



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Great Lakes Gas Transmission
Limited Partnership,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 24-001239

Surrey Township,
Respondent.

Presiding Judge
Patricia L. Halm

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

Petitioner filed this appeal disputing the subject property's taxable value on May 15, 2024. On November 15, 2024, Petitioner filed a motion requesting that the Tribunal grant summary disposition in its favor. In the motion, which was filed pursuant to MCL 2.116(C)(10), Petitioner contends that there are no genuine issues of material fact relative to the calculation of the subject parcel's 2024 taxable value. As such, Petitioner is entitled to judgment as a matter of law. In the motion, Petitioner argues that Respondent "increased both the subject parcel's assessed value and taxable value by the same amount, resulting in an illegally high 2024 taxable value."¹ Petitioner asserts that the 2023 taxable value for the subject property was \$904,488, while the 2024 taxable value was calculated as \$1,728,505. According to Petitioner, "the legal 2024 taxable value is \$1,206,667 based upon the 5% statutory CPI factor (2023 taxable value of \$904,888 x 1.05 plus an addition of \$256,955 for construction in progress)."² Petitioner claims that there were no losses and there was not a transfer of ownership in 2023.

In support of its motion, Petitioner included the State Tax Commission's December 19, 2023 memorandum regarding the Pipeline Economic Factor for 2024, a modified version of a personal property statement and support documents for the subject property, Board of Review Petition, BS&A printout, and an Affidavit of Lance Brown, Property Tax Analyst for TC Energy. Mr. Brown's affidavit states that he has been "filing personal property statements with Michigan communities for over twenty-five years and [has] been focusing on natural gas transmission related property for the last fifteen years...",³ including the filing of Petitioner's personal property returns in Michigan. The affidavit further states that the State Tax Commission issued a memorandum related to the valuation of Petitioner's personal property, and that the multiplier table contained within Table J of Form 3589 *2024 Cable Television and Public Utility Personal Property*

¹ Petitioner's Motion at 4.

² *Id.* at 2.

³ Exhibit 1 at 2.

Report (as of 12-31-23) was to be modified by an economic factor determined by the State Tax Commission as a result of the Table J multipliers overvaluing the property.⁴ The affidavit claims that the State Tax Commission memorandum “provides assessors with the relevant information and the formula for calculating 2024 taxable value[s] due to the likely assessed value increase that would be caused by the Economic Factor increase.”⁵ The affidavit states that the 2024 personal property statements for the subject property were timely filed and included a capped value calculation worksheet that was provided along with the personal property statements. Despite these submissions, the assessment Petitioner received indicated that both the assessed and taxable values for the subject property were \$1,728,505. Finally, the affidavit states that there was not a transfer of ownership in 2023, and “the only new investment in 2023 constituting an Addition was Construction in Progress and that there were no retirements constituting a Loss.”⁶

Respondent has not filed a response to Petitioner’s Motion for Summary Disposition.

STANDARD OF REVIEW

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. 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.”⁷ The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,⁸ 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

⁴ Affidavit, ¶ 5.

⁵ *Id.*, ¶ 8.

⁶ *Id.*, ¶ 10.

⁷ MCR 2.116(C)(10).

⁸ *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).

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.⁹

“A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.”¹⁰ In evaluating whether a factual dispute exists to warrant trial, “the court is not permitted to assess credibility or to determine facts on a motion for summary judgment.”¹¹ “Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial.”¹²

CONCLUSIONS OF LAW

Having considered the motion and case file under the criteria for MCR 2.116(C)(10), the Tribunal finds that the motion should be granted.¹³

⁹ *Id.* at 361-363. (Citations omitted.)

¹⁰ *West v General Motors Corp*, 469 Mich 177 (2003).

¹¹ *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 153 (1994).

¹² *Id.*

¹³ 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 201. 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.” *Id.* The Michigan Supreme Court has provided the following explanation of this Court Rule: “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 . . . 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

As noted above, Respondent did not file a response to Petitioner's Motion for Summary Disposition. Likewise, Respondent did not file an answer to the petition, despite being ordered to do so within the September 11, 2024 Order of Default and October 22, 2024 Order Extending Time to Cure Default.

Although *Vill of Dimondale v Grable* recognized that, "[a]s a general rule, summary disposition is premature if granted before discovery on a disputed issue is complete,"¹⁴ the relevant question is whether further discovery stands a fair chance of uncovering factual support for the opposing party's position.¹⁵ Here, Respondent was provided multiple opportunities to comply with the Tribunal's Rules of Practice and Procedure and various Tribunal orders and Respondent has not done so. As such, in the event this case were to move forward, Respondent's participation would be limited as a default hearing would be scheduled in accordance with the October 22, 2024 Order Extending Time to Cure Default and TTR 237.

In this case, the petition identifies the issue as relating to "taxable value and (b) due process, equal protection, and uniformity."¹⁶ The petition further states that the subject property's "taxable value exceeds the amount permitted by the Michigan Constitution and applicable statutes...."¹⁷ Additionally, the petition requested that the Tribunal enter an order "reducing the 2024 taxable value of Petitioner's Property from \$1,728,505 to \$1,206,667...."¹⁸ In other words, Petitioner is only challenging the subject property's 2024 taxable value, and Petitioner makes no claims as far as the determination of the subject property's 2024 true cash and assessed values.

Taxable values are determined pursuant to the Michigan Constitution,¹⁹ and enacted by section 27a of the General Property Tax Act (GPTA).²⁰ Absent a transfer of ownership or an addition within the meaning of MCL 211.34d, taxable values cannot increase

establishing the existence of a material factual dispute, the motion is properly granted." *Quinto v Cross and Peters Co*, 451 Mich 358, 361-363 (1996) (Citations omitted). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177 (2003). In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary judgment." *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 153 (1994). "Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial." *Id.*

¹⁴ *Vill of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). (citations omitted).

¹⁵ *Id.*

¹⁶ Petition, ¶ 6.

¹⁷ *Id.*, ¶ 10.

¹⁸ *Id.*, p 2.

¹⁹ Article 9, §3 of the Michigan Constitution states: "For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level . . . or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value." *Id.*

²⁰ MCL 211.1 *et seq.*

beyond the applicable rate of inflation for the tax year at issue.²¹ Petitioner's affidavit establishes that no transfers of ownership occurred in the prior tax year, that being 2023.

Here, Petitioner met its initial burden by way of the affidavit and other supporting documents filed contemporaneously with its Motion for Summary Disposition. Petitioner submitted a printout from BS&A Online showing the 2023 taxable value for the subject property, Parcel 014-900-018-00, as \$904,488. Petitioner also provided a copy of the State Tax Commission's memorandum, dated December 19, 2023, related to the Pipeline Economic Factor for 2024. The memorandum states, in pertinent part:

For the 2024 tax year, after consulting pipeline companies and considering available valuation data for the type of personal property assets receiving the economic factor staff recommends that the Commission adjust the factor previously approved to an economic factor of 75% (percent good) and limit the application of the economic factor to personal property assets reported on Table J of Form 3589 *Cable Television and Utility Personal Property Report*. Said factor would not apply to any assets reported on Form 632 Personal Property Statement or any another personal property reporting forms utilized by ANR Pipeline Company, Great Lakes Gas Transmission or Northern Natural Gas Company.

Staff recognizes that assessors have been advised that it was usually not necessary to calculate a Capped Value for most personal property which is valued using the State Tax Commission's Personal Property Multiplier Tables. However, there are occasions where the value of existing personal property assets increase in value from the prior year (not considering the value of additions). If the increase in value exceeds inflation rate multiplier for the current year, the assessor must calculate the taxable value using the Capped Value Formula.

In the case of those entities receiving the economic factor, assessors must consider the possibility that the change in the factor may require the application of the Capped Value Formula.

Additionally, as part of its motion, Petitioner submitted its (annotated) 2024 personal property statement and (annotated) Form 3589 *2024 Cable Television and Public Utility Personal Property Report (as of 12-31-23)* detailing the original cost, assessor calculations, and economic factor value for personal property put into service from 2009 to 2023, as well as personal property put into service prior to 2009. Petitioner's personal property filings also reported a capitalized cost of utility right-of-way and

²¹ MCL 21.27a(2) provides: "Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following: (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994. (b) The property's current state equalized valuation."

easement acquisition amounts within Respondent's geographical boundaries at \$97,088. Multiplying the 2023 taxable value by the inflation rate multiplier, plus 50% of the disclosed additions, results in a capped value of \$1,206,667.

Given Respondent's failure to file an answer or submit a response to Petitioner's Motion for Summary Disposition, Respondent has not addressed any of the issues raised in the petition or established that a genuine issue of disputed fact exists. Petitioner, on the other hand, demonstrated that the subject property's 2024 taxable value exceeds the capped value formula. As such, Respondent's taxable value for the subject is deemed unlawful and shall be set at **\$1,206,667** for the 2024 tax year. Therefore,

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.²² To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (ii) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (iii) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, (iv) after June 30, 2024, through December 31, 2024, at the rate of 9.50%, and (v) after December 31, 2024, through June 30, 2025, at the rate of 9.47%.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

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

²² See MCL 205.755.

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: April 25, 2025
smm/gc

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 provided by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk