



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

MARLON I. BROWN, DPA  
DIRECTOR

Tulip Air Services Inc,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 22-000089

City of Traverse City,  
Respondent.

Presiding Judge  
Patricia L. Halm

ORDER DENYING PETITIONER'S MOTION TO AMEND

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER OF DISMISSAL

Petitioner filed this appeal on January 21, 2022, disputing Respondent's denial of a property tax exemption for Parcel No. 28-51-898-459-00 (the subject property) for the 2021 tax year under MCL 211.181(2)(b).<sup>1</sup> Petitioner also claims that a qualified error was made under MCL 211.53b for the 2020 tax.

Petitioner's Motion for Summary Disposition

On October 6, 2023, Petitioner filed a Motion for Summary Disposition under MCR 2.116(C)(10).<sup>2</sup> Petitioner contends that the subject property is exempt from taxation under MCL 211.7m<sup>3</sup> because it is owned and controlled by a government unit.<sup>4</sup> Petitioner argues that the controlling documents are sufficiently restrictive to

<sup>1</sup> The exemption claim was plead as a concession claim at the 2021 December Board of Review (BOR). The subject property is a commercial building, specifically an airplane hangar, located on leased land.

<sup>2</sup> MCR 2.116(C)(10) provides for summary disposition when "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." See *Hackel v Macomb County Comm*, 298 Mich App 311, 316; 826 NW2d 753 (2012).

<sup>3</sup> MCL 211.7m states in part:

Property owned by 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.

<sup>4</sup> Petitioner relies on *Air Services Inc v City of Traverse City*, MTT Docket No. 16-000031 (Proposed Opinion and Judgment issued on July 12, 2017, and affirmed by Final Opinion and Judgment on August 14, 2017). Petitioner also relies on *Winstanley and KDUB Enterprises, LLC v City of Grand Ledge*, MTT Docket Nos. 15-006901 and 16-000026 (issued July 6, 2017), and *Air Flite and Serv-A-Plane v Tittabawassee Twp*, 134 Mich App 73; 350 NW2d 837 (1984), to support examining the subject property's ownership using the "bundle of sticks" approach.

demonstrate government ownership as of the relevant tax days, and purported facts were provided in support of this argument. Petitioner also points to the Tribunal's prior decisions and the analysis of the "bundle of sticks" of ownership by a government unit being similar to the subject.<sup>5</sup>

Petitioner further contends that the subject property is exempt under MCL 211.181(2)(b) because even though the property is used in connection with a business conducted for profit, it is nevertheless a concession because its lease imposes obligations and restrictions similar to those identified in case law.<sup>6</sup> Petitioner relies on its status as a concession and the comparability of its purported facts to relevant case law to demonstrate Petitioner's overall function as a business supporting the airport.<sup>7</sup> Petitioner also contends that the subject property is available for use by the general public<sup>8</sup> and is used to carry out a public purpose, including uses incidental to the main use of the airport, such as the storage of aircraft within the general public purpose of the airport, aircraft management, and charter flights available to the public.<sup>9</sup>

Finally, Petitioner contends that its Motion for Summary Disposition should be granted under the doctrine of collateral estoppel as a result of previous litigation in *Air Services*. In *Air Services*, the subject property was found to be exempt under MCL 211.181(2)(b). Petitioner contends that there is substantial similarity in the identities of the parties and the issues between *Air Services* and the present case.

Petitioner filed the following documents in support of its motion:

Exhibit A: BS&A Online Parcel No. 28-51-898-459-00

Exhibit B: Affidavit of Terrill J. Boer.

Exhibit C: Cherry Capital Airport (TVC) 2022 Annual Report of Northwest Regional Airport Authority (NRAA).

Exhibit D: TVC 2021 Annual Report of Northwestern Regional Airport Commission (NRAC).

Exhibit E: TVC 2020 Annual Report of NRAC.

Exhibit F: Amended and Restated Airport Ground Lease, dated, July 11, 2019.

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<sup>5</sup> Petitioner relies on *Air Services*, *Winstanley*, and *Brasseur*, respectively *supra*.

<sup>6</sup> Petitioner relies on *City of Detroit v Tygard*, 381 Mich 271, 275; 161 NW2d 1 (1968). *Tygard* states that a concession is a "privilege of space granted or leased for a particular use within specified premises." *Id.* at 275. Petitioner contends that a concession must have a reasonable relationship to the purpose of the granting entity and relies on *American Golf of Detroit v Huntington Woods*, 225 Mich App 226, 231; 570 NW2d 469 (1997). Petitioner relied on *Kent County v City of Grand Rapids (Kent County)*, 381 Mich 640; 167 NW2d 287 (1969) in examining the lease in that case to determine whether it is similar to the subject lease. Petitioner also references *Winstanley*, *supra*, in support of this contention.

<sup>7</sup> Petitioner relies on *Skybolt Partnership v City of Flint (Skybolt)*, 205 Mich App 597; 517 NW2d 838 (1994). Petitioner also relies on *Tygard*, *Kent County*, *Winstanley*, *Air Services*, and *American Golf of Detroit v Huntington Woods*, 225 Mich App 226, 231; 570 NW2d 469 (1997).

<sup>8</sup> Petitioner relies on *Skybolt* and *Emery Worldwide v Cascade Twp*, unpublished per curiam opinion of the Michigan Court of Appeals, issued March 10, 2055 (Docket No 251416).

<sup>9</sup> Petitioner relies on *Rockwell Spring & Axle Co v Romulus Twp*, 365 Mich 632, 643-645; 114 NW2d 166 (1962). Petitioner also relies on *Brasseur v Rutland Charter Twp*, MTT Docket No 029326 (issued February 5, 2004), *Air Services*, and *Winstanley*.

Exhibit G: Minimum Standards for Aeronautical Activities for TVC.  
Exhibit H: Rules, Regulations and Ordinances of NRAA for TVC.  
Exhibit I: *Air Services, Inc v City of Traverse City*, MTT 16-000031 (8/4/2017).  
Exhibit J: Air Carrer Certificate for Tulip City Air Service, Inc.  
Exhibit K: Assignment of Lease.  
Exhibit L: Consent by NRAC to Assignment of Lease.

### Respondent's Response to Petitioner's Motion for Summary Disposition

On November 20, 2023, Respondent filed a response opposing Petitioner's motion and arguing that Petitioner is not eligible for the exemption under both MCL 211.7m and MCL 211.181. Respondent contends that Petitioner is not entitled to judgment as a matter of law and that the motion should be denied.

Respondent submitted the following documents in support of its response:

Exhibit 1: State of Michigan Business Entity Search Results.  
Exhibit 2: *Landes*, Proposed Opinion and Judgment (POJ).  
Exhibit 3: *Landes*, Final Opinion and Judgment (FOJ).  
Exhibit 4: *45 North*, POJ and FOJ.  
Exhibit 5: Petitioner's Discovery Responses Dated November 4, 2022.  
Exhibit 6: December 2021 Consent to Assignment of Ground Lease.  
Exhibit 7: Mortgage and Airport Consent to Mortgage.  
Exhibit 8: Collateral Assignment of Mortgage.  
Exhibit 9: May 26, 2020 Assignment of Right of Sale.  
Exhibit 10: Fueling Agreement.  
Exhibit 11: Termination of Fueling Agreement.  
Exhibit 12: Petitioner's Discovery Responses Dated August 12, 2022.  
Exhibit 13: Affidavit of Polly Cairns.  
Exhibit 14: Property Transfer Affidavit December 17, 2019.

### Respondent's Motion for Summary Disposition

Respondent also filed a motion requesting summary disposition in its favor under MCR 2.116(C)(10) or in the alternative, that judgment be rendered in its favor under MCR 2.116(I)(2).<sup>10</sup> In the motion, Respondent contends that Petitioner is not a proper party in interest because it is not named on the ground lease. Respondent further contends that the subject hangar is used in connection with a business conducted for profit in violation of the requirement of the relevant exemption statute. Respondent argues that Petitioner bears the burden of proving entitlement to the exemption under both MCL 211.7m and MCL 211.181.<sup>11</sup> Respondent's response also provides a counterstatement of facts disputing certain information stated in Petitioner's motion.

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<sup>10</sup> On November 21, 2023, the Tribunal issued a Notice of No Action because Respondent's motion did not include a motion filing fee. On November 22, 2023, Respondent submitted the motion filing fee, and as a result, Respondent's motion is properly pending.

<sup>11</sup> Respondent relies on MCL 205.737(3) and case law in support of its contention.

Respondent contends that the hangar was used by a private, for-profit business in furtherance of Petitioner's for-profit mission. Respondent contends that there is no collateral estoppel due to differences in parties and in the controlling leases.

Respondent submitted the following documents in support of its motion:

- Exhibit 1: State of Michigan Business Entity Search Results.
- Exhibit 2: *Landes*, POJ.
- Exhibit 3: *Landes*, FOJ.
- Exhibit 4: *45 North*, POJ and FOJ.
- Exhibit 5: Petitioner's Discovery Responses Dated November 4, 2022.
- Exhibit 6: December 2021 Consent to Assignment of Ground Lease.
- Exhibit 7: Mortgage and Airport Consent to Mortgage.
- Exhibit 8: Collateral Assignment of Mortgage.
- Exhibit 9: May 26, 2020 Assignment of Right of Sale.
- Exhibit 10: Fueling Agreement.
- Exhibit 11: Termination of Fueling Agreement.
- Exhibit 12: Petitioner's Discovery Responses Dated August 12, 2022.
- Exhibit 13: Affidavit of Polly Cairns.
- Exhibit 14: Property Transfer Affidavit December 17, 2019.

Petitioner did not file a response to Respondent's motion.

On December 3, 2024, the Tribunal issued an Order Requiring Information (ORI). The ORI required Petitioner to submit information and documentation establishing itself as a party in interest in this case.

#### Petitioner's Motion to Amend Petition

In response to the ORI, Petitioner filed a Motion to Amend Petition and an amended petition. In the motion, Petitioner states that its attorney, Mr. Paul McCord (Attorney McCord), had only one day to prepare the original petition and that it was prepared in haste. As a result, the submitted documents errantly referred to the party in interest as Tulip Air Services, Inc., rather than Petitioner's correct legal name of Tulip City Air Service, Inc. Petitioner notes that the filing of the petition was succeeded by Respondent's filing of the answer, written discovery, the filing of the parties' Prehearing Statements, a prehearing conference, a first Motion for Summary Disposition and denial of that motion, and a second prehearing conference. It was not until Respondent filed its second Motion for Summary Disposition that it asserted there was an error in Petitioner's name and as a result, Respondent failed to timely raise the issue. Petitioner referred to itself as Tulip Air Services, Inc. throughout the entirety of the proceedings until the present motion.

Petitioner contends that Tribunal rules permit a petition to be amended when justice so requires<sup>12</sup> and that granting such a motion is appropriate where the scope of the amendment is limited to correcting a misnomer, in this case Petitioner's legal name. Petitioner further contends that the misnomer doctrine applies when the new name was the intended name when the petitioner commenced the action and where a respondent reasonably ought to have been aware of who was asserting the claim.<sup>13</sup> Petitioner asserts that it intended to file the petition using its legal name, Tulip City Air Service, Inc.<sup>14</sup> Further, because the original petition lists an entity name that is not legally valid in Michigan, no separate entity existed so as to cause any confusion as to who is the correct petitioner. Finally, Petitioner contends that the facts at issue support a change in name under the misnomer doctrine because the incorrect name was a misnomer and not a misidentification,<sup>15</sup> and that Respondent was not prejudiced from the error.

Petitioner filed the following documents in support of its Motion to Amend:

Exhibit A: Affidavit of Paul V. McCord.

Exhibit B: December 9, 2021 appeal letter to the December BOR.

Exhibit A: Letter of Authorization.

Exhibit B: Property Transfer Affidavit signed December 20, 2019.

Exhibit C: Amended and Restated Airport Ground Lease dated July 11, 2019.

Exhibit D: Assignment of Ground Lease.

Exhibit E: Articles of Incorporation for Tulip City Air Service, Inc., filed December 11, 1970.

Exhibit C: LARA Corporations Online Filing System, documents for Tulip City Air Service, Inc.

Exhibit D: 2021 December BOR Change Notice.

Exhibit E: Multiple documents, including Articles of Incorporation for Tulip City Air Service, Inc., filed December 11, 1970.

Exhibit F: LARA Corporations Online Filing System, documents for Tulip Air Services.

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<sup>12</sup> The Tribunal's rules were amended on March 28, 2025. As a result, the rule cited by Petitioner, TTR 221(1), is now TTR 227(1).

<sup>13</sup> Petitioner relies on *Wells v Detroit News, Inc (Wells)*, 360 Mich 634, 641; 104 NW2d 767 (1960); *Bensinger v Reid (Bensinger)*, 17 Mich App 219, 224-225; 169 NW2d 361 (1969); *Arnold v Schechter (Arnold)*, 58 Mich App 680, 683; 228 NW2d 517 (1975); and *Miszewski v Knauf Constr Inc*, 183 Mich App 312, 316; 454 NW2d 253 (1990).

<sup>14</sup> Petitioner contends this is supported by the correct legal name being used at the BOR, on assessment documents, and in documents furnished in response to Respondent's discovery requests.

<sup>15</sup> Petitioner distinguishes the present case from *Blue Cross & Blue Shield of Michigan v Eaton Rapids Comm Hosp*, 221 Mich App 301, 311; 561 NW2d 488 (1997); *Miller v Chapman Contracting*, 477 Mich 102; 730 NW2d 462 (2007); and *Premier Medical Movement, LLC v Auto Owners Ins Co, et al*, unpublished per curiam decision of the Michigan Court of Appeals, issued January 6, 2022 (Docket No 355543).

### Respondent's Response to Motion to Amend

On January 28, 2025, Respondent filed a response opposing Petitioner's Motion to Amend. In the response, Respondent states that it first raised the issue of the discrepancy in Petitioner's name in its answer to the petition, filed on February 22, 2022. Thereafter, it raised the issue, in its Prehearing Statement, filed on September 19, 2022, and in its first Motion for Summary Disposition, filed on February 24, 2023. Respondent contends that this error was substantive and not merely typographical or transpositional and as a result, the named petitioner cannot be altered unless justice so requires.<sup>16</sup>

Respondent argues that, regardless of Petitioner's name, the appeal is not properly pending where Petitioner is a stockholder and where ownership interests were transferred to other legal entities.<sup>17</sup> Respondent rejects the contention that the misnomer doctrine is appropriate because Petitioner is seeking to add an entirely new party to the proceedings.<sup>18</sup>

Respondent asserts that this error affected multiple specific discovery responses and the overall attestation to the accuracy of those responses in multiple instances. Respondent contends that Petitioner's discovery answers were incorrect because of this error and that it relied on these responses in preparing its case strategy. Petitioner did not amend its discovery responses and for these reasons, Respondent is prejudiced. Finally, as a result of the years-long error in the named Petitioner, it is unclear whether Petitioner's contention that it did not possess relevant discovery documents refers to the correctly or incorrectly named entity.

Respondent submitted the following documents in support of its response:

- Exhibit A: Petitioner's First Discovery Responses.
- Exhibit B: Petitioner's Second Discovery Responses.
- Exhibit C: Ground Lease Assignment.

### Conclusions of Law

The Tribunal has considered the motions, the responses, and the case file and finds that before addressing the summary disposition motions, Petitioner's Motion to Amend must be resolved. As discussed, this motion requests that the Tribunal permit Petitioner to change its name under Tribunal rules and the misnomer doctrine.

Tax Tribunal rules provide in part that:

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<sup>16</sup> Respondent relies on TTR 223(6), now TTR 229(6).

<sup>17</sup> Respondent relies on *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 473-474; 666 NW2d 271 (2003).

<sup>18</sup> Respondent relies on *Salem Springs, LLC v Salem Twp*, 312 Mich App 210, 225; 880 NW2d 793 (2015).

- (1) With the exception of amendments to petitions or answers that correct typographical or transpositional errors, a petition or answer may only be amended by leave of the tribunal. Leave to amend must . . . be freely given when justice so requires.
- (2) An amended petition or answer correcting only typographical or transpositional errors must be filed by the date established by the tribunal for the filing and exchange of prehearing statements with proof demonstrating the service of the amended petition or answer on the opposing parties.<sup>19</sup>

Parties may be added or removed by order of the tribunal on its own initiative or on motion of any interested person at any stage of the contested case as justice requires.”<sup>20</sup>

The misnomer doctrine was explained by the Michigan Supreme Court as follows:

“As a general rule, . . . a misnomer of a plaintiff or defendant is amendable unless the amendment is such as to effect an entire change of parties.” The misnomer doctrine applies only to correct inconsequential deficiencies or technicalities in the naming of parties, for example, “[w]here the right corporation has been sued by the wrong name, and service has been made upon the right party, although by a wrong name . . . .” Where . . . the plaintiff seeks to substitute or add a wholly new and different party to the proceedings, the misnomer doctrine is inapplicable.<sup>21</sup>

Petitioner commenced this appeal on January 21, 2022. The petition and case information sheet filed on that date identify Petitioner as Tulip Air Services, Inc. Attachments to the petition include the Board of Review decision, which refers to the property owner as Tulip City Air Services Inc., and the Articles of Incorporation, which identify the party in interest as Tulip City Air Service, Inc. The assignment of the ground lease identifies Tulip City Air Service, Inc. as a party to the lease. Proof of service of the petition filed on January 24, 2022, identifies Petitioner as Tulip Air Services, Inc. The Notice of No Valuation Disclosure filed by Petitioner on March 16, 2022, also references Tulip Air Services, Inc.<sup>22</sup>

Further, the record indicates that the parties conducted discovery, in whole or part, between August and November 2022. The proofs of service filed by Petitioner on August 12, 2022, and November 7, 2022, identify Petitioner as Tulip Air Services Inc.

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<sup>19</sup> TTR 227.

<sup>20</sup> TTR 229(6).

<sup>21</sup> *Miller, supra* at 106-107 (citations omitted). See also *Salem Springs, supra* at 224-225, quoting *Parke, Davis & Co v Grand Trunk Ry System*, 207 Mich 388, 391; 174 NW 145 (1919).

<sup>22</sup> The documents filed by Petitioner in the time period from January to March 2022 correspond with the process of initiating a Tribunal appeal.

On November 14, 2022, Petitioner filed requests for admissions, again using the name Tulip Air Services, Inc. These requests include an attached 2019 property transfer affidavit from Air Services, Inc. to Tulip City Air Service, Inc. Petitioner's responses to Respondent's discovery requests, as related to the correct party in interest, appear to be incorrect with respect to Respondent's first set of interrogatories #4, 5, and 8, Respondent's second set of interrogatories #2, 4, 5, 6, 7, 8, 9, and 11, and Respondent's request for production of documents #2, 3, and 4.<sup>23</sup>

Pursuant to the December 16-29, 2022 Prehearing General Call and Order of Procedure, prehearing statements were due September 19, 2022. Petitioner filed its Prehearing Statement on November 18, 2022, again identifying itself as Tulip Air Services, Inc. Petitioner's Prehearing Statement indicates in pertinent part that the pleadings do not need to be amended to conform to the evidence.

Petitioner contends that the error in naming the correct petitioner in the petition and subsequent filings was de minimis. Petitioner explained that the error in the petition was made because Attorney McCord had limited time to prepare the petition prior to the January 2022 filing deadline. Petitioner contends that justice requires the Tribunal to permit the petition to be amended because the new name was the name Petitioner intended to use when the action commenced and because Respondent reasonably ought to have been aware of who was asserting the claim. Petitioner contends that the facts at issue support a change in name under the misnomer doctrine because the incorrect name was merely a mistake in the name and not a misidentification of a distinct party. Petitioner argues that Respondent failed to timely raise the issue and that Respondent was not prejudiced by the error.

The issue before the Tribunal is twofold: first, whether Petitioner's requested name change should be permitted under the misnomer doctrine, and second, whether justice requires that Petitioner be given leave to amend the petition. In determining whether leave should be granted, prejudice to Respondent must be considered.

Petitioner's motion and supporting documents demonstrate the circumstances causing the petition to be filed with an incorrect party name. Specifically, the motion and supporting documents support a determination that Petitioner seeks to correct the name of a party which Attorney McCord has represented since the commencement of the appeal and not a newly added party under TTR 229(6). Ultimately, based on the affirmation of Attorney McCord, the Tribunal accepts that the circumstances surrounding the filing of the petition are within the purview of the misnomer doctrine. This is distinct from situations where a change in a name changes the party that filed the appeal, i.e., the party in interest.

The cases relied upon by Petitioner in the Motion to Amend are distinguishable. In *Wells*, the wrong corporation was sued, but the corporations were related, shared a common mailing address, and the pertinent documents were served upon a person acting as business manager for both entities. Similarly, in *Bensinger*, an individual who

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<sup>23</sup> Respondent's Response to Petitioner's Motion to Amend, Exhibit A.

was president and agent of a corporation was used where the plaintiff was required to sue the corporation itself. *Arnold* is also a case where a suit named and served a corporation's representative rather than the corporation itself. The misnomer in these cases was to a true and actual entity substantially related to the entity actually served, and further, each involves the misnomer of a defendant.

In its response to Petitioner's Motion to Amend, Respondent relied on the Court's decision in *Salem Springs*. However, this reliance is misplaced. In that case, Salem Springs, LLC claimed to have standing to challenge a voter referendum because (1) it previously owned the property at issue in the referendum, and (2) it manages Salem Springs Owner, the entity that owned the property at the time. The Court of Appeals held that Salem Springs, LLC was not a citizen of the county, as required by statute. Further, Salem Springs Owner was an entity separate and distinct from Salem Springs LLC. Given this, the Court held that Salem Springs LLC lacked standing to challenge the results of a voter referendum. The Tribunal finds that the facts in *Salem Springs* are distinguishable from the present facts because there is no valid Michigan entity named Tulip Air Services, Inc.

In *Vanco I LLC v City of Grand Rapids*,<sup>24</sup> the taxpayer appealed the valuation of a property tax assessment using the name of the property's prior owner. The Tribunal permitted the taxpayer to correct the property owner's name using the misnomer doctrine. On appeal, the respondent argued that by permitting the petitioner to change its name under the misnomer doctrine, the parties were effectively substituted. After discussing the Court's holding in *Miller*, the Court noted that the facts in *Vanco* were distinguishable from those in *Miller*. In *Miller*, the requested correction was the equivalent of adding a new party whereas in *Vanco*, "the petitioner's counsel simply put the wrong name on the petition."<sup>25</sup> Thus, *Vanco* is a valid basis for application of the misnomer doctrine in this instance, given that the court's decision demonstrates it can be applied even in situations where a valid entity was named. Given the relatively short timeframe in which Attorney McCord had to file the petition after being retained, as attested, the Tribunal finds that it is understandable that an error occurred that would have been required by justice to be corrected had it been corrected timely. Petitioner successfully demonstrated that the error was misidentification of the correct party rather than identification of an incorrect party. The Tribunal is therefore convinced that the error that occurred in this case is of the type that could be corrected under the misnomer doctrine.

Notwithstanding, two key factors inform the Tribunal's decision to instead find that justice requires the denial of Petitioner's Motion to Amend. First, the very nature of the contested claim in this case looks to whether Petitioner is an owner for purposes of the sought exemption. As discussed above, Petitioner's exemption claim is that pursuant to the lease agreement, the subject is effectively owned by a political subdivision and is used by that entity to carry out a public purpose under MCL 211.7m.

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<sup>24</sup> *Vanco I LLC v City of Grand Rapids*, unpublished per curiam decision of the Court of Appeals, issued November 18, 2014 (Docket No. 317305).

<sup>25</sup> *Id.* at \*4.

Thus, this direct tie of ownership as an element to the specific legal issue pled is more complex than other applications of the misnomer doctrine. This issue necessarily requires consideration of ownership under the lease, taking into account the lease's "bundle of sticks."

Petitioner's claim also includes the contention that based on the lease and other controlling documents cited by Petitioner, the subject is a concession and is available for use by the general public under MCL 211.181(2)(b). This element of the exemption claim also directly relates to whether Petitioner is the owner of the subject property. MCL 211.181(2)(b) excludes certain parties from taxation under MCL 211.181(1), which states that real property exempt from property taxes for any reason that is leased, loaned, or otherwise made available to a private corporation in connection with a business conducted for profit "is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property." The specific exemption contention forming the basis of the legal dispute at issue is therefore directly tied to the issue of ownership.

The second factor supporting denial of Petitioner's Motion to Amend relates to timing. Respondent first identified the issue in its answer, which provided Petitioner with notice as early as February 2022 that the petition contained an error in regard to Petitioner's name. Petitioner also responded to Respondent's discovery requests in late 2022, which should have served as an opportunity to review documents in response to the request and determine that a mistake had been made. Discovery is now closed, and Petitioner has made no attempt to amend or reconcile the purported discovery errors under TTR 243(7). The Tribunal agrees with Respondent that the accuracy of certain discovery responses, identified by the Tribunal above, was compromised as a result of the error.

Additionally, the Prehearing Statement filed by Petitioner on November 18, 2022, is incorrect. On March 1, 2022, the Tribunal issued a Prehearing General Call indicating in pertinent part that the parties were required to submit prehearing statements by September 19, 2022. Respondent submitted its Prehearing Statement on that date, while Petitioner's Prehearing Statement was not filed until November 18, 2022. Despite the advantage Petitioner received in the non-simultaneous exchange, Petitioner nevertheless failed to properly address the party in interest issue raised in Respondent's Prehearing Statement, either in its own Prehearing Statement or at the December 16, 2022 prehearing conference. Tribunal rules specifically contemplate the prehearing conference as being a forum at which parties and the Tribunal may discuss issues such as formal amendments to petitions and answers, as well as other matters to aid in the disposition of a case.<sup>26</sup> Respondent correctly notes that Petitioner did not seek to correct this issue during or after the prehearing conference. As a result, the Prehearing Conference Summary was compromised due to the continued error. Further, Respondent identified the issue in its summary disposition motion filed in November 2023, and Petitioner did not respond to that motion. Instead, Petitioner only

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<sup>26</sup> TTR 251(3)(d), (f).

addressed the error after it was forced to by the Tribunal's December 3, 2024 Order Requiring Information.

The entirety of the record supports a finding that Petitioner had many chances on its own to discover, or at a minimum, recognize Respondent's attempts to draw Petitioner's attention to the error and to correct the error. Petitioner's discovery responses and Prehearing Statement, after notice from Respondent, constitute a failure to properly plead the case or to timely request correction under the misnomer doctrine.

The Tribunal finds that Petitioner has not shown good cause to grant the Motion to Amend because doing so without prejudicing Respondent would necessarily require the re-opening of discovery as well as the filing of amended prehearing statements and another prehearing conference. While a motion to amend should be granted where justice so requires, it is not required in this case. Having had multiple opportunities to correct the error, both after Respondent's notices and Petitioner's own review of its files, Petitioner failed to do so. Thus, Petitioner has not shown good cause for the Tribunal to reset this proceeding to the beginning of discovery. As a result, it is appropriate to deny Petitioner's Motion to Amend because granting the motion at this stage of the proceeding would be irreparably unfair to Respondent. Justice requires that the Motion to Amend only be granted if the prejudice to Petitioner outweighs the prejudice to Respondent. In this case, it does not.

The named petitioner, Tulip Air Services, Inc., is not a recognized entity in the State of Michigan. Therefore, Tulip Air Services, Inc. was not a party in interest capable of appealing the BOR denial of an exemption claim by Tulip City Air Service, Inc. "[T]he 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."<sup>27</sup> "[A]s used in MCL 205.735a(6), 'party in interest' refers to a person or entity with a property interest in the property being assessed . . . '[P]roperty interest' is defined as: '[a] legal share in something; all or part of a legal or equitable claim to or right in property.'"<sup>28</sup> Because the petition was filed by a nonexistent entity without a property interest in the subject property and because justice does not require that Petitioner be granted leave to amend the petition, dismissal is the only appropriate action. Given this, the parties' summary disposition motions are denied as moot and Respondent shall not be granted summary disposition under MCR 2.116(C)(2).

While not pertinent to the outcome of this case, the Tribunal notes that Respondent's records contain a typographical error. Specifically, the Property Transfer Affidavit, dated December 20, 2019, lists Petitioner as "Tulip City Air Service, Inc."<sup>29</sup> However, the 2021 December BOR Change Notice lists Petitioner as "Tulip City Air Services Inc."

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<sup>27</sup> MCL 205.735a(6).

<sup>28</sup> *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 575-576 and fn 9; 861 NW2d 347 (2014). (Citation omitted).

<sup>29</sup> Petitioner's Motion to Amend, Exhibit B.

Finally, Petitioner's motion argues that granting summary disposition in its favor is appropriate under the doctrine of collateral estoppel because this issue was already decided in *Air Services*.

Generally, for collateral estoppel to apply three elements must be satisfied: (1) "a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment"; (2) "the same parties must have had a full [and fair] opportunity to litigate the issue"; and (3) "there must be mutuality of estoppel."<sup>30</sup>

The issue of collateral estoppel requires, in part, that the "same parties" be involved in the dispute. Here, Petitioner's Motion for Summary Disposition correctly contends that collateral estoppel only requires substantial identity, not precise identity, of the parties under the "same parties" portion of the collateral estoppel doctrine.<sup>31</sup> Petitioner's contention that the subject lease transferred from Air Services, Inc. to Tulip City Air Service, Inc. is a rational basis to support such a claim. However, Tulip City Air Service, Inc. is not a party to this case.

Moreover, Petitioner's summary disposition motion failed to properly address all necessary elements of a collateral estoppel claim. "The estoppel doctrine requires the issues in the two actions to be identical, not merely similar."<sup>32</sup>

The estoppel of a judgment extends only to the facts and conditions as they were at the time the judgment was rendered, and to the legal rights and relations of the parties as fixed by the facts so determined; and when new facts or conditions intervene before a second suit, furnishing a new basis for the claims and defenses of the parties respectively, the issues are no longer the same, and hence the former judgment cannot be pleaded in bar to the subsequent action.<sup>33</sup>

In this case, Petitioner's motion failed to address actual use of the subject as a concession and any changes in use that may have occurred due to the lease assignment. Further, Respondent asserts that the lease in place as of tax day,<sup>34</sup> December 31, 2021, is not the same as in the 2016 case.<sup>35</sup> Because there are genuine issues of material fact, granting summary disposition under the legal theory of collateral estoppel is inappropriate under MCR 2.116(C)(10).

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<sup>30</sup> *Monat v State Farm Ins Co*, 469 Mich 679, 683-684; 677 NW2d 843, 845-846 (2004). (Citations omitted).

<sup>31</sup> The Tribunal agrees with Petitioner's reliance on *Local 98, Detroit, Mich, of United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO v Flamegas Detroit Corp*, 52 Mich App 297, 302; 217 NW2d 131, 134 (1974).

<sup>32</sup> *Id.* at 303.

<sup>33</sup> *Id.*, citing *Wright v Kinnard*, 147 Ind App 484, 489; 262 NE2d 196, 200 (1970);

<sup>34</sup> MCL 211.2(2) provides that "[t]he taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, . . ."

<sup>35</sup> Respondent's response to Petitioner's Motion for Summary Disposition at 19.

Therefore,

IT IS ORDERED that Petitioner's Motion to Amend is DENIED.

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

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that this case is DISMISSED.

### 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 Tribunal with the required filing fee within 21 days from the date of entry of the final decision. 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 or disabled veterans exemption and, if so, there is no filing fee. You are required to serve a copy of the motion 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. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By Patricia L. Haem

Entered: August 4, 2025  
bw

**PROOF OF SERVICE**

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk