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

Great Lakes Gas Transmission LP,
ANR Pipeline Company,
Petitioners,

v

MTT Docket No. 16-001403
(Consolidated)

Forest Township,
Almont Township,
Respondents.

Tribunal Judge Presiding
Steven H Lasher

ORDER GRANTING PETITIONERS' MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On August 31, 2016, Petitioners filed a motion pursuant to MCR 2.116(C)(10) requesting that the Tribunal enter summary judgment in their favor in the above-captioned case. More specifically, Petitioners contend that Respondents illegally increased the Taxable Values of the subject parcels for the 2016 tax year.

On September 21, 2016, Respondent, Forest Township filed a response to the Motion and Respondent, Almont Township filed a response to the Motion incorporating the response filed by Forest Township on September 23, 2016. More specifically, Respondents contend that Petitioners' motion is premature, as necessary discovery must be completed.

The Tribunal has reviewed the Motion, responses, and the evidence submitted and finds that granting Petitioners' Motion for Summary Disposition is warranted at this time.

PETITIONERS' CONTENTIONS

In support of their Motion, Petitioners state that (i) the State Tax Commission determined that a 40% reduction factor should be applied to the Table J cost multipliers for Petitioners' pipeline property for the 2014, 2015 and 2016 tax years, (ii) Respondents applied that 40% reduction factor to Petitioners' property for tax years 2014 and 2015, but did not do so for the 2016 tax year, resulting in a substantial increase in the assessed values of the subject properties, and (iii) Respondents also increased the 2016 taxable values of the subject properties to be consistent with the assessed values. Petitioners contend that (i) for three of the subject parcels, there were no additions or losses or omitted property and for parcel 25-09-85-036-009, there was a small amount of additions and losses, (ii) Respondents have violated the Michigan Constitution and statutes by increasing the taxable value of the subject properties in excess of the applicable rate of inflation (.03%),[1] (iii) any attempt by Respondents to justify the increase in taxable values beyond the rate of inflation based on an "omitted value" theory is not supported in the law.

RESPONDENTS' CONTENTIONS

In support of their respective responses, Respondents contend that (i) Petitioners' Motion for Summary Disposition was filed to prevent Respondents from conducting discovery to determine the basis of the State Tax Commission's decision to provide a 40% adjustment to the Table J cost multipliers for Petitioners' pipeline property, (ii) granting summary disposition is premature if discovery has not been completed, (iii) local authorities are granted the ability to review determinations of taxable value made by the State Tax Commission, and (iv) because municipalities are bound by a duty to make "reasonable and just" assessments, Respondents are

[1] Petitioners confirm that a slight adjustment to the 2016 taxable value for parcel 25-09-85-036-009 beyond the rate of inflation is appropriate to account for the additions and losses occurring during 2015.

not bound by the State Tax Commission's direction to apply a 40% economic factor to the Table J multipliers.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[2] In this case, Petitioners move for summary disposition under MCR 2.116(C)(10).

Summary disposition under MCR 2.116(C)(10) tests 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.[3] In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.[4]

The Michigan Supreme Court has established that 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.[5] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[6] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[7] Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-

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[2] See TTR 215.
[3] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).
[4] See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).
[5] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[6] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[7] *Id.*

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.[8] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[9]

CONCLUSIONS OF LAW

Respondents contend that the Tribunal should not entertain Petitioners' motion until discovery is complete. Respondents state that Petitioners' responses to their discovery requests, which focused on identifying the information that Petitioners gave to the State Tax Commission that was concluded to support application of an economic factor in the valuation of Petitioners' personal property in 2013 and subsequent tax years, were incomplete, and that follow-up discovery is therefore necessary. Citing *Vill of Dimondale v Grable* [10] and *Signature Villas LLC v City of Ann Arbor,* [11] Respondents contend that summary disposition is premature if it is granted before discovery is complete, and that the relevant question is whether further discovery stands a fair chance of uncovering factual support for the opposing party's position. Respondents also contend that they have a statutory right to the information sought. For all of the reasons discussed below, however, the Tribunal disagrees.

The information sought by Respondents is irrelevant to this appeal because it speaks solely to the valuation of Petitioners' property for purposes of determining its true cash and assessed values and those values are not at issue; Petitioners dispute only the taxable values set by Respondent for the 2016 tax year. And regardless of whether Respondents are bound by the Commission's determination on the economic condition factor, they used that factor in

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[8] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[9] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).
[10] *Vill of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000).
[11] *Signature Villas LLC v City of Ann Arbor*, 269 Mich App 694, 705-706; 714 NW2d 392 (2006).

calculating the subject properties' assessments for the 2014 and 2015 tax years. The assessments, in turn, set the maximum taxable values for those years, and pursuant to MCL 211.31, the assessment roll, once confirmed by the March Board of Review, "shall be conclusively presumed by all courts and tribunals to be valid, and shall not be set aside except for causes hereinafter mentioned."[12] No such causes exist in this case, and neither Respondent nor the Tribunal has authority to adjust the prior years' assessments.[13] And to the extent that Respondents would, as posited by Petitioners, assert some sort of "omitted value" argument, that argument has previously been rejected both by this Tribunal and the Michigan Supreme Court.[14]

Further, Respondents do not have a statutory right to the information sought, and their entire argument on this point is based in misinterpretations and misstatements of the law. The terms "assessed value" and "taxable value" are not synonymous, yet Respondents use them interchangeably. Citing MCL 211.22(1), Respondents state that "[i]f an assessor is satisfied that the information provided to them regarding the *taxable value* of a property is incorrect, he may examine 'any person he or she believes has knowledge of the amount or value of any property owned, held, or controlled by the person neglecting, refusing, or omitting to be examined.'" The

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[12] *Id.* See also *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767-768, 314 NW2d 479, 481 (1981).

[13] MCL 211.53b provides for the correction of a qualified error, defined as "(a) A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes. (b) A mutual mistake of fact. (c) An adjustment under section 27a(4) or an exemption under section 7hh(3)(b). (d) An error of measurement or calculation of the physical dimensions or components of the real property being assessed. (e) An error of omission or inclusion of a part of the real property being assessed. (f) An error regarding the correct taxable status of the real property being assessed. (g) An error made by the taxpayer in preparing the statement of assessable personal property under section 19. (h) An error made in the denial of a claim of exemption for personal property under section 9o." MCL 211.53b(10)(a)-(f).

[14] "The Tribunal finds that MCL 211.27a and MCL 211.34d does not recognize either the uncapping of or increase to a property's taxable value for omitted VALUE of previously assessed existing tangible property. To treat the increase in market value of existing assets previously considered and assessed as an increase in the taxable value is inconsistent with the protection and purpose of Proposal A and Section 27a(2) of the Act. The only exception to this protection is when there is a physical addition of tangible property due to new construction, replacement construction, complete or partial remediation of environmental contamination, new public services or previously exempt property." *Enbridge Energy v Wells Twp*, 11 MTT 740 (Docket No. 276731) issued December 19, 2002. See also *WPW Acquisition Company v City of Troy*, 466 Mich 117; 643 NW2d 564 (2002).

statute, however, specifically refers to the statements required under section 19 of the GPTA, i.e., personal property statements.[15] And personal property statements, as prescribed by the Michigan Department of Treasury, solicit information pertaining to the *true cash value* of personal property for purposes of determining its *assessed value*.[16] Respondents also cite *City of Negaunee v State Tax Comm'n*[17] for the proposition that "assessors have the authority and discretion to re-examine and review assessments on individual parcels after the State Tax Commission has determined their taxable value." It was the true cash value set by the Commission in that case, however, not the taxable value, and the fact that an assessor may re-examine assessments does not translate into authority to re-examine taxable value established by prior assessments.[18] The *City of Ironwood v Gogebic Cty Bd of Comm'rs* [19] decision similarly speaks only to the Board of Review's power to review *assessments*.[20]

Taxable values are determined pursuant to the Michigan Constitution, as enacted by section 27a of the General Property Tax Act ("GPTA").[21] Absent a transfer of ownership or an

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[15] "If a supervisor, assessing officer, member of the state tax commission, or director or deputy director of the county tax or equalization department is satisfied that *a statement required under section 19* is incorrect, or if a statement required under section 19 cannot be obtained from the person, firm, or corporation whose property is assessed, a supervisor, assessing officer, member of the state tax commission, or director or deputy director of the county tax or equalization department may examine, under oath to be administered by the supervisor, assessing officer, member of the state tax commission, or director or deputy director of the county tax or equalization department, any person he or she believes has knowledge of the amount or value of any property owned, held, or controlled by the person neglecting, refusing, or omitting to be examined or to furnish the statement required under section 19." MCL 211.22(1) (emphasis added). MCL 211.19(2) provides, in pertinent part, that "the supervisor or other assessing officer shall require any person whom he or she believes has personal property in their possession to make a statement of all the personal property of that person whether owned by that person or held for the use of another to be completed and delivered to the supervisor or assessor by February 20 of each year." *Id.*

[16] See MCL 211.19(5).

[17] *City of Negaunee v State Tax Comm'n*, 337 Mich 169; 59 NW2d 136 (1953).

[18] *Id.* at 176.

[19] *City of Ironwood v Gogebic Cty Bd of Comm'rs*, 84 Mich App 464; 269 NW2d 642 (1978).

[20] *Id.* at 469-470.

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

addition within the meaning of MCL 211.34d, they cannot increase beyond the applicable rate of inflation for the tax year at issue.[22] Petitioners' affidavits establish that no transfers of ownership occurred in 2015, and with the exception of Parcel No. 25-09-85-036-009, there was no omitted or previously exempt property that might justify an increase beyond the capped amount for any of the subject parcels.[23] Respondent has not addressed any of these issues or established that a genuine issue of disputed fact exists with respect to the same. As such, and inasmuch as the remaining definitions of "additions" pertain only to real property, Respondents' taxable value increases are unlawful.[24]

JUDGMENT

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

IT IS FURTHR ORDERED that the taxable values for the subject properties should be revised as follows:

Parcel Number	2015 TV As Determined by Board of Review	2016 TV as Revised by Michigan Tax Tribunal
25-09-85-036-009	$3,512,000	$3,634,646
44-001-955-003-00	$306,100	$307,108
25-09-85-036-094	$491,700	$493,175
25-09-85-002-094	$126,100	$126,478

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the properties' and taxable values as finally provided in this Final Opinion and Judgment within

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

[23] During 2015, Great Lakes Gas disposed of assets with a total true cash value of $2,803 and acquired new assets with a total true cash value of $227,032.

[24] MCL 211.34d defines additions as (1) omitted real property, (2) omitted personal property, (3) new construction, (4) previously exempt property, (5) replacement construction, and (6) An increase in taxable value attributable to the complete or partial remediation of environmental contamination. MCL 211.34d(1)(b)(i)-(vi).

20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.[25] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, and (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%.

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

APPEAL RIGHTS

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

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[25] See MCL 205.755.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[26] 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.[27] 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.[28] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[29]

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."[30] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[31] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[32]

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[26] See TTR 261 and 257.
[27] See TTR 217 and 267.
[28] See TTR 261 and 225.
[29] See TTR 261 and 257.
[30] See MCL 205.753 and MCR 7.204.
[31] See TTR 213.
[32] See TTR 217 and 267.