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

Detroit Edison Company,
Petitioner,

v

MTT Docket No. 311191

City of River Rouge,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER DENYING PETITIONER'S MOTION FOR LEAVE TO FILE A REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S REQUEST FOR ORAL ARGUMENT

ORDER DENYING RESPONDENT'S REQUEST FOR SANCTIONS

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(9) AND MCR 2.116(C)(10)

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT PURSUANT TO MCR 2.116(I)(2)

In this case, the Detroit Edison Company (Petitioner) seeks a refund of property taxes paid as the result of an assessment levied on a coke oven gas pipeline (the subject property) for the 2001, 2002 and 2003 tax years. Petitioner's basis for this request is its belief that a mutual mistake of fact occurred and, as such, it is entitled to relief under MCL 211.53a. Petitioner asserts that it does not own the subject property and that it erroneously included the property on its personal property statements. In turn, the City of River Rouge (Respondent) relied upon those erroneous statements in assessing Petitioner. It is Respondent's position that there was no mutual mistake of fact as Petitioner had an agreement with the subject property's owner wherein it would pay the tax and seek reimbursement from the owner.

Petitioner filed a motion for summary disposition under MCR 2.116(C)(9) and (C)(10). For the reasons set forth herein, the Tribunal finds that Petitioner's (C)(9) motion must be denied, but that Petitioner's (C)(10) motion must be granted.

PETITIONER'S CASE

Petitioner states that in 1993 it constructed a coke oven gas pipeline (the subject property) for the National Steel Corporation (National Steel). The subject property connected a National Steel coke oven facility to one of its power plants. Petitioner never owned the subject property. However:

> Because [Petitioner] had access to the cost information as the Pipeline was constructed, it reported the Pipeline on its Personal Property statement and paid property taxes to Respondent. . .on behalf of National Steel. Unfortunately, due to inadvertence, [Petitioner] kept reporting the Pipeline to [Respondent], and paying taxes thereon, long after the Pipeline was constructed. (Petitioner's Brief, p2)

The personal property statements filed by Petitioner identified the subject property as Parcel No. 50-999-99-0260-010.

According to Petitioner, on March 13, 2003, after discovering that it had been inadvertently making these tax payments, Petitioner contacted Respondent's Board of Review and requested that Parcel No. 50-999-99-0260-010 be removed from the assessment roll. Respondent refused to do so and notified Petitioner of such in a letter dated April 4, 2003.

In May 2003, National Steel sold all of its assets to the United States Steel Corporation (US Steel). On February 14, 2004, Petitioner again contacted Respondent, stating that it intended to file a "zero return" personal property statement. In an attempt to discern who owned the subject property, Respondent contacted US Steel. In a letter to Respondent dated March 3, 2004, US Steel acknowledged ownership of the subject property and informed Respondent that it began reporting the subject property in 2004 under Parcel No. 50-999-00-0397-000. In this

letter, US Steel also asserted that National Steel reported the subject property under Parcel No. 50-999-00-0397-010 and paid taxes on it through 2003. "As a result, Respondent received 'double' property tax payments from [Petitioner] and National Steel/US Steel for the Pipeline for many years." (Petitioner's Brief, p2)

Petitioner asserts that it has no tax liability for the subject property "because it is not, and never has been, the owner of the Pipeline." (Petitioner's Brief, p5) Petitioner cites MCL 211.12(1) which states, in pertinent part: "All tangible personal property, except as otherwise provided in this act, shall be assessed to the owner of that tangible personal property. . . ." Petitioner argues that "[t]here is no authority for the City to assess [Petitioner] for the Pipeline and any outstanding tax assessments related to the Pipeline must therefore be cancelled." (Petitioner's Brief, p5)

Petitioner requests a refund of all taxes paid on the subject property beginning with the taxes levied in July 2001. Citing MCL 211.53a, Petitioner argues that it is entitled to this refund because there has been a mutual mistake of fact. According to Petitioner:

> The factual situation presented before the Tribunal in this case is almost identical to that presented to the Michigan Supreme Court in *Ford Motor Co v Woodhaven*, 475 Mich 425; 716 NW2d 247 (2006). In *Ford*, the taxpayer, Ford Motor Company, submitted erroneous personal property statements to three taxing jurisdictions that over reported or incorrectly reported Ford's assets. In reliance upon these statements, the taxing jurisdictions issued tax bills. The Supreme Court held that, under such circumstances, there was a mutual mistake of fact that could be remedied pursuant to MCL 211.53a. Specifically, the Court held:
>
> > Here, there is little doubt that a mistake occurred-the personal property statements erroneously overstated the amount of Ford's taxable property, including reporting the same property twice. This resulted in excessive assessments that were paid in full. Further, the mistakes made in these cases are best characterized as mutual. In our view, each assessor's erroneous belief that Ford's personal property statement was accurate does not practically differ from Ford's belief that the statement was accurate. <u>In other words, if Ford believed that it owned certain personal property and reported it properly at the time, then Ford believed that each statement was</u>

> accurate. Similarly, if each assessor believed that Ford's statement was accurate, then the assessor likewise believed Ford owned certain personal property and reported it properly. As such, the parties shared a mistaken belief about a material fact that went to the very nature of the transaction-that all the personal property Ford claimed in its personal property statements was taxable. And the parties relied on this shared, erroneous belief-respondents when they assessed the property, and Ford when it subsequently paid the excessive assessments. Therefore, we conclude that Ford has stated valid claims under MCL 211.53a under the theory of mutual mistake of fact because the parties shared and relied on their erroneous beliefs about material facts that affected the substance of the assessments. 475 Mich at 443. (Emphasis added by Petitioner.) (Petitioner's Brief, pp6-7)

In this case, Petitioner "mistakenly reported the Pipeline on its personal property statement and the assessor relied upon that reporting when issuing the statement." (Petitioner's Brief, p7)

In support of its position, Petitioner submitted an affidavit of Mr. Jerry Henderson, Petitioner's Property Tax Manager. In this affidavit, Mr. Henderson states, in pertinent part:

1. "The personal property statements filed by [Petitioner] on behalf of National Steel identified the Pipeline as tax parcel number 50-999-99-0260-010."

2. "[Petitioner] mistakenly continued to report the Pipeline on personal property statements, and pay taxes on the Pipeline, despite the fact that it did not own the Pipeline."

Petitioner also submitted an affidavit of Mr. Jacques B. Foster, a Senior Tax Accountant with US Steel. In his affidavit, Mr. Foster states, in pertinent part:

1. "In May 2003, US Steel purchased assets from National Steel Corporation. . .including the Great Lakes Division Integrated Steel Mill. . .located in River Rouge and Ecorse, Michigan."

2. "As Senior Tax Accountant for US Steel, I have access to the property tax records of US Steel, and prior records of National Steel. . . ."

3. "In March 2004, I became aware that the River Rouge Assessor's office had sent a letter, dated February 27, 2004, stating that Detroit Edison had disavowed ownership of a pipeline. . .that connected the coke oven facility at the Steel Mill to Detroit Edison's power plant."

4. "Upon receiving the letter, I investigated the matter and reviewed US Steel's property tax records and the property tax records of National Steel. Upon reviewing these documents, I determined that National Steel had reported the value of the [p]ipeline on its personal property statements, and paid property tax thereon, through 2003 as part of tax parcel #50-999-00-0397-010."

5. "When US Steel [a]cquired the Steel Mill, it reported the value of the [p]ipeline on its personal property statements, and paid property tax thereon, for 2004 and thereafter as part of tax parcel #50-999-00-0397-000."

Finally, Petitioner claims that Respondent would be unjustly enriched if it were not required to refund Petitioner's tax payments. "After all, US Steel/National Steel also paid to Respondent the very same taxes for the Pipeline during the relevant tax years. As a result of the parties' mutual mistake, Respondent has been unjustly enriched because it received a 'double' tax payment for the Pipeline." (Petitioner's Brief, p8)

In addition to the affidavits, Petitioner submitted the following exhibits:

1. A copy of a July 2004 property tax bill for Parcel No. 50-999-00-0260-010, issued by Respondent to Petitioner.
2. A copy of a letter dated February 27, 2004, from Respondent to US Steel, in regards to Parcel No. 50-999-99-0260-010.
3. A copy of a letter dated March 3, 2004, from Mr. Foster to Respondent.
4. A copy of a letter dated December 7, 2006, from Respondent in regards to Parcel No. 50-999-99-0260-010.

RESPONDENT'S CASE

Respondent contends that there is no mutual mistake of fact as there was no mistake as to the subject property's ownership. Respondent also contends that Petitioner reported the subject property on its personal property statement because of an agreement with National Steel, not

because Petitioner mistakenly believed that it owned the subject property. In support of these contentions, Respondent states the following:

> In 1993, [Petitioner] constructed a Pipeline in the City of River Rouge for National Steel that connected a National Steel coke oven facility to [Petitioner's] power plant. From the date of its construction in 1993, [Petitioner] consistently filed Personal Property statements with Respondent claiming ownership of the Pipeline, applying the appropriate annual depreciation and making payment to Respondent for the relevant assessment. Based upon the sworn Personal Property statements filed by [Petitioner], Respondent concluded that [Petitioner] was in fact the owner of the Pipeline and therefore assessed [Petitioner] accordingly. Respondent did not assess any other entity for the Pipeline, as prior to 2004 Respondent had no knowledge that National Steel, or any other entity for that matter, had any ownership interest in the property. Most certainly, Respondent had no knowledge of a silent agreement between [Petitioner] and National Steel that obligated [Petitioner] to report the Pipeline as its asset. . .Based upon [Petitioner's] consistent reporting of the Pipeline asset since 1993 and the lack of evidence that National Steel was in fact the owner of the property, Respondent upheld the 2003 assessment against [Petitioner]. . .National Steel did not report the Pipeline as an asset in 2003 and was not assessed by Respondent for it. (Respondent's Response, pp3-4)

In support of this position, Respondent submitted a copy of a letter dated March 13, 2003, from Mr. Thomas A. Niemiec, Tax Consultant for Detroit Edison. In this letter, Mr. Niemiec states:

> [Petitioner] has been filing a personal property tax return on behalf of National Steel since 1993, when the pipeline was under construction ([Petitioner] had knowledge of its expenditures at year end). [Petitioner] pays the property taxes and National Steel is [supposed] to reimburse us.
>
> Through the years, with numerous personnel changes within both companies, this arrangement has not been working out. We are requesting that this Board remove the assessment on the existing [Petitioner] tax parcel #50-999-99-0260-010 and establish a new tax parcel in the name of National Steel . . . for the assessment of this $2.4 million . . . pipeline (which they own).

As for the 2004 and 2005 tax years, Respondent asserts that:

> The 2004 tax year was the first year that Respondent assessed both [Petitioner] and [US Steel] for the Pipeline as [Petitioner] still had the Pipeline listed under Parcel # 50-999-99-0260-010, and [US Steel] was simultaneously reporting the Pipeline under Parcel #50-999-00-0397-000.

> Respondent concedes that it inadvertently assessed both [Petitioner] and [US Steel] for the subject Pipeline during the 2004 and 2005 tax years as both entities were reporting the Pipeline on their Personal Property statements. From Respondent's perspective, there was an ongoing dispute relative to which entity actually owned the property and was, therefore, responsible for filing the proper statements and paying the assessments. However, this mix-up in reporting was remedied before the Wayne Count Board of Review when Wayne County Director, Gary Evanko, zeroed out the assessment for [Petitioner] for both the 2004 and 2005 tax years. (Respondent's Response, pp5-6)

In response to Petitioner's argument that there was a mutual mistake of fact, Respondent argues that:

> Nothing could be further from the truth. There is no mutual mistake of fact. There is no mistake whatsoever. For [Petitioner] to even make these arguments when it had an agreement with National Steel to report the Pipeline as its property and to later seek reimbursement from National for those taxes paid is alarming and grounds for sanctions. How [Petitioner] could attempt to ignore and conceal from this Tribunal a letter on its own [stationery] outlining the terms of that agreement and not try to contend that the reporting of this Pipeline was because of an administrative error or some other excuse . . . is outrageous and beyond logic. (Respondent's Response, p7)

Given this, Respondent seeks sanctions against Petitioner pursuant to MCR 2.114; 2.625(A)(2). Respondent also requests that oral argument be held on Petitioner's motion.

Respondent submitted the following exhibits:

1. A copy of the March 13, 2003 letter from Mr. Thomas A. Niemiec to Respondent's Board of Review.
2. A copy of a letter dated April 4, 2003, from Respondent's Board of Review to Mr. Niemiec.
3. A copy of a letter dated February 14, 2004, from Petitioner to Respondent.
4. A copy of a letter dated February 27, 2004, from Respondent to US Steel, in regards to Parcel No. 50-999-99-0260-010.
5. A copy of a letter dated March 3, 2004, from Mr. Foster to Respondent.
6. A copy of a letter dated March 12, 2004, from Mr. Gary Evanko to Respondent.

7. A copy of a letter dated December 7, 2006, from Respondent in regards to Parcel No. 50-999-99-0260-010.

PETITIONER'S MOTION FOR LEAVE TO FILE REPLY TO RESPONDENT'S RESPONSE

In response to Respondent's Response to its Motion for Summary Disposition, Petitioner filed a motion requesting leave to file a reply brief. In this request, Petitioner states:

> [Respondent's] Response does not comply with the Michigan Court Rules requirements for opposing a Motion for Summary Disposition. The Response contains factual allegations that are not only false but also not supported by affidavits, as is required by the court rules. (Motion, p2)

With this motion, Petitioner also filed its reply brief.

Having reviewed the motion and the brief, the Tribunal finds that Petitioner's reply brief is not necessary as the Tribunal is well aware of the requirements for summary disposition motions. Moreover, the Tribunal is capable of addressing Petitioner's concerns without the benefit of an additional brief. Therefore, Petitioner's motion is denied.

FINDINGS OF FACT

The Tribunal makes the following findings of fact:

1. The subject property is a gas pipeline that was constructed by Petitioner in 1993 for National Steel. The pipeline connects a coke oven owned by National Steel to a power plant owned by Petitioner.
2. The subject property is located in the City of River Rouge and was assessed by the City as Parcel No. 50-999-99-0260-010 for the 1993 through 2005 tax years.
3. Petitioner has never held an ownership interest in the subject property; however, Petitioner reported the subject property on its 1993 through 2003 personal property statements. The only property reported under Parcel No. 50-999-99-0260-010 was the subject property.

4. In a letter dated March 13, 2003, a representative of Petitioner notified Respondent's Board of Review that:

> [Petitioner] has been filing a personal property tax return on behalf of National Steel since 1993, when the pipeline was under construction . . . [Petitioner] pays the property taxes and National Steel is [supposed] to reimburse us. Through the years, with numerous personnel changes within both companies, this arrangement has not been working out. We are requesting that this Board remove the assessment on the existing Detroit Edison tax parcel #50-999-99-0260-010 and establish a new tax parcel number in the name of National Steel. . .for the assessment of this $2.4 million pipeline (which they own.)

5. In a letter dated April 4, 2003, Respondent's Board of Review notified Petitioner that its assessment and taxes would not be changed.

6. In May 2003, National Steel sold all of its assets, including the subject property, to the United States Steel Corporation (US Steel).

7. In a letter dated February 14, 2004, Petitioner notified Respondent that "[w]e have no ownership title to these facilities for tax year 2004 and we will be filing a zero return."

8. In a letter dated February 27, 2004, Respondent notified US Steel that: "[Petitioner] said they have no ownership to these facilities . . . Unless someone claims ownership of this facility we will list the parcel owner as unknown."

9. In a letter dated March 3, 2004, US Steel notified Respondent that:

> Contrary to the information provided to you by [Petitioner] . . . National Steel Corporation continued to report the value (and pay the associated property taxes) of the coke oven gas pipeline, along with related coke oven assets (retained by National Steel and subsequently part of the assets acquired by United States Steel Corporation) under parcel #50-999-00-0397-010 through 2003. If [Petitioner] did file a return for these assets and pay the associated property tax, then the City of River Rouge was paid twice (once each by National Steel

> and [Petitioner]) for these assets. This apparently has gone on for several years.
>
> When United States Steel filed the 2004 property tax returns for the City of River Rouge, these assets were reported under the main plant parcel #50-999-00-0397-000. Therefore and in response to your letter, United States Steel has effectively claimed ownership of the referenced assets by reporting them on its 2004 tax return.

10. In 2004, US Steel began reporting the subject property on its personal property statement. The Parcel Number assigned to the subject property was #50-999-00-0397-000.

11. In 2004 and 2005, Respondent assessed both Petitioner and US Steel for the subject property under Parcel Nos. 50-999-99-0260-010 and 50-999-00-0397-000, respectively.

12. In a letter dated December 7, 2006, Respondent stated:

> In regards to [Petitioner] parcel #50-999-00-0260-010 pipeline, there were no taxes due for this parcel in the year 2005 and 2006. This parcel # was inactive for those years.
>
> There was a sale from National Steel to U.S. Steel and they included this pipeline cost in another parcel belonging to United States Steel.

MOTIONS FOR SUMMARY DISPOSITION

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions. See TTR 111(4). In the instant case, Petitioner moved for summary disposition under MCR 2.116(C)(9) and (C)(10).

MCR 2.116(C)(9) provides that a party may move for summary disposition on the grounds that "[t]he opposing party has failed to state a valid defense to the claim asserted against

him or her." In *Owczarek v State of Michigan*, 276 Mich App 602; 742 NW2d 380 (2007), the Michigan Court of Appeals reiterated the standard of review for a (C)(9) motion.

> Summary disposition under MCR 2.116(C)(9) is proper if a defendant fails to plead a valid defense to a claim . . . A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings by accepting all well-pleaded allegations as true. . .If the defenses must be "so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery," then summary disposition under this subrule is appropriate . . . MCR 2.116(I)(2) permits a court to enter judgment for the party opposing a motion for summary disposition "[i]f it appears to the court that the opposing party rather than the moving party, is entitled to judgment." *Id*., p609.

When deciding a motion under MCR 2.116(C)(9), the trial court must accept as true all well-pleaded allegations. *Slater v Ann Arbor Public Schools Bd of Education*, 250 Mich App 419; 648 NW2d 205 (2002).

MCR 2.116(C)(10) provides the following ground upon which a summary disposition motion may be based: "Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." In *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996), the Michigan Supreme Court provided the following explanation of MCR 2.116(C)(10).

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
>
> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.
>
> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in

> respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
>
> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, **the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.** (Emphasis added.) (Citations omitted.) (*Id*., pp361-363)

In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

CONCLUSIONS OF LAW

After reviewing the Petition and the Amended Petition filed in this matter and Respondent's Answer to both, the Tribunal finds that Respondent pled a valid defense to the claims made in the Petition. As such, Petitioner's Motion for Summary Disposition under MCR 2.116(C)(9) must be denied.

To determine whether Petitioner's (C)(10) Motion should be granted, it must first be determined if there are any genuine issues of material fact and, if not, whether Petitioner is entitled to judgment as a matter of law. For the reasons set forth below, the Tribunal finds that while Petitioner satisfied the initial burden of production through its submission of affidavits, Respondent submitted evidence sufficient to convince the Tribunal that not only is there no genuine issue as to a material fact, Respondent is entitled to judgment as a matter of law pursuant to MCR 2.116(I)(2).

In this case, Petitioner's claim for relief is made pursuant to MCL 211.53a, which states:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or *mutual mistake of fact* made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest. (Emphasis added.)

To begin, the Tribunal notes that Petitioner has stated that it did not pay the 2004 taxes assessed against the subject property. (Affidavit of Mr. Henderson, p4) Given this, Petitioner's claim as to the 2004 tax year is not properly before the Tribunal and is dismissed.

As previously discussed, Petitioner believes that the facts of this case are almost identical to those in *Ford Motor Company v City of Woodhaven, et al*, 475 Mich 425; 716 NW2d 247 (2006). In *Ford*, the Michigan Supreme Court was presented with several cases in which Ford had filed personal property statements in various taxing jurisdictions that Ford later determined were incorrect. Specifically, Ford determined that it double reported certain assets in the statements it filed with Bruce Township and the City of Sterling Heights. In the statement it filed with the City of Woodhaven, Ford determined that it incorrectly classified certain assets. Having made these discoveries, Ford filed appeals claiming that there had been a mutual mistake of fact and that it was entitled to refunds.

Ultimately, the Michigan Supreme Court was "called on to interpret the meaning and applicability of the phrase 'mutual mistake of fact' as it is used in MCL 211.53a." (*Id*., p428) In doing so, the Court held that the phrase means "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." (*Id*., p442) As in *Ford*, "the key issue in [this case] is whether there was an erroneous belief shared and relied on by both [Petitioner] and [Respondent] about a material fact that affected the substance of the transaction." (*Id*., pp442-443)

Before this issue may be decided, it must first be determined whether there was ever an "erroneous belief." Clearly, Petitioner never believed that it owned the subject property, while

Respondent had no reason to believe that it did not. Petitioner's position is that, in 1993, it constructed the subject property. Given this, the property would have been first reported on a personal property statement, which Petitioner filed even though it did not own the property, merely because it was aware of the construction costs. While this may be true, the Tribunal is not convinced that this is the end of the story. It is difficult to believe, no, it is impossible to believe, that Petitioner paid property taxes out of the goodness of its heart on a $2.4 million pipeline it was building for another corporation. Clearly, there must have been an agreement between Petitioner and National Steel as to which corporation would ultimately be responsible for these costs.

Petitioner claims that in subsequent tax years it *inadvertently* and *mistakenly* filed personal property statements for the subject property. However, this position is contradicted by Mr. Niemiec's letter of March 13, 2003. Again, in that letter, Mr. Niemiec states:

> [Petitioner] has been filing a personal property tax return on behalf of National Steel since 1993, when the pipeline was under construction ([Petitioner] had knowledge of its expenditures at year end). [Petitioner] pays the property taxes and National Steel is [supposed] to reimburse us.
>
> Through the years, with numerous personnel changes within both companies, this arrangement has not been working out. We are requesting that this Board remove the assessment on the existing [Petitioner] tax parcel #50-999-99-0260-010 and establish a new tax parcel in the name of National Steel . . . for the assessment of this $2.4 million . . . pipeline (which they own).

Petitioner may not claim that it was unaware of this letter as Petitioner submitted a copy of it with its Petition and its Amended Petition. Moreover, in both the Petition and the Amended Petition, Petitioner states that the letter describes "the pre-existing tax reporting and payment practice in respect of the Pipeline." (Petition and Amended Petition, p¶9) Petitioner did not address this letter in its Motion for Summary Disposition and, in spite of the fact that it is an integral part of Respondent's Response to the Motion, does not address it in the Brief it filed

with its Motion for Leave to File Reply to Respondent's Response. Importantly, at no time did Petitioner ever assert that the letter was incorrect or disavow the author.

The Tribunal has struggled with how to reconcile this information with the statements made by Mr. Henderson in his affidavit without calling into question Mr. Henderson's credibility. In his affidavit, Mr. Henderson states that he became aware of the situation in "late 2003." Mr. Niemiec's letter to Respondent was dated March 13, 2003, hardly what would be considered late in the year. Thus, it appears that Mr. Henderson's involvement arose well after Mr. Niemiec's request to establish a new tax parcel number for the subject property in National Steel's name was rejected by Respondent's March Board of Review. Given this, the Tribunal understands why Mr. Henderson characterized "the pre-existing tax reporting and payment practice in respect of the Pipeline" as a mistake and inadvertent.

However, the Tribunal cannot find that *Petitioner* believed that "the pre-existing tax reporting and payment practice in respect of the Pipeline" was a mistake. While Petitioner does not own the subject property, Petitioner has admitted liability for the 1994 taxes, being the first tax year after the property was constructed. Moreover, Petitioner has not proven that it was not liable for the tax assessed to the property in subsequent years. In fact, the evidence proves just the opposite.

Even if the Tribunal agreed that Petitioner filed the personal property statements by mistake, Petitioner has not shown that there was a mistake of *fact*. In other words, what *fact* was incorrect? If the mistaken fact is that Petitioner did not own the subject property, this is not a mutual mistake as Petitioner knew that it never owned the property. While it is possible that Petitioner filed a personal property statement for the subject property each year for nine years (1994 through 2002) by mistake, this mistake was not one of fact. Given this, the Tribunal

cannot find that there was a mistake of fact, let alone a *mutual* mistake of fact. Petitioner's request for a refund pursuant to MCL 211.53a must be denied.

As to Petitioner's claim that "Respondent would be unjustly enriched if permitted to keep [Petitioner's] mistaken payments," the Tribunal finds this claim is similar to the one made by the petitioner in *Rowe v City of Detroit*, unpublished opinion per curiam of the Court of Appeals, decided July 19, 2002, (Docket Nos. 228507, 232878). One of the issues presented to the court in that case was whether the Tribunal had jurisdiction over a claim for a refund of overpayment of tax made under the theories of conversion and unjust enrichment. The plaintiff's position was that the Tribunal did not have jurisdiction to hear his case because "he merely [requested] the 'return' of his 'overpayments' and that this 'refund' is not in the nature of a 'tax refund' as contemplated by MCL § 205.731(b)." *Id*. The court disagreed, stating that "[t]he 'type of relief requested' by plaintiff is a *refund* of property taxes paid in excess of the billed amount because of taxpayer error." *Id*. In determining that the Tribunal had jurisdiction to hear his appeal, the court stated:

> [W]hile plaintiff couches his claim in tort theories, this case presents a straight-forward request for a tax refund based on taxpayers remitting amounts in excess of their tax liabilities. Whether plaintiff is entitled to a refund of those payments under the General Property Tax Act is contemplated within the Act and is within the exclusive jurisdiction of the Tax Tribunal. MCL 205.731(b); MCL 205.774; MCL 211.53a; MCL 211.53b. Simply because the validity of the underlying tax is not in issue does not mean that the Tax Tribunal is deprived of its exclusive jurisdiction. This is particularly true where, as here, the statute specifically contemplates the Tax Tribunal's authority to review refunds.

Like the plaintiff in *Rowe*, Petitioner is attempting to couch its claim in a tort theory. However, as in *Rowe*, this case involves a straightforward request for a tax refund. To that end, the Tribunal has found that Petitioner is not entitled to a refund under MCL 211.53a. There are no other provisions of the General Property Tax Act that would provide Petitioner the relief it requests.

Furthermore, Petitioner has not proven that Respondent received "double" tax payments for the subject property. (Petitioner's Brief, p8) While Petitioner submitted an affidavit claiming that double payments had been made, it did not submit any documentary evidence in support of this claim. In response to Petitioner's claim, Respondent asserts that double payments were not made yet did not submit any documentary evidence in support of this defense. Given the lack of documentary evidence, the Tribunal is unable to find that both Petitioner and National Steel or US Steel paid taxes on the subject property for the tax years at issue. Moreover, even if there were documentary evidence to support this claim, Petitioner has not made it clear that it would be the party that is entitled to a refund. For these reasons, the Tribunal finds that while there is no genuine issue as to any material fact, Petitioner is not entitled to judgment as a matter of law. Instead, the Tribunal finds that Respondent is entitled to judgment as a matter of law and is granted such under MCR 2.116(I)(2).

Finally, Respondent requests that sanctions be imposed under MCR 2.114 and MCR 2.625(A)(2). In *Lanzo Construction v City of Southfield*, unpublished opinion per curiam of the Court of Appeals, decided June 28, 2007 (Docket No. 268567), the court considered the situation wherein the Tribunal found that the petitioner had filed documents in violation of MCR 2.114(D) but did not impose sanctions against the petitioner under MCR 2.114(E). On appeal, the petitioner argued that MCR 2.114 does not apply to Tribunal proceedings because the Tribunal has its own administrative rule governing costs. Specifically, TTR 205.1145 provides that "[t]he Tribunal may, upon motion or upon its own initiative, allow a prevailing party in a decision or order to request costs." The court provided the following analysis.

> The purpose of imposing sanctions under MCR 2.114, however, is to "deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose." Nothing in TTR 205.1145 or any other Tax Tribunal Rule addresses sanctions. Therefore, because no applicable Tax Tribunal Rule

> exists regarding sanctions, MCR 2.114 applies to proceedings before the Tax Tribunal. TTR 205.1111(4). Accordingly, because the Tax Tribunal found that petitioner's petition and motion for reconsideration were filed in violation of MCR 2.114(D), the Tax Tribunal erred when it failed to sanction petitioner, its counsel, or both. (Citations omitted.) *Id*.

Given this, the provisions of MCR 2.114 must be examined to determine if sanctions are appropriate. MCR 2.114 provides, in pertinent part:

> (D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
>
> > (1) he or she has read the document;
> >
> > (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
> >
> > (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> (E) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.
>
> (F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCR 2.625 provides, in pertinent part:

> > (2) Frivolous Claims and Defenses. In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591.

MCL 600.2591(3) provides:

> 1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with

> the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
>
> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
>
> (3) As used in this section:
>
> > (a) "Frivolous" means that at least 1 of the following conditions is met:
> >
> > (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
> >
> > (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
> >
> > (iii) The party's legal position was devoid of arguable legal merit.
> >
> > (b) "Prevailing party" means a party who wins on the entire record.

In this case the Tribunal cannot find that Petitioner's actions were frivolous. Petitioner asserted that it was entitled to a refund under MCL 211.53a and *Ford, supra*. While the Tribunal has ruled against Petitioner, it cannot be said that Petitioner had no reasonable basis to believe the facts underlying its legal position were true as Petitioner had sworn affidavits from representatives of both Petitioner and US Steel. Moreover, the Tribunal cannot find that Petitioner's position was devoid of arguable legal merit. While the Tribunal has ruled that Petitioner's legal position is incorrect, it cannot be said that it was not arguable under *Ford*. Finally, there is no evidence upon which to base a decision that Petitioner filed this appeal to harass, embarrass, or injure Respondent.

Finally, as to Petitioner's request that Respondent be ordered "to terminate and remove from its tax rolls tax parcel number 50-999-99-0260-010 and tax parcel number 50-999-00-0260-010," the Tribunal takes judicial notice that these parcels numbers are no longer in existence. (Petitioner's Brief, p8). As such, Petitioner's request is denied as moot.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Leave to File a Reply to Respondent's Response to Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent's request for oral argument on Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(9) is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

IT IS FURTHER ORDERED that Respondent is GRANTED Summary Disposition under MCR 2.116(I)(2).

IT IS FURTHER ORDERED that Respondent's request for Sanctions is DENIED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: May 6, 2011

By: Patricia L. Halm