



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

Empire Iron Mining Partnership and  
The Cleveland-Cliffs Iron Company,  
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-004900

Tilden Township,  
Respondent.

Presiding Judge  
Steven M. Bieda

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Order Granting Petitioner's Motion for Summary Disposition and Proposed Opinion and Judgment (POJ) on July 14, 2021. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

On July 21, 2021, the parties filed a joint stipulation to the POJ and requested that the Tribunal issue a Final Opinion and Judgment granting Petitioner's Motion for Summary Disposition.

The Tribunal has considered the stipulation and the case file and finds that the Administrative Law Judge's determination that the property at issue is not subject to the Low Grade Iron Ore Tax (LGIOT) is supported by the facts and applicable law, as is his determination that Petitioner is entitled to judgment as a matter of law. As such, the Tribunal adopts the POJ as the Tribunal's final decision in this case.<sup>1</sup> The Tribunal also incorporates by reference the Conclusions of Law contained in the POJ in this Final Opinion and Judgment. Therefore,

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

IT IS FURTHER ORDERED that the property's LGIOT assessment for the tax year at issue is CANCELLED.

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

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<sup>1</sup> See MCL 205.726.

### **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 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.

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By 

Entered: August 25, 2021

ejg

### **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



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MOAHR Docket No. 20-004900

Tilden Township,  
Respondent.

Presiding Judge  
Peter M. Kopke

PROPOSED ORDER GRANTING  
PETITIONER'S MOTION FOR SUMMARY DISPOSITION

PROPOSED OPINION AND JUDGMENT

On June 11, 2021, Petitioner filed a Motion in the above-captioned case requesting that the Tribunal render summary disposition in their favor. In the Motion, Petitioner claims that:

1. "At issue in this case is whether for tax year 2020, the subject property is subject to taxation pursuant to the Michigan Low Grade Iron Ore Act of 1987, MCL 211.621 *et seq*; MSA 13/157(1) *et seq*, (the 'Act'). The Act imposes a specific tax, which by its terms is in lieu of *ad valorem* taxation under the General Property Tax Act ('GPTA')."
2. "**For the tax year at issue**, the subject property did **not** constitute 'low grade iron ore mining property' and, therefore, is **not** subject to the tax imposed by the Act. Respondent's taxation of the subject property under the Act constitutes both an error of law and a fraud upon the taxpayer because the subject property does **not** constitute low grade iron ore mining property and the Act is not applicable."
3. "Indeed, **the Tribunal previously determined** that the subject property was **not** subject to the tax imposed by the Act for tax years 2018 and 2019 in four consolidated cases dealing with the subject property at issue in this case (in Tilden Township) and property in adjoining Richmond Township. See Exhibit 1, a copy of the Tribunal's January 9, 2020 Order Denying Respondents' Motion For Summary Disposition, Order Granting Petitioners' Summary Disposition Under MCR 2.116(I)(2), and Final Opinion And Judgment in Tribunal Docket No. 18-003877, consolidated with 18-003878, 19-003740, and 19-003742 (the 'Tribunal's Prior Order')."
4. "**The facts have not changed - the subject property is still not being**

**mined and the result in this case should be the same.”**

5. “The other Respondent in the prior cases - Richmond Township -- has agreed that the Act is not applicable and has cancelled its 2020 Ore Tax assessment. See Exhibit 2, Richmond Township’s April 29, 2021 Motion to Amend Answers and Affirmative Defenses in Tribunal Docket No. 20-004901.”
6. “Furthermore, the tax imposed by the Act is in lieu of taxation under the GPTA and Respondent has brought an action before the State Tax Commission to assess GPTA tax upon the subject property for 2020. See Respondent’s April 29, 2021 Response To Petitioner’s Notice Of No Valuation Disclosure at ¶3 (stating that “[i]n accordance with the [Tribunal’s Prior Order], Respondent filed an L-154 Petition with the State Tax Commission requesting that the property at issue in this case and in the [Tribunal’s Prior Order] be placed on the GPTA tax roll for tax years 2018, 2019, and 2020 as omitted property[.]”).”
7. “For the foregoing reasons . . . Petitioners respectfully request that the Tribunal issue an order granting summary disposition to Petitioners and ruling that Respondent’s 2020 Low Grade Iron Ore Tax assessment on the indefinitely idled subject property is inapplicable, null, and void.”

[Emphasis added.]

Respondent filed a Response to the Motion on July 1, 2021. In the Response, Respondent claim that:

1. “On June 11, 2021, Petitioner filed its Motion for Summary Disposition requesting that the Tribunal issue an order ruling that the 2020 Low Grade Iron Ore Tax assessment on the subject property is null and void. Petitioner’s Motion, p. 11.”
2. “After Petitioner’s motion was filed, the Court of Appeals issued its published decision in *Empire Iron Mining Partnership and Cleveland-Cliffs Iron Company v Tilden Township and Richmond Township*, COA Case No. 353098 (June 17, 2021). Based on the Court of Appeals’ ruling in that case that the Low Grade Iron Ore Tax does not apply to properties that were not mined during the tax years in question (COA Opinion, p. 8), Respondent does **not** contest that the Low Grade Iron Ore Tax does **not** apply to the subject property for the tax year at issue in this case.”
3. “Respondent **attempted to reach a stipulation** with Petitioner’s counsel stipulating to the inapplicability of the Low Grade Iron Ore Tax in this case but was unable to do so prior to the filing of this Response.”

[Emphasis added.]

The Tribunal has considered the Motion, the Response, and the case file, and finds that Petitioner is seeking summary disposition in its favor under MCR 2.116(C)(10). There are, however, no specific Tribunal rules governing motions for

summary disposition. Thus, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.<sup>1</sup>

Motions for summary disposition under MCR 2.116(C)(10) test the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.<sup>2</sup> Additionally, it has also been held that: (i) a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party,<sup>3</sup> (ii) the moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider and,<sup>4</sup> (iii) the burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists, (iv) where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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,<sup>5</sup> and (v) if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.<sup>6</sup>

With respect to the Motion, the Tribunal has carefully considered the Motion and finds that the granting of the Motion under MCR 2.116(C)(10) is warranted. More specifically, the subject property was assessed for the tax year at issue under the Tax on Low Grade Iron Ore Act (LGIOA) and the Petition appeals that LGIOA assessment only<sup>7</sup>; the Michigan Court of Appeals recently entered a decision involving the assessment of the property at issue for a prior tax year holding, as indicated by Respondent, that the LGIOA does **not** apply to properties that were **not** mined during

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<sup>1</sup> See TTR 215.

<sup>2</sup> See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). See also *Maiden, supra* at 120.

<sup>3</sup> See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

<sup>4</sup> See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

<sup>5</sup> See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

<sup>6</sup> See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

<sup>7</sup> See the December 30, 2020 Petition, ¶ 5.

the tax years in question<sup>8</sup>; Petitioner's claim that "[t]he facts have not changed [from the prior case] – the subject property is still not being mined [–] and the result in this case should be the same" was not rebutted by Respondent and is actually supported by both Respondent's actions in petitioning the Michigan State Tax Commission under MCL 211.154 to assess the property under the General Property Tax Act for 2020 and prior tax years as omitted property and Respondent's Response admission that they "attempted to reach a stipulation with Petitioner's counsel **stipulating to the inapplicability** of the Low Grade Iron Ore Tax in this case but was unable to do so prior to the filing of [their] Response."<sup>9</sup> [Emphasis added.] As such, there are no genuine issues of material fact and Petitioner is entitled to summary disposition in its favor as a matter of law.

### PROPOSED JUDGMENT

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

IT IS FURTHER ORDERED that the property's LGIOA assessment for the tax year at issue is CANCELLED.

### EXCEPTIONS

This is a Proposed Opinion and Judgment (POJ) and not a Final Opinion and Judgment (FOJ).<sup>10</sup> As such, the parties have 20 days from the below "Date Entered by Tribunal" to notify the Tribunal and the opposing party in writing, by mail or by electronic filing, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions.

The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.

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<sup>8</sup> See *Empire Iron Mining Partnership and Cleveland-Cliffs Iron Company v Tilden Township and Richmond Township*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (June 17, 2021).

<sup>9</sup> See the affidavits attached to the Motion. See also Petitioner's June 23, 2021 response to the Tribunal's June 14, 2021 Order requiring information, which was entered prior to the posting of the June 11, 2021 Motion for Summary Disposition to the Tribunal's docketing system.

<sup>10</sup> See MCL 205.726.

A copy of a party's written exceptions or response must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party.

Exceptions and responses filed by *facsimile* will not be considered.

Entered: July 14, 2021  
pmk

By 