

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Superior Hotels, LLC,  
Petitioner,

v

MTT Docket No. 313228

Township of Mackinaw,  
Respondent.

Tribunal Judge Presiding  
Jack Van Coevering

FINAL OPINION AND JUDGMENT  
ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

On December 4, 2006, Petitioner, Superior Hotels, LLC, submitted its Motion for Summary Disposition, pursuant to MCR 2.116(C)(10).<sup>1</sup> Petitioner requests that the Tribunal set aside the State Tax Commission's Order increasing the 2001, 2002, and 2003 taxable values for the subject property. Petitioner and Respondent stipulated to all facts at issue in this matter, including:

Respondent levies and collects the property taxes on the subject property. The subject property is identified as parcel number 16-012-V07-052-004-00 and is classified as commercial real property. The subject property was designed to be used for a motel and Petitioner presently uses the subject property for a motel. The subject property is located in Mackinaw Township, Cheboygan County. The subject property is located in the Cheboygan Public and the Cheboygan, Otsego, and Presque Isle Intermediate School District.

In 1997, Petitioner began construction of a motel known as a "Baymont Inn" on the subject property; Petitioner completed construction of the "Baymont Inn" in 1998. Respondent assessed the subject property as 50 % complete as of December 31, 1997 and calculated the 1998 assessed value and taxable value accordingly. Respondent assessed the subject property as 100% complete on December 31, 1998 but calculated the 1999 taxable value by applying the applicable inflation rate to the 1998 taxable value. The 1998 taxable value was based on a 50% completion calculation. Respondent assessed the subject property as 100% complete for the 1999 tax year and such assessment was reflected on the assessment roll. No portion of the subject property was omitted from the assessment by Respondent.

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<sup>1</sup> On December 2, 2006, pursuant to the Tribunal's November 17, 2006 Order, Respondent submitted its brief on the issue other whether the property that is the subject of this appeal was omitted, incorrectly reported, or incorrectly calculated. Respondent's brief stressed that (i) MCL 211.154 confers the State Tax Commission with jurisdiction to correct incorrectly reported taxable and assessed valuations, (ii) Respondent incorrectly reported the tax calculations because the 1998 values used a 50% completion rate and the 1999 values should have been changed to reflect the 100% completion rate, and (iii) the proper way correct incorrect valuations through the State Tax Commission. In addition to the brief, Respondent attached its MCL 211.154 Petition submitted to the State Tax Commission. Because Respondent's brief was not accompanied by a Motion, this Order addresses only Petitioner's December 4, 2006 Motion for Summary Disposition.

Respondent sought review under MCL 211.154 with the Michigan State Tax Commission claiming that taxable property had been incorrectly reported or omitted, resulting in a miscalculation of taxable value for the 2001, 2002, and 2003 taxable values. The Michigan State Tax Commission accepted Respondent's 154 Petition and increased the 2001, 2002, and 2003 taxable values for the subject property. MCL 211.154 specifically provides the State Tax Commission with jurisdiction over matters involving incorrectly reported or omitted property and the State Tax Commission may place the corrected assessment value for the appropriate years on the appropriate assessment roll.

In support of its Motion for Summary Disposition, Petitioner contends that (i) the Michigan State Tax Commission did not have jurisdiction under MCL 211.154 because the subject property was not incorrectly reported or omitted property, (ii) the subject property can not be described as "omitted property" because both parties have stipulated that this matter does not involve omitted property and the 1999 assessment indicates that the subject property is 100% complete (iii) the subject property can not be described as "incorrectly reported" property because the subject property's status is not in dispute, (iv) the State Tax Commission lacks jurisdiction to correct an assessor's error in mistakenly undervaluing the property because MCL 211.154 does not apply to property conceded to be taxable but alleged to be improperly assessed, (v) the State Tax Commission erroneously assumed jurisdiction in this matter for the express purpose of correcting an assessor's error in calculating taxable value, (vi) MCL 211.53b is not applicable to this matter because there was no "clerical error" as defined by *International Place Apartments-IV v Ypsilanti Township*, 216 Mich App 104; 548 NW2d 668 (1996), and (vii) Respondent can not rely on MCL 211.34d(b) because such a remedy "is permitted only when there is omitted real property" and there was no omitted property according to the Joint Stipulated Facts.

On December 16, 2006, Respondent submitted its Reply Brief in the above-captioned matter. In its brief, Respondent contends that (i) Respondent stipulated that no portion of the subject property was omitted from the assessment by the township because the entire parcel was included in the assessment, (ii) improvements made to the subject property "which should have led to an increase in taxable value, were, in fact, missing or omitted from the assessment, (iii) the omitted "improvements to the subject property which occurred after 1998, when the motel/hotel went from 50% completed to 100% completed, but the taxable valuation only went up by the applicable inflation calculation," (iv) under *International Place v Ypsilanti*, 216 Mich 104 (1996), MCL 211.53a is applicable to this matter because "the township assessor clearly committed a mathematical error in incorrectly reporting the taxable value by using a calculation based upon the fifty percent (50%) completion factor for the hotel/motel from 1998," (v) after the "completion factor went from 50% to 100% complete, the taxable value should have been increased, but was not," and (vi) as a result of this error, the improvements to the subject property were not included in the assessment.

#### FINDINGS OF FACT

The Tribunal adopts the stipulated facts as set forth above. In addition, the Tribunal finds that Respondent failed to appear before the Board of Review and seek review of the 1999, 2001, 2002, or 2003 assessments for the subject property.

## CONCLUSIONS OF LAW

### A. Standard of Review—Motion for Summary Disposition

Under MCR 2.116(C)(10), a Motion for Summary Disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-55; 597 NW2d 28 (1999). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No 292745; 2004 WL 4960371 (March 4, 2004), the Tribunal stated the standards governing motions for summary dispositions as follows:

Motions for summary disposition are governed by MCR 2.116. A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). *JW Hobbs Corp v Mich Dep't of Treasury*, Court of Claims Docket No 02-166-MT; [2004 WL 625814] (January 14, 2004)[, aff'd in part rev'd in part 268 Mich App 38; 706 NW2d 460 (2005)]. This particular motion has had a longstanding history in the Tribunal. *Kern v Pontiac Twp*, [93 Mich App 612; 287 NW2d 603 (1979)]; *Beerbower v Dep't of Treasury*, MTT Docket No 73736 (November 1, 1985); *Lichnovsky v Mich Dep't of Treasury*, [MTT Docket No 111497; 1989 WL 162964 (November 14, 1989)]; *Charfoos v Mich Dep't of Treasury*, MTT Docket No 120510[; 1989 WL 168004] (May 3, 1989)]; *Kivela v Mich Dep't of Treasury*, MTT Docket No 131823[; 1991 WL 52761 (March 1, 1991), rev'd 449 Mich 220; 536 NW2d 498 (1995)].

In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996), the Michigan Supreme Court set forth the following standards for reviewing Motions for Summary Disposition brought under MCR 2.116(C)(10):

In reviewing a motion for summary disposition under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed 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 affidavits or other documentary evidence show 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. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* 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. *McCarty v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing

party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992). 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, 18; 469 NW2d 436 (1991).

- B. The State Tax Commission lacked jurisdiction to correct an assessor's error in calculating taxable value. Respondent has failed to show that the subject property was incorrectly reported or omitted property.

After careful consideration of Petitioner's Motion, the relevant law, and the case file, the Tribunal finds that Petitioner's Motion for Summary Disposition is appropriate in this matter.

MCL 211.154 states, in pertinent part, "If the state tax commission determines that property subject to the collection of taxes under this act...has been incorrectly reported or omitted for any previous year...the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll." MCL 211.154(1). In light of the Legislature's failure to define "incorrectly reported" and "omitted" within MCL 211.154, the Tribunal must engage in statutory interpretation.

The primary goal of statutory interpretation is to determine the legislature's intent and give effect to that intent. *Inter Cooperative Council v Dept of Treasury*, 257 Mich App 219, 223; 668 NW2d 181 (2003) (citing *McJunkin v Cellasto Plastic Corp*, 461 Mich 590, 598). Taxation statutes should be construed in the same manner as general statutes. See 22 Mich Civ Jur Statutes § 147; *Clark v Mowyer*, 5 Mich 462, 1858 WL 4487 \*3 (1858). Legislative intent, once discovered, must take priority over any rule of statutory construction that may conflict with that intent. *Terzano v Wayne County*, 216 Mich App 522, 527; 549 NW2d 606 (1996) (quoting *Michigan Central R Co v Michigan*, 148 Mich 151, 156 (1907)). In reviewing a statute, the Tribunal must first examine the words used in the statute because they provide the best indication of the Legislature's intent in passing the statute. 22 Mich Civ Jur § 188 Statutes (citing *Wessels v Garden Way, Inc*, 263 Mich App 642 (2004)). Legislative intent may be inferred from the words expressed in the statute itself. *GC Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 420; 662 NW2d 710 (2003) (citing *Chandler v Co of Muskegon*, 467 Mich 315, 319; 652 NW2d 224 (2002)). Every word in a statute has some meaning and a court should avoid interpreting a statute in such a way as to cause a portion of the statute to become inconsequential. *Inter Cooperative Council v Dept of Treasury*, 257 Mich App 219 (2003). All words and phrases should be construed by their common and accepted usage. MCL 8.3a.

In *Eagle Glen Golf Course v Surrey Tp*, No 224810, 2002 WL 652105, \*1 (Mich App Apr 19, 2002), the court looked at past interpretations of MCL 211.154, including the decision in *City of Detroit v Norman Allan & Co*, 107 Mich App 186; 309 NW2d 198 (1981), and found that the MCL 211.154 permitted "assessments to be corrected only if a property's status is misrepresented, such as when a taxpayer incorrectly claimed that the property was tax-exempt." *Eagle Glen Golf Course v Surrey Tp*, 2002 WL 652105 at \*1.

In this case, it is clear that neither the status of the property nor a purported omission was at issue. According to the Joint Stipulation of Facts, Respondent appeared before the State Tax Commission in order to address Respondent's erroneous calculation the 2001, 2002, and 2003 taxable values for the subject property.<sup>2</sup> At no time has either party disputed the taxable status of the subject property. Likewise, Respondent, by way of the Joint Stipulation of Facts, has conceded that this matter does not involve "omitted property."<sup>3</sup> Respondent's own stipulations of fact dictate that MCL 211.154 is not applicable to this matter.

Furthermore, the Michigan Court of Appeals in an unpublished opinion outlined the State Tax Commission's jurisdiction in cases involving MCL 211.154. In *Centre Management v City of Ferndale*, No 248266, 2004 WL 1779117 (Aug 10, 2004), Centre Management sought to appeal the increase in taxable value of its commercial property originally built in 1941. *Id* at \*1. Centre Management failed to protest the increase in taxable value to the local Board of Review even though the City of Ferndale notified Centre Management that a clerical error resulted in an omission of a portion of the building and that the Board of Review would be correcting the assessment rolls. *Id*. Four months later, Centre Management petitioned the State Tax Commission to change the assessments. *Id*. On April 29, 2002, the State Tax Commission informed Centre Management that it lacked jurisdiction to hear the appeal. *Id*. Centre Management then sought relief with the Tribunal, claiming a violation of MCL 211.27a. However, the Tribunal dismissed Centre Management's appeal for lack of jurisdiction. *Id*.

The Michigan Court of Appeals ultimately disagreed with Centre Management's contention that the State Tax Commission had the authority to correct an increase in taxable value, set by a Board of Review, for incorrectly reported or allegedly omitted property. *Id* at \*2.

This Court has interpreted MCL 211.154 to allow assessments to be corrected only if a property's status is misrepresented, such as when a taxpayer incorrectly claimed that the property was tax-exempt. *City of Detroit v Norman Allan & Co*, 107 Mich App 186, 191-192; 309 NW2d 198 (1981) (MCL 211.154 "applies when property has been incorrectly reported as exempt property but is thought to be ... taxable property. The issue in such cases is the proper status of the property, whether it is amendable to taxation in the first place."); see also *General Motors Corp v State Tax Comm*, 200 Mich App 117, 119-120; 504 NW2d 10 (1993). Thus, MCL 211.154 did not confer jurisdiction on the STC to correct an assessor's error in mistakenly undervaluing the property in previous years because MCL 211.154 does not apply to property conceded to be taxable but alleged to be improperly assessed.

*Centre Management v City of Ferndale*, No 248266, 2004 WL 1779117 at \*2 (Aug. 10, 2004); see also *Michigan Basic Property*, MTT Docket No 296251, 2006 WL 1210783 (March 13,

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<sup>2</sup> Paragraph 15 the parties Joint Stipulation of Facts states, "The Township filed Michigan Department of Treasury Form L-4154, Assessor or Equalization Director's Notice of Property Incorrectly Reported or Omitted from Assessment Roll...with the State Tax Commission alleging an error made by the Township in calculating the 2001, 2002 and 2003 taxable values for the subject property."

<sup>3</sup> Paragraph 11 of the parties Joint Stipulation of Facts states, "No portion of the subject property was 'omitted' from the assessment by the Township."

2006) (“MCL 211.154 does not ‘confer jurisdiction on the state tax commission to correct an assessor’s error in mistakenly undervaluing the property, because MCL 211.154 does not apply to property conceded to be taxable but alleged to be improperly assessed.’”)(Citation omitted).

While not binding on the Tribunal, *Centre Management* justifies the Tribunal’s decision to grant summary disposition in favor of Petitioner. Moreover, Respondent has not provided the Tribunal with any authority to support its position that Respondent’s error satisfied the “incorrectly reported” or “omitted” standards, as currently interpreted by the Michigan appellate courts. Respondent has failed to persuade the Tribunal that it should ignore both *Centre Management* and *Michigan Basic Property*. Allowing Respondent’s assessor to alter the assessment roll vis-à-vis MCL 211.154 would be in direct contravention of *Centre Management*’s mandate that the State Tax Commission cannot assert jurisdiction, pursuant MCL 211.154, to correct an assessor’s undervaluing the property for previous years.

C. Respondent’s failure to appear before the Board of Review precludes the Tribunal from granting any relief under MCL 211.53b.

While Respondent believes that MCL 211.53b is applicable to this matter because the incorrect assessment was a result of a “clerical error,” Respondent is unable to avail itself of provisions of MCL 211.53b. MCL 211.53b permits the correction of an assessment if it was the result of a clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes; a mutual mistake of fact; an adjustment under section 27a(4); or an exemption under section MCL 7hh(3)(b). MCL 211.53b(1); MCL 211.53b(7)(a)-(c). Any alleged error under MCL 211.53b must be verified by the local assessing officer and approved by the Board of Review. MCL 211.53b(1). Any action taken under MCL 211.53b is limited to the year in which the qualified error was made or the following year. *Id.*

As stipulated to by both parties, during the 1999 tax year, Respondent determined that the subject property was 100% complete. Joint Stipulation of Facts, ¶ 9. In order to calculate the 1999 taxable value, Respondent applied the applicable inflation rate to the 1998 taxable value. Joint Stipulation of Facts, ¶ 9. However, Respondent subsequently concluded that this calculation undervalued the taxable value because it failed to account for the fact that the construction on the subject property went from 50% complete to 100% complete.

While the error at issue in this matter would seemingly satisfy the standard set forth in *International Place Apartments-IV v Ypsilanti Township*, 216 Mich App 104; 548 NW2d 668 (1996),<sup>4</sup> Respondent’s failure to appear before the Board of Review is fatal. As evidenced by the stipulated facts, Respondent’s miscalculation of the taxable value of the subject property was, at least arguably, an error of mathematical nature and thus could have been corrected by the Board of Review pursuant to MCL 211.53b. However, Respondent never appeared before the Board of Review to allege a clerical error. Instead, Respondent sought to correct this error through the State Tax Commission and a petition under MCL 211.154. Under its enacting

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<sup>4</sup> In *International Place Apartments*, the Michigan Court of Appeals defined the term “clerical error,” as it applied to MCL 211.53b, as an error of a typographical, transpositional, or mathematical nature. *International Place Apartments*, 216 Mich App at 109.

statute, the Tribunal does not acquire jurisdiction over a dispute unless the party seeking the Tribunal's jurisdiction challenged the underlying assessment with the local Board of Review. MCL 205.735(2). Thus, because Respondent failed to appear before the Board of Review, the Tribunal is powerless to undo Respondent's failure to pursue the appropriate avenue to remedy this error.

**JUDGMENT**

IT IS ORDERED that Petitioner's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that the taxable values for the subject property shall be as follows:

Parcel Number: 16-012-V07-052-004-00

Year	TV
2001	841,604
2002	868,535
2003	881,563

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 taxable values contained in this Order within 90 days of the entry of this Order, subject to the processes of equalization. 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 as required by this Order within 90 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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 unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. 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. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 1, 1995, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78%

for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, and (xii) after December 31, 2006, at a rate of 5.42% for calendar year 2007.

MICHIGAN TAX TRIBUNAL

Entered: February 23, 2007

By: Jack VanCoevering, Tribunal Chairman