STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Pine Arbor Condominium, LLC,
Petitioner,

v

MTT Docket No. 354223

City of Woodhaven, *et al*,
Respondents.

Tribunal Judge Presiding
Patricia L. Halm

ORDER GRANTING RESPONDENTS' MOTION FOR LEAVE TO FILE SUPPLEMENT TO MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENTS' MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(4)

ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) AND (C)(10)

ORDER OF DISMISSAL

The Petition in this matter was filed by Petitioner, Pine Arbor Condominium, LLC, on July 23, 2008. Pursuant to the Petition, under appeal is the 2005 assessed and taxable value of Petitioner's real property, consisting of one parcel of residential property (the subject property), located in the City of Woodhaven, Wayne County (Respondents). The basis for this appeal, in part, is Petitioner's contention that the taxable value established by Respondents for the 2005 tax year includes public service improvements added pursuant to MCL 211.34d(1)(b)(viii). Petitioner brought this appeal pursuant to MCL 211.53a, *Toll-Northville v Northville Township*, 480 Mich 6; 743 NW2d 902 (2008), and *Eltel Associates LLC v City of Pontiac*, 278 Mich App 588; 752 NW2d 492 (2008).

On January 28, 2009, Respondents filed a Motion requesting that the Tribunal grant partial summary disposition in their favor pursuant to MCR 2.116(C)(4), (C)(8) and (C)(10). In support of their Motion, Respondents state:

a. "MCL 205.735a(6) states that '(6) The jurisdiction of the tribunal in an assessment dispute as to property classified...as...residential real property...is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved."

b. "As Petitioner did not file its Petition in this Tribunal contesting the 2005 assessment and taxable value until July 25, 2008, the Tribunal clearly does not have jurisdiction over this appeal. MCL 205.735a(6)."

c. "In its Petition, Petitioner alleges that this Tribunal has jurisdiction to hear this appeal pursuant to MCL 211.53a which permits the recovery of taxes paid because of a 'mutual mistake of fact':

> 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.

d. "In support of this contention of a 'mutual mistake of fact,' Petitioner alleges that the 2005 taxable value includes the value of public service improvements which were added to the taxable values pursuant to MCL 211.34d(1)(b)(viii) before the Michigan Supreme Court held that MCL 211.34d(1)(b)(viii) was unconstitutional in *Toll-Northville v Northville Twp*, 480 Mich 6; 743 NW2d 902 (2008)."

e. "The fact that the 2005 taxable value was computed by Respondent pursuant to the then existing dictates of law does not turn a subsequent overturning of that same law into a 'mutual mistake of fact' by those who relied upon it. A 'mutual mistake of fact' under MCL 211.53a means a mutually mistaken belief about a material fact or condition. *Ford Motor Co v City of Woodhaven*, 475 Mich 525 (2006)."

f. "In this case, there was no mutually mistaken belief about any material fact or condition. When the 2005 taxable value was calculated, the existing law clearly stated that the value of public service improvements was to be added to taxable value as an 'addition.' There was no mistake as to the statute's directive and is no dispute that the then existing provisions of MCL 211.34d(1)(b)(viii) were followed when the 2005 taxable value was calculated."

g. "Due to the tardy filing of the Petition and the absence of a 'mutual mistake of fact,' this appeal of the 2006 and 2007 assessed and taxable values must be dismissed for lack of jurisdiction."

On February 3, 2009, Petitioner filed an Answer to Respondents' Motion and a Brief in support thereof. In its Answer, Petitioner states, *inter alia*, that it "denies that the Tribunal is

without subject matter jurisdiction, as MCL 205.731 gives the Tribunal subject matter jurisdiction over nearly all property tax appeals. Petitioner is invoking the Tribunal's jurisdiction under § 53a of the General Property Tax Act, (MCL 211.53a)." Petitioner also asserts that it "will show in its attached Brief in Opposition, 'mutual mistake' in Michigan has not differentiated between mistake of fact and mistake of law."

In its Brief, Petitioner states, *inter alia*,

a. "Petitioner...is a developer of site condominiums. [It] developed the subject property in the City of Woodhaven under parcel # 59-080-99-0006-00. Sometime in 2004, Petitioner installed $1,500,000 worth of public service improvements, which Petitioner believes were treated as additions to taxable value in tax year 2005."

b. "In 2008, the Michigan Supreme Court struck down MCL 211.34d(1)(b)(viii), which provided for the taxation of public service additions...Both parties relied upon this provision; the assessor relied upon it in raising the taxable value, and the Petitioner relied upon it in not contesting the taxable value in 2005 to the Michigan Tax Tribunal."

c. "In 2006, the above parcel was divided into 136 lots. The taxable value for 2005 was likewise split and spread onto the lots for 2006, 2007 and 2008. The Respondent failed to subtract the infrastructure improvements from the lots for these years, as provided by MCL 211.27a, which requires that losses be subtracted."

d. "The parties' mutual reliance upon an unconstitutional law is grounds for rescission under common law mutual mistake of fact, and is therefore grounds for jurisdiction under § 53a of the General Property Tax Act." In support of this argument, Petitioner relies upon *Ford Motor Co v City of Woodhaven*, 475 Mich 425; 716 NW2d 247 (2006), *Eltel v City of Pontiac*, 278 Mich App 588; 752 NW2d 492 (2008), and *Briggs Tax Service v City of Detroit*, 282 Mich App 29; 761 NW2d 816 (2008).

e. "As the Michigan Supreme Court looked outside the field of property taxation to define mutual mistake of fact under § 53a, it is useful to see whether our state has granted mistaken reliance of law as a basis for rescission." Petitioner cited *Twp of Royal Oak v City of Huntington Woods*, 313 Mich 137; 20 NW2d 840 (1945), and stated "[h]ere, as in *Eltel*, and *Briggs*, the Supreme Court treated a mistake of law as a mistake of fact. The key to this decision was that there was a misunderstanding of rights by the parties."

f. "This is not a case where the Petitioner failed to act diligently in determining what the law was. This is not a case where the Petitioner relied upon bad legal advice. Rather, this is a case where a law was on the books, and the Petitioner was taxed accordingly. This belief was mistaken, and reliance upon it was mutual. Accordingly, there has been a mutual mistake of fact, and jurisdiction is proper under MCL 211.53a."

On April 20, 2009, Respondents filed a Motion requesting leave to file a supplement to its Motion for Summary Disposition. In its Motion, Respondents states that, as a result of Petitioner's answers to Respondents' Request for Admissions:

> Respondents first became aware that title to the subject property was in fact transferred to Petitioner in 2004, which transfer permitted the uncapping of the 2005 taxable value. MCL 211.27a(3). Indeed, in its Answers to Respondents' Request for Admissions, Petitioner admitted that title to the subject real property was transferred from VHR, a Michigan Limited Partnership, to Pine Arbor Condominium, LLC, a Michigan Limited Liability Company, on September 14, 2004, via a Warranty Deed and that this transfer of title via Warranty Deed constitutes a "transfer of ownership" as that term is defined in the provisions of MCL 211.27a(6).
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> ...As there was a "transfer of ownership" of the subject property in 2004, it is unnecessary for this Tribunal to determine whether any increase in the 2005 taxable value was proper as an "addition," as Respondents clearly had the right, and the statutory obligation, to uncap the 2005 taxable value. MCL 211.27(3). Proposal A only operates to limit increases in property taxes while the property remains owned by the same party. *Toll-Northville v Northville Twp, supra*; MCL 211.27a(3).

Petitioner did not file an Answer to the Motion.

Having reviewed Respondents' Motion for Leave to File Supplement to Motion for Summary Disposition, the new information contained therein, and the fact that Petitioner admitted that the subject property was purchased in 2004 and did not file an Answer objecting to Respondents' Motion, the Motion will be granted.

FINDINGS OF FACT

In 2004, Petitioner purchased Parcel No. 59-080-99-0006-00, located in the City of Woodhaven, Michigan. Also in 2004, Petitioner installed what it termed "public service improvements" on this parcel of property. Petitioner's Petition asserts that Parcel No. 59-080-99-0006-00 was in existence for the 2005 tax year. The Tribunal takes judicial notice of Respondents' webpage, in particular the information posted by its Assessing Department. This

information indicates that Parcel No. 59-080-99-0006-00 was split on April 25, 2005, confirming the assertions contained in the Petition. For the 2005 tax year, Respondents uncapped the subject property's taxable value due to the transfer of ownership. The 2005 taxable value included 50% of the value of the public service improvements. Petitioner filed this appeal on July 23, 2008, contesting Parcel No. 59-080-99-0006-00's 2005 assessed and taxable value. The property is classified residential.

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. TTR 111(4). In the instant case, Respondent moved for summary disposition under MCR 2.116(C)(4), (C)(8) and (C)(10).

- **MCR 2.116(C)(4)**

MCR 2.116(C)(4) provides the following ground upon which a summary disposition motion may be based: "The court lacks jurisdiction of the subject matter."

> Jurisdictional questions under MCR 2.116(C)(4) are questions of law that are also reviewed de novo… When reviewing a motion under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show there was no genuine issue of material fact. (Citations omitted.) *South Haven v Van Buren Co Comm'rs*, 270 Mich App 233, 237; 715 NW2d 81 (2006).

- **MCR 2.116(C)(8)**

MCR 2.116(C)(8) provides the following ground upon which a summary disposition motion may be based: "The opposing party has failed to state a claim on which relief can be granted."

> A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which

> relief can be granted. The motion should be granted if no factual development could possibly justify recovery. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

"Under MCR 2.116(C)(8), we accept all well-pleaded factual allegations as true and construe them in a light most favorable to the nonmoving party." *Johnson v City of Detroit*, 457 Mich 695, 701; 579 NW2d 895 (1998). Only if no factual development could justify the plaintiff's claim for relief can the motion be granted. *Koenig v City of South Haven*, 460 Mich 667, 674; 597 NW2d 99 (1999).

- **MCR 2.116(C)(10)**

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." The Michigan Supreme Court, in *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996), provided the following explanation of MCR 2.116(C)(10):

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

The Tribunal's "…task is to review the evidence and all reasonable inferences from it and determine whether a genuine issue of any material fact exists to warrant a trial." *Muskegon Area Rental Assoc v City of Muskegon*, 244 Mich App 45, 50; 624 NW2d 496 (2000), rev'd in part on other grounds, 465 Mich 456; 636 NW2d 751 (2001). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Taylor v Laban*, 241 Mich App 449, 452; 616 NW2d 229 (2000). 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).

CONCLUSIONS OF LAW

The requirements that must be met for the Tribunal to acquire jurisdiction in an appeal filed after December 31, 2006, are set forth in Section 35a of the Tax Tribunal Act. In relevant part, Section 35a provides:

> (3) Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6).
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> (4) In the 2007 tax year and each tax year after 2007, all of the following apply:
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> ***
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> (6)...The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as agricultural real property, residential real property, timber-cutover real property, or agricultural personal property is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved.

In this case, Petitioner is attempting to invoke the Tribunal's jurisdiction over the 2005 tax year. While the Petition was filed prior to July 31, 2008, it was filed four years after the tax

year at issue. For this reason, the Tribunal does not have jurisdiction in this case pursuant to MCL 205.735a.

Moreover, the Tribunal does not have jurisdiction in this case pursuant to the Constitution of the State of Michigan. The requirements for assessing property and the formula for calculating taxable value are found in Article IX, §3. In relevant part, §3 provides:

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. 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, as defined in section 33 of this article, 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.** (Emphasis added.)

The general property tax act ("GPTA"), being MCL 211.1 *et seq*, implements the legislative determination required by Article IX, §3. Specifically, MCL 211.27a provides, in relevant part:

> 1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.
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> (2) 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:
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> (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.
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> (b) The property's current state equalized valuation.

> (3) Upon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer.

Thus, the starting point of a property's taxable value in any given year is the property's taxable value in the previous year.

To determine how to calculate a property's taxable value in any given year, the first decision that must be made is whether MCL 211.27a(2) or MCL 211.27a(3) applies. MCL 211.27a(2) states, in pertinent part: "(2) Except as otherwise provided in subsection (3) . . . ." Given this language, it is clear that one or the other subsection should be utilized each year, but not both. In this case, the Tribunal finds that MCL 211.27a(3) must be utilized in calculating the subject property's 2005 taxable value.

MCL 211.27a(3) states: "**Upon a transfer of ownership** of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the properties' state equalized valuation for the calendar year following the transfer." (Emphasis added.) In this case, ownership of the subject property was transferred to Petitioner in 2004. Pursuant to MCL 211.27a(3), to calculate the subject property's 2005 taxable value, the subject property's 2005 state equalized value became the subject property's taxable value. Therefore, the issue of whether the value of the public service improvements should have been added to the taxable value under MCL 211.27a(2) is, in reality, a non-issue. In *Toll Northville*, the Court of Appeals stated:

> We further note that to the extent that the public service improvements increase the true cash value of the land, the tax revenue for that increased value will be realized when the lots are transferred to the private owners. As required by Const. 1963 art. 9, § 3, "[w]hen 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." Stated differently, the increased value for public service improvements should be realized just as any other community improvements are realized. For example, public service improvements are analogous to better

> community resources, like a better school system, which increase home values across the community that are realized when the homes are sold for higher prices, at which time the true cash value assessments can be adjusted accordingly. As stated in *WPW Acquisition Co.*, "The amendment generally was to not allow the taxable value to increase above the 'cap' regardless of any larger increase in true market value until the property was transferred." *Id.*, pp375, 376.

Thus, the Court of Appeals recognized that when ownership is transferred, the property is assessed at 50% of true cash value. In this case, ownership was transferred and public service improvements were installed in the same year, that being 2004. If Petitioner had made the public service improvements in a year other than the year in which ownership transferred, MCL 211.27a(2) would have applied. Given this, the Tribunal does not have jurisdiction in this case pursuant to controlling Michigan statutes.

Having made this determination, it must be decided whether the addition to the subject property's 2005 taxable value should be considered a mutual mistake of fact or clerical error pursuant to MCL 211.53a. Pursuant to MCL 211.53a:

> 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.

In this case, the Tribunal finds that the addition to the subject property's 2005 taxable value pursuant to MCL 211.34d(1)(b)(viii) was not a clerical error. Clearly, this addition was made intentionally and was based upon the state equalized value of the improvements as required pursuant to MCL 211.27a.

The Tribunal also finds that the addition made pursuant to MCL 211.34d(1)(b)(viii) was not the result of a mutual mistake of fact. In *Ford Motor Company v City of Woodhaven, et al*, 475 Mich 425; 716 NW2d 247 (2006), the Michigan Supreme Court interpreted the phrase "mutual mistake of fact" in MCL 211.53a to mean "an erroneous belief, which is shared and

relied upon by both parties, about a material fact that affects the substance of the transaction." *Id*., p443. In this case, Respondents properly assessed the subject property pursuant to MCL 211.34d(1)(b)(viii) and Petitioner paid the corresponding taxes. At the time the assessments were levied, MCL 211.34d(1)(b)(viii) was valid; therefore, there was no mutual mistake of fact.

This position is supported by the Court of Appeals' decision in *Wolverine Steel Company v City of Detroit*, 45 Mich App 671; 207 NW2d 194 (1973). In that case the City of Detroit levied a tax in violation of the United States Constitution. *Id*., p675. The Wolverine Steel Company asserted that there had been a mutual mistake of fact between the assessing officer and the taxpayer and requested a refund of the tax it paid under MCL 211.53a. The court held:

> On the facts as presented, contrary to the trial court's ruling, we believe that a "mutual mistake" was made. However appellant is still not entitled to recovery under MCLA §211.53a; MSA §7.97(1). An error made in determining the application of the United States Constitution to the tax laws of Michigan is not the type of mistake of fact required by this statute…When the words 'mutual mistake of fact made by the assessing officer and the taxpayer' are construed in the light of the other type of mistakes covered by this section, i.e., a 'clerical error', it seems clear that the statute was not intended to apply to mistakes in determining the application of the United States Constitution to the tax laws of Michigan. This would not generally be assumed to be within the province of a taxpayer and the tax assessor . . . .
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> Case law in Michigan also indicates that the appellant may not recover, because if any mistake did occur it was not a mistake of "fact." *Upper Peninsula Generating Company v City of Marquette*, 18 Mich App 516, 517; 171 NW2d 572 (1969), the plaintiff had paid ad valorem taxes for the years 1965 and 1966. Sometime in 1967 the plaintiff became convinced that the taxes had been illegally assessed because the millage had been in excess of the 15-mill limitation imposed by article 9, section 6 of the Michigan Constitution of 1963, and had not received the approval of the electorate. The plaintiff sought recovery under MCLA 211.53a as does the appellant here. This Court denied recovery holding that an error of the type made could not be characterized as a 'mistake of fact'.
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> The error made in the *Upper Peninsula* case was the same type of error that was made in the present case. In the *Upper Peninsula* case the City of Marquette levied taxes in violation of the Michigan Constitution. In the present case the appellees levied taxes in violation of the United States Constitution. In both cases the plaintiff and the defendants thought that the taxes were valid at the time they

> were paid. In the *Upper Peninsula* case this was held not to be an error of fact within the meaning of the statute. The same result must, therefore, be reached in the present case . . . . *Id*., pp673-677.

In this case, Respondents levied taxes based on a statute that was ultimately determined to be in violation of Article 9, §3 of the Constitution of the State of Michigan. As in *Wolverine Steel*, the parties in this case thought the taxes were valid at the time they were paid. Thus, the result reached in *Wolverine Steel* must be reached in the present case.

Contrary to Petitioner's belief that "'mutual mistake' in Michigan has not differentiated between mistake of fact and mistake of law," the Michigan Supreme Court has held that "[l]est confusion exist in differentiating mistakes of fact and mistakes of law, Michigan courts have held on several occasions that an unauthorized tax levy constitutes a mistake of law." *Briggs Tax Service v Detroit Public Schools, et al*, 485 Mich 69, 81; 780 NW2d 753 (2010). After discussing several cases pertinent to this issue, the Court stated:

> These cases stand for the proposition that a mistake about the validity of a tax constitutes a mistake of law. We agree with their reasoning and reaffirm that collection of an unauthorized tax constitutes a mistake of law, not a mistake of fact. *Id*., p83.

The Court went on to differentiate mutual mistakes of fact, such as that found in *Ford Motor Company, supra*, and mistakes of law.

> Ford and the assessors shared and relied on an erroneous belief about a material fact that affected the substance of the transactions...Specifically, Ford's property statements overstated the amount of its taxable property, including reporting the same property twice. As this mistake concerned a numeric value, it was inherently a factual mistake...Indeed, in reaching our decision in *Ford*, we did not consider or discuss the distinction between a mutual mistake of fact and a mistake of law. *Id*., pp83-84.

The Court also briefly discussed *Eltel, supra*, and concluded that "*Eltel* did not involve the validity of the underlying tax, which is a legal issue." *Id*., pp84-85. For these reasons, the Tribunal finds that there was no mutual mistake of fact in this case pursuant to MCL 211.53a and

that Petitioner's attempt to reach back to the 2005 tax year under this statute, in spite of the fact that the taxes may have been paid within three years of the date of the Petition, is without merit.

Because the Tribunal has jurisdiction in all proceedings involving Michigan's property tax laws, the Tribunal finds that Petitioner is correct and that Respondents' MCR 2.116(C)(4) Motion must be denied. On the other hand, the Tribunal finds Respondents' (C)(8) Motion must be granted. Petitioner has not stated a claim upon which relief can be granted as to the 2005 tax year and there are no facts that could be developed to justify recovery. Additionally, the Tribunal finds that there are no genuine issues as to any material fact and that Respondents are entitled to judgment as a matter of law. As such, Respondents' (C)(10) Motion is also granted. Therefore,

IT IS ORDERED that Respondents' Motion for Leave to File Supplement to Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that Respondents' Motion for Summary Disposition under MCR 2.116(C)(4) is DENIED.

IT IS FURTHER ORDERED that Respondents' Motions for Summary Disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10) are GRANTED.

IT IS FURTHER ORDERED that this case is DISMISSED.

MICHIGAN TAX TRIBUNAL

Entered: January 28, 2011 By: Patricia L. Halm