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

Toll MI III Limited Partnership,
Petitioner,

v MTT Docket No. 318363

Township of Northville,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER DENYING RESPONDENT'S MOTION TO DISMISS APPEAL

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENT PURSUANT TO MCR 2.116(C)(I)(1)

ORDER DISMISSING CASE

On January 8, 2007, Respondent filed a Motion requesting that this appeal be dismissed. In support of that Motion, Respondent states:

1. "This is a real property tax appeal for tax year 2005 concerning 51 residential lots in Northville Township."
2. "On May 16, 2006, the Tribunal entered an Order requiring mutual appraisal exchange and the filing of pre-hearing statements on or before 8/25/06."
3. "More than four months have passed since the appraisal exchange date, and neither party has filed an appraisal or filed a pre-hearing statement."
4. "Petitioner has failed to file and exchange appraisals and has failed to file a pre-hearing statement. Both of these documents should have been filed more than four months ago. If Petitioner now believes that no valuation issues exist, Petitioner has also failed to seek an Order setting aside the requirement of valuation exchange."
5. "Because of the Petitioner's letter dated April 6, 2006, it appears that this case has nothing to do with valuation, even though the Petition clearly raises valuation issues. As a result, the Respondent is unable to know how to proceed in this case."

On January 19, 2007, Petitioner filed an Answer to the Motion. In its Answer, Petitioner states:

1. "Petitioner raised the issue of Taxable Value in its original Petition. In conversations, and correspondence with counsel, Petitioner has made it clear to Respondent...that this appeal involves the issue of Taxable Value only. Now that there is binding precedent stating that a taxing authority may not increase taxable value to a developer on the basis of public service improvements without violating Const 1963 Art IX § 3, Petitioner has case law on which to go forward on this appeal...As the issues in this case are issues of law, rather than true cash value, appraisals are unnecessary.

Petitioner believes that Respondent's record cards in this matter will show the following relevant facts:

a. When public service improvements were added to Taxable Value;
b. The amount added to Taxable Value of each parcel as a result of infrastructure improvements."

2. "The only issues left after those facts are established are the legal issues of whether or not for tax year 2005, those improvements can be taxed to the developer without violating Const 1963 Art IX § 3."

Pursuant to the Tribunal's May 2, 2007 Order partially granting Petitioner's Motion to Amend its Petition, the 2005 and 2006 tax years only involve the issue of the subject property's taxable value. The May 2, 2007 Order also required Respondent to 1) file and serve an affidavit indicating when the public service improvements were added to the subject property's assessed and taxable values and confirm whether or not there was an addition to the subject property's 2005 taxable value for public service improvements; and 2) file and serve copies of the subject property's record cards indicating whether there was an addition for public service improvements in 2003.

On May 11, 2007, Respondent complied with the Tribunal's Order by filing and serving an affidavit addressing the issues raised in addition to copies of the applicable property record cards. Pursuant to the affidavit of James H. Elrod, the assessor for Northville Township:

1. "[T]here were no additions for public service improvements added to the taxable value of the subject properties for tax years 2006, 2005, or 2004."
2. "[P]rior to tax year 2004 the parcels that are the subject of this appeal did not exist."
3. "[P]rior to tax year 2004 the subject parcels were part of three acreage or 'parent' parcels, and those parcels are identified as 77-026-99-0002-701, 77-027-99-0009-005, and 77-028-99-0002-001."
4. "[The property record cards] show that for tax year 2003, the following amounts were added to assessed value and taxable value for the three parcels:

PARCEL NO.	BUILDING VALUE AV/TV
77-026-99-0002-701	$1,720,000.00
77-027-99-0009-005	$ 678,900.00
77-028-99-0002-001	$ 413,100.00

5. "[A]ccording to the information on [the property record cards], the Petitioner did not own the properties described in [the property record cards] as of the 2002 tax day (12/31/01) or the 2003 tax day (12/31/02). Rather the property was owned by Kirkland's West, LLC and conveyed to the Petitioner on February 3, 2003."

While Petitioner was provided an opportunity to respond to the information provided by Respondent, and ordered to provide information that there was an increase in the subject property's taxable value for the 2005 tax year, Petitioner did not do so.

Now that the Tribunal has the information necessary upon which to rule on Respondent's Motion to Dismiss, and the Tribunal has finalized MTT Docket No. 284952, a ruling on Respondent's Motion is necessary.

FINDINGS OF FACT

Pursuant to an Affidavit filed by Respondent's Assessor, James H. Elrod, and undisputed by Petitioner, the Tribunal makes the following findings of fact:

1. In 2002, public improvements were installed on Parcel Nos. 77-026-99-0002-701, 77-027-99-0009-005 and 77-028-99-0002-001. These parcels of property are located in Township of Northville (Respondent).
2. In 2003, pursuant to MCL 211.34d(1)(b)(viii), Respondent increased the assessed and taxable values for these parcels of property to account for these improvements.
3. On December 31, 2002, the 2003 tax day, these parcels of property were owned by Kirklands West, LLC.
4. Pursuant to a Property Transfer Affidavit filed on February 3, 2003, ownership of Parcel No. 77-026-99-0002-701 was transferred to Petitioner on that same date.
5. Prior to 2004, the parcel numbers under appeal did not exist; the parcel numbers under appeal (the subject property) were first added to Respondent's assessment roll for the 2004 tax year.
6. There were no additions for public service improvements added to the subject property's taxable value in the 2004, 2005 and 2006 tax years.

Additionally:

1. The Petition in this matter was filed on June 30, 2005.
2. The Petition included 51 parcels of real property.
3. Respondent's Answer asserts that Petitioner does not own several of the parcels of property under appeal.

CONCLUSIONS OF LAW

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

> The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved . . . All petitions required to be filed or served by a day during which the offices of the tribunal are not open for business shall be filed by the next business day. (MCL 205.735(3))

In this case, the Petition was filed on June 30, 2005. Therefore, the first tax year in which the Tribunal has jurisdiction is the 2005 tax year.

The requirements for assessing property and the formula for calculating taxable value are found in Article IX, §3, of the Constitution of the State of Michigan. 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.
>
> (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:
>
> (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. (Emphasis added.)

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

In this case, to arrive at the subject property's 2005 taxable value, the subject property's 2004 taxable value was multiplied by the rate of inflation, 1.023%. There were no additions or losses to the subject properties in 2005. Moreover, Petitioner has not asserted that there was a mathematical error in the calculation of the property's taxable value. As such, this is the end of the taxable value calculation required under MCL 211.27a for the 2005 tax year.

Sometime during calendar year 2002, public service improvements were installed on Parcel Nos. 77-026-99-0002-701, 77-027-99-0009-005 and 77-028-99-0002-001. One half of the value of the improvements installed on each property was added to that property's 2003 taxable value.

While it is clear under the Michigan Supreme Court's decision in *Toll Northville* that additions made to taxable value for installation of public service improvements under MCL 211.34d(1)(b)(viii) are unconstitutional, no such additions were made in the first tax year under appeal in this case, that being the 2005 tax year. The Tribunal simply has no statutory or constitutional authority under these circumstances to examine previous tax years and require that changes be made to the taxable values in those years.

There are numerous Michigan court decisions in which the Tribunal's decision not to address a property's prior taxable value for lack of jurisdiction has been upheld. For example, in *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006), the Michigan Court of Appeals dealt with a case remarkably similar to the case at hand. In an earlier case filed by the same petitioner, the petitioner challenged the 2002 assessment of his property by suing the respondent in circuit court instead of by filing a petition at the Tribunal. See *Leahy v Orion Twp*, unpublished opinion per curiam of the Court of Appeals, issued December 14, 2004 (Docket No. 250406). The circuit court dismissed the case for lack of jurisdiction. The Court of Appeals affirmed the circuit court's decision. In the following year, the petitioner filed a petition at the Tribunal challenging his property's 2003 taxable value. The Tribunal agreed with the petitioner that its 2003 taxable value was incorrectly calculated, but declined to address previous year's taxable values as the petitioner requested.

> The tribunal found that it lacked jurisdiction to revisit the 2000 through 2002 assessments because petitioner had
>
> > failed to appeal his assessment in said years [2000 through 2002]; therefore, those years are not currently before the Tribunal. As a general rule, the Tribunal lacks jurisdiction to revise a property's taxable value with respect to tax years not properly before it. An exception to this rule is set forth in MCL 211.53a...In the instant case, however, the mistake, if any, in Respondent's determination of the subject property's taxable value for 2000-2002 was not the result of a clerical error or mutual mistake of fact; thus the Tribunal does not have jurisdiction over those tax years, and no revisions may be made to the taxable values set forth by Respondent. *Leahy*, p529.

In his appeal to the Court of Appeals,

> . . . petitioner argued that the tax code requires property taxes to be based on the prior year's assessed value, so the prior year's value *must* be the correct value. Petitioner suggests on appeal that because the tribunal found that respondent had erred in the 2003 assessment, respondent must recognize its errors for the years 2000 through 2002, correct those assessments, and then recompute the 2003 taxable value. *Leahy*, p529.

The court rejected the petitioner's argument, holding that:

> Petitioner cannot be aggrieved by the tribunal's finding that respondent erroneously computed the 2003 assessment. Rather, petitioner challenges the 2003 assessment to the extent that it remains premised on an incorrect starting point. Thus, petitioner argues that the 2003 assessment remains erroneous because it was computed on the basis of the 2002 taxable value of $137,910. However, this challenge presents a collateral attack on a matter that is no longer subject to litigation.
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> Collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. The doctrine bars relitigation of issues when the parties had a full and fair opportunity to litigate those issues in an earlier action. A decision is final when all appeals have been exhausted or when the time available for an appeal has passed.
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> Petitioner's attempts to challenge the 2002 assessment culminated in this Court's affirmance of the circuit court's dismissal of petitioner's complaint. The record shows that, in that appeal, petitioner failed to take advantage of appellate opportunities to disturb the challenged assessment while he had time to do so. This Court affirmed both the circuit court's dismissal for lack of jurisdiction and its award of sanctions, rejecting petitioner's attempt to characterize his claim as a constitutional one. *Leahy, supra*, slip op at 1-2. Because the time available for appeals has run out, that assessment now stands as final. Therefore, petitioner is precluded from attacking the 2002 taxable value assessment. We agree with the Tax Tribunal that the starting point for the 2003 assessment was the final figure resulting from the initial 2002 assessment and petitioner's failed attempts to appeal it: $137,910. (Citations omitted.) *Leahy*, p530.
>
> Because the time available for appeals has run out, that assessment now stands as final. Therefore, petitioner is precluded from attacking the 2002 taxable value assessment. We agree with the Tax Tribunal that the starting point for the 2003 assessment was the final figure resulting from the initial 2002 assessment and petitioner's failed attempts to appeal it . . . . *Leahy*, p531.

In this case, Petitioner makes the same argument as the petitioner in *Leahy*. Petitioner requests that the Tribunal take into consideration the fact that the subject property's 2003 taxable value was increased due to an addition that was found to be unconstitutional in 2008 and remove the value of this addition from the property's 2005 taxable value. The Tribunal finds that the facts in this case are indistinguishable from those in *Leahy* since in both cases the "petitioner failed to take advantage of appellate opportunities to disturb the challenged assessment while he had time to do so." *Leahy*, p530. For the reasons set forth in *Leahy*, Petitioner's request must be denied. Another case dealing with an attempt to deal with "the legality of the precipitate increase" in a property's taxable value was *Springhill Associates, et al v Township of Shelby*, unpublished

opinion per curiam of the Court of Appeals, decided December 11, 2003, (Docket Nos. 247100, 247101, 247102, 247103, 247104, 247105). In that case, Petitioners argued that:

> [T]he Tax Tribunal erred in granting respondent's motions for summary disposition with regard to the 2002 taxable values of petitioners' property. The Tax Tribunal found that it lacked subject matter jurisdiction to consider the legality of the precipitate increase in the taxable values of petitioners' property from the year 2000 to 2001, because petitioners failed to timely file petitions protesting the 2001 taxable values of their property. The tribunal further found that because it could not alter the excessive 2001 taxable values, and because the 2002 taxable values were correctly calculated by the simple application of a statutory inflation factor to the 2001 taxable values, respondent was entitled to summary disposition. Petitioners contend that while they cannot request a refund for the 2001 taxes assessed on their property because of their failure to timely file a petition protesting the 2001 tax assessments, they are entitled to protest the 2002 assessments and to call for an examination of the taxable values of their property, even if this means examining the excessive increase in their 2001 taxable values. *Id*.

Before rendering its decision, the court reiterated applicable language from previous decisions.

> The Tax Tribunal has exclusive and original jurisdiction to review final decisions relating to assessments or valuations under the property tax laws. MCL 205.731(a). To invoke the tribunal's jurisdiction, a party in interest must file a written petition "on or before June 30 of the tax year involved." MCL 205.735(2). This statute "is not a notice statute, but a jurisdictional statute that governs when and how a petitioner invokes the Tax Tribunal's jurisdiction." *EDS v Flint Twp,* 253 Mich App 538, 542-543; 656 NW2d 215 (2002). Failure to correct assessments and evaluations in the manner and time provided by statute precludes later attack upon the assessment. *Auditor General v Smith,* 351 Mich 162, 168; 88 NW2d 429 (1958). The Tax Tribunal properly grants summary disposition to a respondent on the basis of the lack of subject matter jurisdiction when the petitioner fails to timely file the petition. *Kelser v Dep't of Treasury,* 167 Mich App 18, 20-21; 421 NW2d 558 (1988).

The court held that:

> The tribunal correctly determined that petitioners' failure to challenge the 2001 taxable values within the statutory period prevented the tribunal from hearing and deciding it. So the only question before the tribunal was whether the assessor properly applied the statutory inflationary factor to the 2001 taxable values of the petitioners' property when it determined the 2002 taxable values. Because there was no genuine issue of material fact that the assessor correctly made this simple calculation, the tribunal properly granted respondent's summary disposition motion . . . Petitioners argue that because they are challenging the 2002 taxable values and have properly invoked the tribunal's subject matter jurisdiction on this issue, they are entitled to have the tribunal reexamine the excessive increase in

> 2001 taxable values of their property. This is sophistry. A timely filed petition with regard to the 2002 taxable values restricts petitioners' proofs and the tax tribunal's inquiry to whether the 2002 taxable values were correctly calculated based on the 2001 taxable value. *Auditor General, supra.* It does not enable petitioners to circumvent the jurisdictional requirements of the Tax Tribunal. *Id.*

The Tribunal understands that, as an unpublished decision, *Springhill* is not binding. However, the Tribunal concurs with the court's analysis and finds the decision persuasive.

Similarly, in *Toll Northville v Township of Northville*, 272 Mich App 352; 726 NW2d 57 (2007), the court held that:

> Failure to correct assessments and evaluations in the manner and time provided by statute precludes later attack on the assessment. The Tax Tribunal properly grants summary disposition to a respondent on the basis of the lack of subject-matter jurisdiction when the petitioner fails to timely file the petition. *Id*., p360.

Given this, and for the reasons discussed herein, the Tribunal finds that because Petitioner failed to pursue relief in 2003, Petitioner may not now collaterally attack the 2003 taxable value in this appeal.

Having made this determination, the issue of whether the Court's holding in *Toll Northville Ltd and Biltmore Wineman, LLC v Township of Northville*, 480 Mich 6; 743 NW2d 902 (2008), should be applied retroactively must be addressed as this question was not addressed by the *Toll Northville* Court. "Sometimes a court which announces a change of law will refrain from going the next step to indicate how its new rule is to be applied. In such a situation, the prospective-retrospective issue is left for decision in a later case." *Riley et al v Detroit Board of Education*, 431 Mich 632, 643; 433 NW2d 787 (1988). In both *Toll Northville* and *WPW Acquisition Company v City of Troy*, 467 Mich 117; 643 NW2d 564 (2002), the Court refrained from going the next step. As such, it appears as though this is the "later case" in which this issue must be decided.

"Courts have acknowledged that resolution of the retrospective-prospective issue ultimately turns on considerations of fairness and public policy." *Riley*, p644. In *Pohutski, et al v City of Allen Park, et al*, 465 Mich 675; 641 NW2d 219 (2002), the Court stated that "[a]lthough the general rule is that judicial decisions are given full retroactive effect, a more flexible approach is warranted where injustice might result from full retroactivity." (Citations omitted.) *Id*. pp695-696.

> This court has overruled prior precedent many times in the past. In each such instance the Court must take into account the total situation confronting it and seek a just and realistic solution of the problems occasioned by the change...While fairness is a goal, certain rules or principles have evolved which provide guidance in resolving the retroactive-prospective dilemma. *Riley*, p645, quoting *Placek v Sterling Heights*, 405 Mich 638; 275 NW2d 511 (1979).

The resulting test to be applied in situations such as this was adopted from *Linkletter v Walker*, 381 US 618; 85 S CT 1731; 14 L Ed 2d 601 (1965), and set forth in *People v Hampton*, 384 Mich 669, 674; 187 NE2d 404 (1971). This test requires a court to weigh: "(1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect of retroactivity on the administration of justice," or, in a civil case, whether "the decision clearly [establishes] a new principle of law." *Riley*, pp645-646.

In *Bolt v City of Lansing***,** 238 Mich App 37; 604 NW2d 745 (1999), the Court of Appeals dealt with the question of whether the Supreme Court's decision in *Bolt v City of Lansing*, 459 Mich 152; 587 NW2d 264 (1999), should be given retrospective or prospective application.

> [A]s our Supreme Court recognized in *Lindsey v Harper Hospital*, 455 Mich 56, 58; 564 NW2d 861 (1997), particular circumstances may warrant only prospective application:
>
> > [W]here injustice might result from full retroactivity, this Court has adopted a more flexible approach, giving holdings limited retroactive or prospective effect. This flexibility is intended to accomplish the "maximum of justice" under varied circumstances.
>
> A key consideration under *Lindsey* in deciding if a decision should be given prospective or retrospective application is: Did the judicial decision announce a new and unexpected rule of law, or did it merely clarify, extend, or interpret existing law? A decision should be applied prospectively if the decision overrules settled precedent or decides an issue of first impression "whose resolution was not clearly foreshadowed" . . . Of course, a decision regarding an issue of first impression does not necessarily require prospective application. If the decision merely provides a clarified legal interpretation without announcing a new rule of law or a change in existing law, the decision should be retroactively applied. (Citations omitted.) *Id*., p750.

Having considered these things and the three-part test set forth in *People v Hampton*, the *Bolt* court concluded that the "decision announced a new and unanticipated rule of law concerning a significant public issue of first impression" and should be applied prospectively. *Id*., p45.

Applying the three-part test to the instant case, the Tribunal finds that the purpose to be served by the "new rule" set forth in *Toll Northville* was to declare MCL 211.34d(1)(b)(viii) unconstitutional. As to the second part of the test, the Tribunal finds that reliance on MCL 211.34d(1)(b)(viii) was extensive as it was relied upon for fourteen years, beginning in 1994 with the adoption of Proposal A. This reliance was not misplaced as "[s]tatutes are presumed constitutional unless the unconstitutionality is clearly apparent." *Toll Northville*, citing *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999), p11. "If tax legislation is at issue, then the presumption is especially strong. Until a taxing statute has been shown to 'clearly and palpably violate[] the fundamental law,' it will not be declared unconstitutional." (Citations omitted.) *Dana Corporation v Department of Treasury*, 267 Mich App 690, 694; 706 NW2d 204 (2005). In *Toll Northville*, the unconstitutionality of MCL 211.34d(1)(b)(viii) was not clearly

apparent. At best, the constitutionality of MCL 211.34d(1)(b)(viii) could not have been called into question until after the Michigan Supreme Court's decision in *WPW, supra,* in 2002, which was after the addition for public improvements was made to the subject properties' taxable value.

Finally, the third part of the test requires a court to determine whether the decision clearly establishes a new principle of law. The Tribunal finds that, as in *Bolt,* the Court's decision in *Toll Northville* announced a new and unanticipated rule of law concerning a significant public issue of first impression. Thus, under this test the decision in *Toll Northville* should be applied prospectively.

The *Bolt* Court also discussed the Michigan Supreme Court's decision in *Michigan Educational Employees Mutual Insurance Company v Morris*, 460 Mich 180, 189; 596 NW2d 142 (1999), wherein the Court set forth two other things to take into consideration when deciding the question of retrospective or prospective application. Specifically, the Court stated:

> [I]t has been stressed that "we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.". . . Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of non-retroactivity. (Citations omitted.) *Bolt*, p48.

Having weighed the merits and demerits, the Tribunal finds that a decision requiring retroactive application of the *Toll Northville* decision would produce substantial inequitable results. Since 1994, every assessing unit in Michigan in which "public improvements" have been installed, having no authority to otherwise ignore a statute, has increased the property's taxable value pursuant to MCL 211.34d(1)(b)(viii). Retroactive application of the *Toll Northville* decision would require each of these hundreds of units of government to review fourteen years of assessment rolls to determine which properties' taxable values were increased pursuant to MCL 211.34d(1)(b)(viii). Having done so, every unit of government that levied a millage against that taxable value would have to issue a refund of excess taxes paid. The result would be an extreme hardship that can only be avoided by prospective application.

The last argument that must be addressed is Respondent's argument that Petitioner did not own the property under appeal as of 12/31/2002, and that ownership transferred in 2003. This argument brings into play the statutory provisions governing transfer of ownership. 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 2004 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 2003. Pursuant to MCL 211.27a(3), to calculate the subject property's 2004 taxable value, the subject property's 2004 state equalized value becomes 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 the year after the value of the public service improvements were added to the property's taxable value.

Because there is no genuine issue of matter fact, the Tribunal finds that Respondent is entitled to summary disposition as a matter of law pursuant to MCR 2.116(C)(I)(1). On the other hand, the Tribunal finds that Respondent's Motion to Dismiss pursuant to TTR 247(4) is not warranted at this time.

Therefore,

IT IS ORDERED that Respondent's Motion to Dismiss Appeal is DENIED.

IT IS FURTHER ORDERED that Summary Disposition is GRANTED to RESPONDENT pursuant to MCR 2.116(C)(I)(1).

IT IS FURTHER ORDERED that this case is DISMISSED.

MICHIGAN TAX TRIBUNAL

Entered: March 21, 2011

By: Patricia L. Halm