STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

Aaron M Phelps,
Petitioner,

v

MTT Docket No. 16-002057

Courtland Township,
Respondent.

Tribunal Judge Presiding
Steven H Lasher

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

The Tribunal issued a proposed order denying Respondent's motion for summary disposition and granting Petitioner's motion for summary disposition ("POJ") on March 27, 2017. 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)."

Neither party has filed exceptions to the POJ.

The Administrative Law Judge ("ALJ") considered the testimony and evidence and made specific findings of fact and conclusions of law. The ALJ's determination is supported by the testimony and evidence and applicable statutory and case law.

Given the above, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[1] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

The property's TV, as established by the Board of Review for the tax year at issue, is:

Parcel Number: 41-07-09-400-001

Year	TV
2016	$60,326

[1] See MCL 205.726.

The property's final TV for the tax year at issue, as determined by the Tribunal, is:

Parcel Number: 41-07-09-400-001

Year	TV
2016	$35,824

IT IS SO ORDERED.

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

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

IT IS FURTHER ORDERED that Petitioner is NOT entitled to a refund of the property's ad valorem taxes paid for the 2016 tax year.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's qualified agricultural exemption as provided in this Final Opinion and Judgment within 20 days of entry of this Final Opinion and Judgment.

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

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[2] 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.[3] A copy of the motion must be served 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.[4] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[5]

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[2] See TTR 261 and 257.
[3] See TTR 217 and 267.
[4] See TTR 261 and 225.
[5] See TTR 261 and 257.

A claim of appeal must be filed 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."[6] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[7] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[8]

By Steven H. Lasher

Entered: May 2, 2017
ejg

[6] See MCL 205.753 and MCR 7.204.
[7] See TTR 213.
[8] See TTR 217 and 267.

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Aaron M. Phelps,
Petitioner,

v

MTT Docket No. 16-002057

Courtland Township,
Respondent.

Administrative Law Judge Presiding
Peter M. Kopke

ORDER GRANTING MICHIGAN FARM BUREAU'S
MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

PROPOSED ORDER DENYING
RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

PROPOSED ORDER GRANTING
PETITIONER'S MOTION FOR SUMMARY DISPOSITION

On January 18, 2017, Respondent filed a Motion requesting that the Tribunal render summary disposition in its favor pursuant to MCL 2.116(C)(10), as "there is no disputed issue fact and the Township is entitled to judgment as a matter of law." In the Motion, Respondent contends that:

1. "This case involves the 'resetting' [i.e., recapping] provisions of MCL 211.27a(8) for qualified agricultural property. The statute imposes the following requirement for 'resetting': 'The qualified agricultural property was qualified agricultural property **for taxes levied in 1999 and each year after 1999**.' [Emphasis in the original.] The prior property owners had **never** claimed the qualified agricultural property exemption from 18 mill local school operating millage afforded by MCL 211.7ee **prior to 2011**. Nevertheless, Petitioner claims that the taxable value of the property should be 'reset' if the property had been used in a manner that would have satisfied the definition of 'qualified agricultural property' for 1999 and every year since 1999, regardless of whether the prior property owners had actually claimed the qualified agricultural exemption." [Emphasis added.]

2. "The issue presented by this motion is a purely legal question: To qualify for 'resetting' under qualifying agricultural property, must all previous property owners have actually claimed the qualified agricultural exemption from local school operating taxes for 1999 and each year thereafter? If so, judgment must be entered in favor of the Township. If not, then this Tribunal must conduct an evidentiary hearing to determine whether the property was actually being used in such a manner that it would have qualified for each and every year between 1999 and 2010."

3. "Since 1999, the property has had four owners, including Mr. and Mrs. Phelps."

4. "The taxable value was 'uncapped' by virtue of the 2002 transfer to Kleinheksel. No uncapping occurred by virtue of the 2008 transfer from Kleinheksel to MBK Holding, LLC, because that entity claimed the exemption for transfers between entities under common control or members of an affiliated group . . . . **Had the 2002 uncapping event not occurred, the 2016 taxable value would have been $35,824**, which is what Mr. Phelps claims it should be . . . ." [Emphasis added.]

5. "With respect to exemption from the local school operating millage**, the property was subject to a principal residence exemption from 1999 through 2003. Neither a PRE nor a qualified agricultural exemption was claimed from 2003 through 2010. For the first time, MBK Holdings claimed a 100% qualified agricultural property exemption in 2011**." [Emphasis added.]

6. "Petitioner Aaron Phelps and his wife, Elizabeth Phelps, purchased the subject property on or about March 11, 2016 . . . . The Phelps executed and recorded an 'Affidavit Attesting that Qualified Agricultural Property Shall Remain Qualified Agricultural Property,' Treasury Form 3676, on or about March 16, 2016 . . . . It is the Township's intention to accept that affidavit, such that the 2016 taxable value of $60,326 will not become uncapped by virtue of the sale from MBK Holdings, LLC to the Phelps, and the 2017 taxable value will increase only by the lesser of the increase in the general price level or 5% . . . ."

7. "By letter dated March 29, 2016 . . . Mr. Phelps asserted that the 2017 taxable value should be calculated as if there had been no transfer of ownership since 1999. Following consultation with the Township attorney and the State Tax Commission, it was determined that MCL 211.27a(8) requires that the property had actually been receiving a qualified agricultural exemption for 1999 and every year since 1999. Accordingly, the assessor informed Mr. Phelps on May 4, 2016, that although the 2017 taxable value would not be uncapped by virtue of the 2016 transfer, the 2017 taxable value would not be reset pursuant to MCL 211.27a(8). Mr. Phelps filed this appeal within 35 days of that notification."

8. "Courtland Township's position is that the resetting provisions of MCL 211.27a(8) are available only if the subject property had **actually been receiving** the qualified agricultural exemption from local school operating taxes for 1999 and for each year thereafter. [Emphasis in the original.] It is not sufficient that the property could have met the definition of qualified agricultural property and may have been eligible for such an exemption. [Emphasis in the original.] The only potential factual issue with respect to that legal question is whether the subject property was or was not receiving the qualified agricultural property exemption from local school operating taxes for each of the years from and including 1999. Whether the property was used in such a manner that it could have qualified for such an exemption is irrelevant for purposes of this motion."

9. "That the property at issue had never received the qualified agricultural exemption from the local school operating millage prior to 2011 is **supported by the assessor's affidavit** . . . and we doubt that there will be any opposition to that. Therefore, the Township will have satisfied its burden of providing documentary evidence that there is no disputed issue of fact, and the Township is entitled to summary disposition as a matter of law." [Emphasis added.]

10. "Act 260 was initiated by Senate Bill 709. Substitute Senate Bill 709, passed by the Senate on October 12, 1999, included an exemption from uncapping for transfers of qualified agricultural property, with language similar to that ultimately adopted, but did not include the provision for resetting taxable value. The resetting provisions of subsections (8) and (9) were added by a substitute House version of Senate Bill 709 reflecting the recommendation by the House Committee on Agriculture Resource Management, passed by the House on June 7, 2000, and concurred by the Senate on June 8, 2000. The **Legislative Analysis of the House substitute** reflects a deliberate inclusion of the language 'for taxes levied' as one of the requirements for resetting . . . ."[1] [Emphasis added.]

11. "Claiming the exemption for qualified agricultural property 'for taxes levied' **requires either** that the property be classified as agricultural for equalization purposes, **or** that the owner file an affidavit claiming the exemption."[2] [Emphasis added.]

12. "Here it is **undisputed** that this property was classified as either residential vacant or residential improved every year **from 1999 through 2016**." [Emphasis added.]

13. "If the property is not classified as agricultural, the property owners **must file an affidavit** claiming the exemption (Treasury Form 2599) and the owners of this property **never did so until the 2011 tax year**." [Emphasis added.]

14. "For purposes of the exemption, 'qualified agricultural property' is defined by MCL 211.7dd(d). The determination of whether property meets this definition depends on the nature of agricultural use, and the extent of property put to that use. For purposes of this motion, however, it is irrelevant whether the Phelps parcel met the definition of 'qualified agricultural property' because it was not receiving the exemption from local school operating taxes prior to 2011."

15. "Applying this principle here: The phrase 'for taxes levied' **has no meaning unless** it means that the property **was actually receiving** the qualified agricultural exemption from local school operating taxes.[3] The construction urged by Mr. Phelps would rewrite this

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[1] See the House Legislative Analysis Section, *Addendum to Senate Fiscal Agency Analysis of SB 09 Dated 1-10-00*, (May 24, 2000).
[2] See MCL 211.7ee(2) and (4).
[3] Respondent cites *Aroma Wines & Equipment, Inc v Columbian Distribution Services, Inc*, 497 Mich 337, 345-56; 871 NW2d 136 (2015) in support of the "principle" relied upon. Respondent also cites *People v Miller*, 498 Mich 886; 869 NW2d 606 (2015), *Kincaid v City of Flint*, 311 Mich App 76; 874 NW2d 193 (2015), *Harbor Watch*

requirement to read: 'The qualified agricultural property was qualified agricultural property in 1999 and each year after 1999,' thus ignoring and rendering the phrase 'for taxes levied' meaningless and surplusage." [Emphasis added.]

16. "The phraseology of MCL 211.27a(o) does not require that qualified agricultural property be receiving the qualified agricultural exemption 'for taxes levied' in the year of the transfer, or for any particular time, in order to take advantage of the exemption from **uncapping** for the year following transfer of such property. In contrast, the provisions for resetting do **specifically require** that the property was qualified agricultural property 'for taxes levied' in 1999 and each year thereafter.[4] [Emphasis in the original.] This difference reflects a deliberate decision by the legislature that it was not necessary that property be receiving the qualified agricultural exemption 'for taxes levied' in order to claim the uncapping exemption, but that it was necessary that the property be receiving the exemption to qualify for resetting of the taxable value."

17. "The uncapping and resetting provisions for agricultural property were drafted in recognition of the need for practical and effective administration of the law, as well illustrated by this case. The determination of whether property meets the definition of 'qualified agricultural property' is a fact based determination requiring first an analysis of whether at least 50% of the property is devoted to any of the various 'agricultural uses' defined in MCL 324.36101(b). In addition, property, or portions of the property, used for commercial storage, processing, distribution, marketing, shipping or other commercial or industrial purposes do not qualify, so that needs to be determined. Moreover, in the case of a property which includes a residence, a determination must be made whether that residence is 'occupied by a person employed in or actively involved in the agricultural use . . . .' MCL 211.7dd."

18. "If Mr. Phelps' position is correct, and satisfying the definition of 'qualified agricultural property' is sufficient regardless of whether the exemption is granted, the local assessor and this Tribunal are faced with the daunting task of taking evidence to determine whether a property met the definition of qualified agricultural property 18 years ago, in 1999. If so, did it meet it again in 2000? If so, did it meet it in 2001? And so on for each and every year thereafter . . . ."

19. "To address this, the Legislature required that the property had actually received the qualified agricultural property exemption for property taxes for 1999 and each year thereafter. This can be easily verified from the historical assessment records. This

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Condominium Ass'n v Emmet County Treasurer, 308 Mich App 380; 863 NW2d 745 (2014), and *Robertson v DaimlerChryselr Corp*, 465 Mich 732, 748: 641 NW2d 567 (2002).

[4] Respondent cites *Tyler v Livonia Public Schools*, 220 Mich App 697, 701; 561 NW2d 390, 392 (1996), *aff'd*, 459 Mich 382; 590 NW2d 560 (1999) for the proposition that "phraseological distinctions in the subparagraphs of a statutory section presumably reflect a legislative intent to treat some things differently." Respondent also cites People v Carruthers, 301 Mich App 590, 604; 837 NW2d 16 (2003) and *United States Fidelity and Guarantee Co v Michigan Catastrophic Claims Ass'n* (On Rehearing), 484 Mich 1, 14; 795 NW2d 101 (2009).

requirement dovetails with provisions of the General Property Tax Act which allow for challenging the classification of property for equalization purposes (MCL 211.34c(16)), and for testing whether or not the property is truly qualified agricultural property (MCL 211.7ee(4)-(8)) on an annual basis when the facts are more easily determined, not 18 or more years later."

20. "In contrast, the requirement that the property had been receiving the qualified property tax exemption in the year of transfer is not included in the uncapping exemption in MCL 211.27a(7)(o) because the assessor need only to evaluate the use of the property during, at most, the prior 12 months. Thus, a record of receiving the exemption is not nearly so important."

21. "The legislative design acknowledges the incentive for property owners to claim the qualified agricultural property tax exemption, if it is available to them. A property owner might deliberately choose not to take advantage of the uncapping provisions of MCL 211.27a(7)(o) if unsure of the future use of the property and desiring to avoid the agricultural property recapture tax. However, there is no 'claw back' of the local school operating millage if the status of a qualified agricultural property for exemption purposes changes from year to year, and so there is no disincentive to claiming the qualified agricultural property tax exemption."

22. "The [*Red Arrow Diary*][5] decision does not indicate whether the properties had achieved . . . [the qualified agricultural property] status by virtue of classification as agricultural property or the filing of an exemption affidavit. Rather, it was simply accepted as true that the property was qualified agricultural property 'for taxes levied in 1999 and for each year after 1999."[6]

23. "Bulletins issued by the State Tax Commission also do not directly address the issue of whether a subject property must have been receiving the qualified agricultural exemption from local school operating taxes in order to be eligible for resetting, and only considered that question in the context of uncapping pursuant to MCL 211.27a(7)(o). See Bulletin No. 7 of 2006, Transfers of Qualified Agricultural Property (August 29, 2006). However, the position taken by Courtland Township here is consistent with staff advice from Timothy Schnelle of the State Tax Commission dated May 3, 2016, and attached to petitioner's own [petition][7] . . . . Mr. Schnelle pointed out that the Red Arrow Dairy case involved a situation in which the property had admittedly been receiving a qualified agricultural exemption since 1999, unlike the Phelps situation. In addition, he set forth

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[5] See the Order granting Petitioner's Motion for Summary Disposition issued by the Tribunal in *Red Arrow Dairy LLC v Hartford Twp* on November 30, 2007 (MTT Docket No. 320205).

[6] The parties stipulated that the properties at issue were qualified agricultural property for taxes levied in 1999 and for each year after 1999. Respondent also indicates that the decision in *Lyle Schmidt Farms, LLC v Mendon Twp*, 315 Mich App 824; ___ NW2d ___ (2016) also has no applicability as "the opinion specifically noted there was no dispute that the properties were qualified agricultural properties."

[7] Although Respondent uses the word "complaint," the only pleadings filed in the Tribunal are petitions and answers. See TTR 221(1).

the department's position that 'we interpret the statute as requiring actual qualified ag designation since 1999 . . . .' With respect to this, Mr. Schnelle further noted: 'How can one determine the amount of tilled acreage and the relative values of the residential and agricultural uses going back 18 years?'"

24. "Mr. Phelps cannot be heard now to complain that the property should have been included in one of the agricultural classifications in previous years. Each year, a property owner has the opportunity to dispute the classification of a parcel, with a right to appeal to the State Tax Commission. MCL 211.34c(6). In addition, a property owner may claim the qualified agricultural exemption by filing the required affidavit claiming the exemption, without seeking to change the classification. In 1999 through 2002, the Squires were claiming a principal residence . . . exemption for this property, so perhaps they did not see any necessity for challenging their classification or claiming exemption as a qualified agricultural property. But it is inexplicable why the Kleinheksels and their related company, MBK Holdings, never sought to claim the qualified agricultural exemption from 2003 through 2010 if they were entitled to it."

25. "Mr. Phelps also may not [be] heard to complain that the outcome here is unfair, or that the Tribunal should exercise powers of equity to 'treat as done that which should have been done.' This Tribunal and the Michigan Appellate Courts have made [it] absolutely clear that the Tribunal does not have powers of equity. See *Electronic Data Systems Corp v Flint Township*, 253 Mich App 538, 548[; 656 NW2d 215] (2002) . . . ."

On February 8, 2017, Petitioner filed a Response to Respondent's Motion and a Cross-Motion for Summary Disposition pursuant to MCR 2.116(C)(10). In the Response and the Cross-Motion, Petitioner contends that:

1. "This case concerns 60 contiguous acres of farmland . . . . [that] has continuously been 'qualified agricultural property.' In 2002, the owner of the Farm (who had owned it for over twenty-three years) sold it. Although the 2002 purchaser continued to farm the property as it had been farmed before, he never filed the Form 3676 Affidavit, resulting in the uncapping of the taxable value."

2. "In 2016, Petitioner purchased the Farm and promptly filed Form 3676, attesting that the Farm shall remain qualified agricultural property. Petitioner also requested that the Courtland Township Assessor revise the taxable value of the Farm to the value it would have had [had] no transfer occurred in [2003], pursuant to MCL 211.27a(8)."

3. "Petitioner has strictly complied with the recapping requirements established by MCL 211.27a(8): the Farm has and continues to meet the statutory definition of qualified agricultural property, and Petitioner has filed an affidavit attesting to continue using the Farm for qualified agricultural purposes. Therefore, Petitioner, not Respondent, is entitled to summary disposition and the Farm's taxable value should be re-capped."

4. "The statute does not mention, much less require, exemption from local school operating taxes (a matter wholly unrelated to taxable value) in order to re-cap. Rather, the statute requires only that the property be 'qualified agricultural property,' that is [sic] property 'devoted primarily to agricultural use.' The Farm is, and has been, 'qualified agricultural property.'"[8]

5. "The law . . . provides that a transfer of qualified agricultural property does not constitute a 'transfer of ownership' if the transferee files an affidavit with the local tax assessor and the register of deeds, attesting that the qualified agricultural property will remain qualified agricultural property. MCL 211.27a(o) . . . . However, for a variety of reasons (including simple ignorance), property owners do not always file Form 3676, resulting in the uncapping of taxable values. The Legislature addressed this situation in MCL 211.27a(8) by requiring assessors to 'revise' the current year's taxable value to the value of the property 'would have had if there had been no transfer of ownership . . . since December 31, 1999 . . . .' MCL 211.27a(8). The only requirements for recapping a property's taxable value are that the property (1) has been 'qualified agricultural property' without interruption since 1999, and (2) that the owner files an affidavit with the local assessor pursuant to MCL 211.27a(o)."

6. "Allowing the current owner to adjust the property's taxable value through this process facilitates the statute's purpose of easing tax burdens on farmers, thereby promoting the continued use of land for agricultural purposes. 2000 Leg. Analysis. Without such a provision, farmers in Petitioner's position, who have acquired agricultural land and intend to continue to use the land for agricultural purposes, would be stuck paying taxes on an inflated taxable value relative to other farmland."

7. "Petitioner has submitted his own affidavit, as well as affidavits from the Farm's prior owner (and deceased owner's daughter) attesting to . . . [the] fact [of the property's agricultural use]. See Exhibits A-C. The Township has no contrary evidence. Therefore, the fact that the Farm is (and has been) 'qualified agricultural property' is undisputed."

8. "MCL 211.27a(8) makes no mention of 211.7ee at all, much less incorporates by reference its exemption procedure, and the Township has no authority to impose additional requirements not authorized by the Legislature."[9]

9. "The statute is clear; all that is required is that the property be 'qualified agricultural property.' The Legislature defined qualified agricultural property as property **devoted primarily to agricultural use**. [Emphasis in the original.] The key word is 'devoted.' It

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[8] Petitioner cites *Keyzer v Christian Rest Home Ass'n*, 32 Mich App 286, 288; 188 NW2d 672 (1971) for the proposition that "[i]t is not for the court [or, in the instant case, the Tribunal] to add language to a clear and explicit statute." Petitioner also cited *Kirkaldy v Rim MD, et al*, 478 Mich 581, 587; 734 NW2d 201 (2007), *F. M. Sibley Lumber Co v Dep't of Revenue*, 311 Mich 654, 660; 19 NW2d 132 (1945).

[9] Petitioner cites *Davidson v Bugbee*, 227 Mich App 264, 267; 575 NW2d 574 (1977) (citing *Johnson v Marks, et al*, 224 Mich App 356, 358; 568 NW2d 689 (1997)) for the proposition that "[i]n construing a statute . . . omissions in the language are deemed to be intentional."

only matters how the property has been **used**, not whether an **exemption** from school taxes was granted by the Township. [Emphasis in the original.] The Township's position re-writes the law. Not only would a Form 2599 exemption have to be requested since 1999, but the Township would have to approve it. No such obstacle was interposed by the Legislation and none can now be demanded by the Township."[10]

10. ". . . the 2016 taxable value should have been $35,824, which in turn should have reduced the 2016 summer tax bill, which was unpaid when the recapping was requested. Consequently, Petitioner is now owed a partial refund for summer and winter 2016 taxes."

On February 17, 2017, Respondent filed a Response to Petitioner's Motion. In the Response, Respondent contends that:

1. "Petitioner did not contest that the property had not been receiving the qualified agricultural exemption from property taxes for 1999 and each year thereafter. Rather, Petitioner takes the position that such exemption is not a prerequisite to resetting."

2. "Considering the difficulty, expense, and burden on staff, the Township does not intend to contest the Affidavits filed by Petitioner. Indeed, such burden on the taxing unit is the reason why the resetting statute requires confirmation of agricultural use by reference to the easily verifiable fact of whether the property had been receiving the qualified agricultural exemption for 1999 and each year thereafter."

3. "The Township's position is that the actual use of the property is irrelevant, and that the Petitioner is not eligible for resetting unless the property had been receiving the qualified agricultural exemption from local school operating taxes for 1999 and every single year thereafter. Indisputably it was not."

On February 27, 2017, the Michigan Farm Bureau ("Farm Bureau") filed a Motion requesting that the Tribunal permit it to file an Amicus Curiae brief in support of Petitioner. In the Motion, the Farm Bureau contends that ". . . [the] Farm Bureau has determined that resolution of the legal issue in this case will significantly impact the owners of farmland throughout the state" and ". . . [the] Amicus Brief . . . offers additional analysis and different perspectives on the legal issue and that the Brief will aid the Tribunal in reviewing the pending motions."

The Tribunal has reviewed the Motions, the Responses, and the case file and finds the resolution of the legal issue may, in fact, "significantly impact the owners of farmland throughout the state" and that the amicus brief, although unnecessary, does provide some marginal assistance in

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[10] Petitioner cites *Eldenbrady v City of Albion*, 294 Mich App 251, 254; 816 NW2d 449 (2011) for the proposition that "[t]he words contained in the statute provide . . . the most reliable evidence of the Legislature's intent" and *Pohutski v City of Allen Park*, 465 Mich 675, 638; 641 NW2d 219 (2002) for the proposition "[w]here the language is unambiguous, 'we presume that the Legislature intended the meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous."

resolving that issue.[11] As a result, the Farm Bureau has shown good cause to justify the granting of its Motion.

With respect to the parties' motions, there is no specific Tribunal rule governing motions for summary disposition. Nevertheless, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[12] In that regard, a motion filed under MCR 2.116(C)(10) tests the factual support for Petitioner's claim based upon the Tribunal's consideration of all pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties "in the light most favorable to the party opposing the motion."[13] Further, the Tribunal may only grant such motions if the parties' submissions show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.[14] If it is, however, determined that an asserted claim can be supported by evidence at trial, the motion under (C)(10) must be denied.[15] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[16] 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.[17] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[18]

Here, Respondent contends that the property is not entitled to have its taxable value "reset" because the property had not "actually been receiving the qualified agricultural exemption from local school operating taxes for 1999 and for each year thereafter." In support of its argument, Respondent indicates that the resetting of the taxable value would render the phrase "for taxes levied" meaningless contrary to principles of statutory construction.[19] More specifically, Respondent is asking the Tribunal to interpret that phrase so as to limit the "resetting" to properties that have annually received qualified agricultural exemptions only.[20]

Although the applicable statutes are not strictly tax exemption statutes, they do provide for an exception to full taxation. As such, they are sufficiently similar to exemption statutes so as to

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[11] See TTR 223(7).
[12] See TTR 261 and 215.
[13] See *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 187 (1999) and *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).
[14] See *Smith v Globe Life Insurance Co*, 460 Mich 446, 454-5; 597 NW2d 28 (1999) and *Quinto, supra* at 362.
[15] See *Arbelius v Poletti*, 188 Mich App 14, 18; 469 NW2d 436 (1991).
[16] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[17] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[18] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).
[19] See MCL 211.27a(8)(a).
[20] Although Respondent makes this argument, it does recognize that the property received a qualified agricultural exemption beginning in 2011. In that regard, there is some question as to why the property was receiving a principal residence exemption ("PRE") from 1999 to 2003 that is not addressed by Petitioner's affidavits, as those affidavits merely indicate that the property was "primarily devoted" to agricultural uses during those years and from 2004 to 2010. The fact that Respondent did, however, grant the property a qualified agricultural exemption of 100% beginning in 2011 does, however, address concerns regarding related buildings. See MCL 211.7dd(d)

require that they be "strictly construed in favor of the taxing authority."[21] That does not, however, mean that the Tribunal "should give a strained construction which is adverse to the Legislature's intent." Nevertheless, the term or, more appropriately, phrase "for the taxes levied" is not, unfortunately, defined and, as a result, the Tribunal is required to interpret that phrase to "glean the Legislature's intent."[22] Any such interpretation does, however, begin with a review of the plain language of the statutes at issue.[23] In that regard, MCL 211.27a(7) provides, in pertinent part:

> Transfer of ownership does not include the following:
>
> (o) . . . a transfer of qualified agricultural property, if the person to whom the qualified agricultural property is transferred files an affidavit with the assessor of the local tax collecting unit in which the qualified agricultural property is located and with the register of deeds for the county in which the qualified agricultural property is located attesting that the qualified agricultural property will remain qualified agricultural property . . . . If property **ceases** to be qualified agricultural property **at any time after a transfer** subject to this subdivision, all of the following shall occur:
>
> (i) The taxable value of that property . . . shall be adjusted under subsection (3) as of the December 31 in the year that the property . . . **ceases** to be qualified agricultural property . . . .
>
> [Emphasis added.]

The phrase "for taxes levied" is not contained in this portion of the statutory scheme relating to transfers of qualified agricultural property (i.e., uncapping) and said omission is considered "intentional."[24] There is also no requirement that the property have a qualified agricultural exemption. Rather, the statute merely requires the property to be "qualified agricultural property" and indicates that said status can "cease" at any time, which is consistent with the requirements for the granting and rescission of a qualified agricultural exemption.[25]

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[21] See *Ashley Capital, LLC v Dep't of Treasury*, 314 Mich App 1, 7; 884 NW2d 848 (2015) (i.e., "'tax statutes that grant tax credits or exemptions are to be narrowly construed in favor of the taxing authority because such statutes reduce the amount of tax imposed'" citing *Alliance Obstetrics & Gynecology, PLC v Dep't of Treasury,* 285 Mich App 284, 286; 776 NW2d 160 (2009)).

[22] See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664-65; 378 NW2d 737 (1985).

[23] See *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014) (i.e., "[t]he primary goal of statutory interpretation 'is to discern and give effect to the intent of the Legislature'" citing *Lafarge Midwest, Inc v Detroit,* 290 Mich App 240, 246; 801 NW2d 629 (2010)).

[24] See *Bronson Methodist Hospital v Allstate Ins Co*, 286 Mich App 219, 228; 779 NW2d 304 (2009) (i.e., the Legislature "is presumed to know the rules of statutory construction and therefore its use or omission of language is generally presumed to be intentional").

[25] See MCL 211.7ee(4) (i.e., "the assessor **shall determine if** the property is qualified agricultural property **and if so** shall exempt the property from the collection of the tax as provided in subsection (1) until December 31 of the year in which the property is **no** longer qualified agricultural property **as defined in section 7dd**") and 211.7ee(5) (i.e., "[n]ot more than 90 days after all or a portion of the exempted property is **no** longer qualified agricultural property,

As for the recapping portion, MCL 211.27a(8) provides, in pertinent part:

> **If all of the following conditions are satisfied**, the local tax collecting unit shall revise the taxable value of qualified agricultural property taxable on the tax roll in the possession of that local tax collecting unit to the taxable value that qualified agricultural property would have had if there had been no transfer of ownership of that qualified agricultural property since December 31, 1999 and there had been no adjustment of that qualified agricultural property's taxable value under subsection (3) since December 31, 1999:
>
> (a) The qualified agricultural property **was qualified agricultural property for taxes levied in 1999 and each year after 1999**.
>
> (b) The owner of the qualified agricultural property **files an affidavit** with the assessor of the local tax collecting unit **under subsection (7)(o)**.
>
> [Emphasis added.]

Although the phrase "for tax levied" is contained in this portion of the statutory scheme, the statute does not specifically require that the property had to have had a qualified agricultural exemption for the 1999 tax year and each year after 1999. Rather, the plain language of the statute requires the property to have been qualified agricultural property during that time period, which is consistent with Petitioner's offered interpretation of that phrase. More specifically, the disputed phrase is one that is, in fact, commonly used in the General Property Tax Act to denote the effective date of particular statutory provisions (i.e., "[f]or taxes levied after December 31, 2002," etc.)[26] and the Tribunal has a responsibility to read the contested portion of the statute in relation to the Act so as to ensure that the statutory provisions "work in mutual agreement."[27] Additionally, said phraseology seems to have acquired a particular meaning in the Act and should be construed accordingly.[28]

As for Respondent's reliance on the bill analysis prepared by the House Legislative Analysis Section in support of the "deliberate inclusion" of the phrase, said reliance is misplaced, as the Michigan Court of Appeals has stated that "staff-prepared legislative analysis does not 'summarize the intentions of those who have been designated by the Constitution to be

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the owner shall rescind the exemption for the applicable portion of the property by filing with the local tax collecting unit a rescission form prescribed by the department of treasury"). [Emphasis added.]

[26] See MCL 211.2, MCL 211.7o, MCL 211.7cc, MCL 211.7dd, and MCL 211.79.

[27] See *Spartan Stores*, *supra* at p 569. See also *G C Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 420-21; 662 NW2d 710 (2003) (i.e., "the emphasized language does not stand alone, and thus it cannot be read in a vacuum . . . . [i]nstead, [i]t exists and must be read in context with the entire act, and the words and phrases used there must be assigned such meanings as are in harmony with the whole of the statute" citing *Arrowhead Dev Co v Livingston Co Rd Comm*, 413 Mich 505, 516; 322 NW2d 702 (1982)).

[28] See *Bronson Methodist Hospital*, *supra* at p 223 (i.e., "[w]here words 'have acquired a peculiar and appropriate meaning in the law,' they should be construed according to that meaning" citing *Feyz v Mercy Memorial Hospital*, 475 Mich 663, 673; 719 NW2d 1 (2006)).

participants in this legislative process' and therefore 'should be accorded very little significance by courts when construing a statute.'"[29] Nevertheless, it is clear that the object of the statute and the harm it was designed to remedy related to the continuation of farmland with a remedy, albeit punitive in nature, providing for a recapture of taxes should the property no longer be primarily devoted to agricultural use.[30] In that regard, the amendment adding the language at issue did not become effective until March 28, 2001.

As for the definition of "qualified agricultural property," MCL 211.27a(11)(f) provides "[q]ualified agricultural property" means that term as defined in section 7dd" and MCL 211.7dd(d) provides, in pertinent part:

> "Qualified agricultural property" means unoccupied property and related buildings **classified as agricultural, or** other unoccupied property and related buildings located on that property **devoted primarily to agricultural use** as defined in section 36101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.36101. Related buildings include a residence occupied by a person employed in or actively involved in the agricultural use and who has not claimed a principal residence exemption on other property . . . . Property used for commercial storage, commercial processing, commercial distribution, commercial marketing, or commercial shipping operations or other commercial or industrial purposes is not qualified agricultural property. **A parcel of property is devoted primarily to agricultural use only if more than 50% of the parcel's acreage is devoted to agricultural use.** An owner shall not receive an exemption for that portion of the total state equalized valuation of the property that is used for a commercial or industrial purpose or that is a residence that is not a related building . . . .
>
> [Emphasis added.][31]

The phrase "for taxes levied" is not in the statutory definition of "qualified agricultural property" and the provision does not condition the status of property as qualified agricultural property based on the issuance of a qualified agricultural exemption. Rather,

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[29] See *Ford Motor Co v Dep't of Treasury*, 313 Mich App 572, 587; 884 NW2d 587 (2015), *appeal denied*, 887 NW2d 799 (2016) citing *In re Certified Question*, 468 Mich 109, 115 n. 5; 659 NW2d 597 (2003).

[30] See VanGessel v Lakewood Public Schools, 220 Mich App 37, 41; 558 NW2d 248, 251 (1996) citing *ABC Supply Co v City of River Rouge*, 216 Mich App 396, 398; 549 NW2d 73 (1996).

[31] MCL 324.36101(b) provides:

> "Agricultural use" means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; maple syrup production; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.

the definition requires the property to either be classified as agricultural property or that the property be primarily devoted to agricultural use.

Given the above, Respondent's contention that the Legislature included the phrase "for tax levied" as an indication that the issuance of a qualified agricultural exemption was a prerequisite to recapping is strained at best and "courts may not read into the statute a requirement that the Legislature has seen fit to omit."[32] Although Respondent's contention relative to the efficient administration of the said recapping has some merit, said administration does not justify the imposition of a requirement not provided by law.[33] Further, any difficulty in said administration is alleviated by the burden that an owner or, more appropriately, transferee would have in establishing that the property was qualified agricultural property for taxes levied in 1999 and each year after by a preponderance of evidence, which in this case has been established by the submission of Petitioner's affidavits and Respondent's failure to contest those affidavits.

Said determination is consistent with a prior decision rendered by the Tribunal.[34] More specifically, the Tribunal specifically found in that case that "[p]roof that the subject property is qualified agricultural property and a Form 3676 affidavit attesting to the property's continued use of qualified agricultural property is all that section 8 requires."[35] Although Respondent contends that the Tribunal did not in that case consider the question at issue in this case (i.e.,

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[32] See *Book-Gilbert v Greenleaf*, 302 Mich App 538, 542; 840 NW2d 743, 745-46 (2013) citing *In re Hurd–Marvin Drain,* 331 Mich 504, 509; 50 NW2d 143 (1951) and *Mich Basic Prop Ins Ass'n v Office of Fin & Ins Regulation,* 288 Mich App 552, 560; 808 NW2d 456 (2010).

[33] The Court of Appeals also stated in *Book-Gilbert*, supra at p 542:

> "When the Legislature fails to address a concern in the statute with a specific provision, the courts cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose." *Mich Basic Prop Ins Ass'n,* [supra] . . . at [p] 560 . . . .

[34] See *Red Arrow Dairy, supra.*

[35] The properties at issue in both *Red Arrow Dairy* case and the *Lyle Schmidt Farms* case were considered qualified agricultural property and entitled to the recapping. Neither case indicated that the properties were required to also have a qualified agricultural exemption to be entitled to said recapping. Rather, the Court of Appeals in *Lyle Schmidt Farms, supra* at p ___ stated:

> "Courts may **not** speculate regarding legislative intent **beyond** the words expressed in a statute. Hence, **nothing may be read into a statute that is not within the manifest intent of the Legislature as derived from the act itself.**" *Mich Ed Ass'n v Secretary of State,* 489 Mich 194, 217-218; 801 NW2d 35 (2011) . . . . **"The words used by the Legislature are given their common and ordinary meaning.**" *Joseph v Auto Club Ins Ass'n,* 491 Mich 200, 206; 815 NW2d 412 (2012).
>
> [Emphasis added.]

In that regard, the "common and ordinary meaning" of the phrase or phraseology when analyzed by its grammatical components (i.e., the phrase "was qualified agricultural property" is a past participle verb, while "for taxes levied in 1999 and each year after 1999" is a prepositional phrase modifying that verb) merely indicates when the property was required to be qualified agricultural property.

whether the property was required to have been receiving a qualified agricultural exemption) given that it was undisputed that the property was qualified agricultural property, said contention is without merit, as the question was specifically addressed as the Tribunal did not find or otherwise hold that the property was also required to have received a qualified agricultural exemption to be entitled to recapping. Additionally, Respondent's reliance on statements made by a representative of the Michigan State Tax Commission ("STC") is also misplaced because those statements are unsupported and "the tribunal is the final agency for the administration of property tax laws."[36]

Finally or, more importantly, the Tribunal finds that there is no genuine issue of material fact with respect to the status of the property as qualified agricultural property for the 1999 tax year and each after 1999 and that Petitioner is entitled to summary judgment as a matter of law. More specifically, the submitted documents establish that the property was qualified agricultural property during that time period and, as a result, was, based on the filing of Petitioner's March 16, 2016 affidavit, entitled to a recapping or recalculation (i.e., resetting) of the property's taxable value for the 2016 tax year as if there had been no transfer since 1999 in the amount indicated herein.[37] Petitioner is not, however, entitled to a refund of the taxes paid for the 2016 tax year, as the property's taxable value is being proposed for "adjustment under subsection (8)" by this decision, which is occurring after the collection or payment of taxes for that tax year.[38] Therefore,

IT IS ORDERED that the Michigan Farm Bureau's Motion for Leave to File Amicus Curiae Brief is GRANTED.

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

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

IT IS FURTHER ORDERED that the property's taxable value (TV) for the tax year at issue is as follows:

Parcel Number: 41-07-09-400-001

Year	TV
2016	$35,824

IT IS FURTHER ORDERED that Petitioner is NOT ENTITLED to a refund of the property's ad valorem taxes paid for the 2016 tax year.

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[36] See MCL 205.753(1).

[37] See MCL 211.27a(8) (i.e., "[i]f all of the following conditions are met, the local tax collecting unit **shall** revise the taxable value of qualified agricultural property . . . .") and *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518, 531–32; 817 NW2d 548, 554 (2012). [Emphasis added.]

[38] See MCL 211.27a(9) (i.e., "[i]f the taxable value of qualified agricultural property is adjusted under subsection (8), the owner of that qualified agricultural property is **not** entitled to a refund for any property taxes collected under this act on that qualified agricultural property **before** the adjustment under subsection (8)").

JUDGMENT

This is a proposed decision ("POJ") prepared by the Michigan Administrative Hearings System. It is not a final decision. As such, no action should be taken based on this decision. In that regard, the Tribunal will, after the expiration of the time period for the opposing party to file a response to exceptions, will review the case file, including the POJ and all exceptions and responses, if any, and:[39]

a. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
b. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

The 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, that 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 with the Motion, the Response, and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to or electronically served on that party (i.e., email), **if** the parties agree to service by email, to file a written response to the exceptions.[40]

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

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

By Peter M. Kopke

Entered: March 27, 2017
Ejg/pmk

[39] See MCL 205.726.
[40] See MCL 205.762(2) and TTR 289(1) and (2).