opinions in both *Tygard* and *Kent County*. In the present case, no lease was provided by either party between Petitioners and Beacon Aviation. While the Tribunal agrees that Beacon provides a service customarily or needfully required in the operations to which the concession pertains, the other elements of a concession cannot be established without a written lease. Instead, Petitioners rely solely upon the

[47] *Kent County v City of Grand Rapids*, 381 Mich 640; 167 NW2d 287 (1969).
[48] *Id*., at 653-654
[49] *Id*., at 648

lease between Petitioners and the airport, to which Beacon would also be bound. However, that lease is for the construction and occupancy of the buildings, rather than for the conduct of any business. There is no requirement concerning hours of operation, standards of operation, or availability to the public. In that lease, there are no terms covering charges, or guaranteeing that the services be provided to all, without discrimination. There was no specific requirement to maintain particular services at specified times. There was no requirement regarding the range of charges allowed for Beacon's services.

As to the second test under *Skybolt*, availability to the general public, Petitioners have only provided a listing of Beacon in a directory of airport managers and fixed base operators.[50] Even if the Tribunal is to find this sketchy entry in a directory adequate to establish the second element of availability to the general public, it does not establish the first element of a concession. Accordingly, Petitioners have failed to meet their burden of proving an exemption from TEPA for the area leased to Beacon.

Moreover, Petitioners have failed to provide any evidence as to how much of the subject property is available to Beacon, as opposed to being used only by Petitioners. The Tribunal was however, provided evidence by Respondent in the form of two color photographs of the subject.[51] The first photograph shows a fence surrounding the subject with a sign for Beacon Aviation of Michigan. The second photograph shows a large sign centered on the airplane entrance hangar door, again proclaiming "Beacon Aviation of Michigan." The Tribunal concludes from these photographs that none of the area of the hangar is restricted from use by Beacon. As we hold that Beacon does not qualify as a concessionaire under MCL 211.181(2)(b), it follows that the entire buildings are not exempt from TEPA. Petitioners are therefore subject to tax under TEPA, which provides, "the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property."[52]

The Tribunal finds, based upon the Stipulation of Facts and the Conclusions of Law set forth herein, that while Petitioner is exempt from property taxation under MCL 211.27m, they

[50] Exhibit A attached to Petitioner's Brief in Support of Petition.
[51] Exhibit I to Respondent's Brief in Lieu of Hearing.
[52] MCL 211.181(1)

are subject to TEPA under MCL 211.181. The subject property's TV for the tax year at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that this matter is consolidated with Docket No. 16-000026.

IT IS FURTHER ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Order. If a refund is warranted, the tax collecting official for the tax year in which the assessment has been paid, shall issue a refund equal to the amount paid in excess of the correct and lawful amount, **without interest**, pursuant to MCL 211.53b.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[53] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[54] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[55] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[56]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[57] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[58] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[59]

By David B. Marmon

Entered: July 6, 2017

[53] See TTR 261 and 257.
[54] See TTR 217 and 267.
[55] See TTR 261 and 225.
[56] See TTR 261 and 257.
[57] See MCL 205.753 and MCR 7.204.
[58] See TTR 213.
[59] See TTR 217 and 267.