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STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals

SIXARP, LLC d/b/a Praxis Packaging Solutions, Petitioner/Appellee,	Supreme Court:	_____
v	Court of Appeals:	361888
Byron Township, Respondent/Appellant.	MOAHR/Tax Tribunal:	21-000523

RESPONDENT/APPELLANT BYRON TOWNSHIP'S APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED IF THE COURT DEEMS IT APPROPRIATE

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Dated: October 3, 2023

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

JUDGMENT APPEALED FROM v

QUESTIONS PRESENTED FOR REVIEW vi

INTRODUCTION 1

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS 2

STANDARD OF REVIEW 7

ARGUMENT 8

I. *PARKVIEW* IS BAD LAW AND DOES NOT SUPPORT THE COURT OF APPEALS' CONCLUSION 10

A. *Parkview* 10

B. *Electronic Data Sys Corp v Flint Twp* 11

C. Subsequent Cases 12

II. THE NOTICE IN THIS CASE WAS ADEQUATE 18

A. The Due Process Issue 19

CONCLUSION 22

RELIEF REQUESTED 22

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

RECEIVED by MSC 10/3/2023 11:43:06 AM

TABLE OF AUTHORITIES

Cases

Bukowski v City of Detroit, 478 Mich 268; 732 NW2d 75 (2007) 8

By Lo Oil Co v De'pt of Treasury, 267 Mich App 19; 703 NW2d 822 (2005) 19

Delke v Scheuren, 185 Mich App 326; 460 NW2d 324 (1990) 19

Elec Data Sys Corp v Flint Twp, 253 Mich App 538; 656 NW2d 215 (2002) ..... passim

Fradco, Inc, v Dep't of Treasury, 495 Mich 104; 845 NW2d 81 (2014) 7

Grimm v Dep't of Treasury, 291 Mich App 140; 810 NW2d 65 (2010) 12

Henry v Laborers' Local 1191, 495 Mich 260; 848 NW2d 130 (2014) 8

Highland-Howell Dev Co LLC v Marion Twp, 478 Mich 932; 733 NW2d 761 (2007) 16, 17, 21

Howard v City of Detroit, 40 F4th 417 (CA 6, 2022) 1

In re Petition of Wayne Co Treasurer, 286 Mich App 108; 777 NW2d 507 (2009) 12

Jehovah Shalom Church of God v City of Detroit, unpublished per curiam opinion of the Court of Appeals, issued April 23, 2020 (Docket No. 248320) 13

Leahy v Orion Twp, 269 Mich App 527; 711 NW2d 438 (2006) 12

Liberty Hill Housing Corp v Livonia, 480 Mich 44; 746 NW2d 282 (2008) 8

McKesson Corp v Division of Alcoholic Beverages & Tobacco, 496 US 18 (1990) 20

Mich Mut Liability Co v Baker, 295 Mich 237; 294 [*664] NW 168 (1940) 19

Mich State Univ v Lansing, unpublished per curiam opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 250813) 6, 13

Mikelonis v Alabaster Twp, 307 Mich App 606; 861 NW2d 354 (2014) 12

Morehouse v Mackinaw Twp, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2009 (Docket No. 281483) 6, 14

New Covert Generating Co v Covert Twp, 334 Mich App 24; 964 NW2d 378 (2020) 1

Pacific Props v Shelby Twp, unpublished per curiam opinion of the Court of Appeals, issued March 1, 2005 (Docket No. 249945) 12

Parkview Mem Ass'n v Livonia, 183 Mich App 116; 454 NW2d 169 (1990) ..... passim

People v Mazur, 497 Mich 302; 872 NW2d 201 (2015) 8

Podmajersky v Dep't of Treasury, 302 Mich App 153 (2013) 8

President Inn Props, LLC v City of Grand Rapids, 291 Mich App 625; 806 NW2d 342 (2011) 7

Promed Healthcare v Kalamazoo, 249 Mich App 490; 644 NW2d 24 (2002) 8

Sixarp LLC d/b/a Praxis Packaging Solutions v Byron Twp, ____ Mich App ___; ___ NW2d ___ (2023) (COA Docket No. 361888) ..... passim

Strata Oncology Inc v Dep't of Treasury, ____ Mich App ___ ; ___ NW2d ___ (2023) (COA Docket No. 362431) 1, 18

Szymanski v Westland, 420 Mich 301; 362 NW2d 224 (1984) 12

W & E Burnside Inc v Bangor Twp, 77 Mich 950; 314 NW2d 196 (1978) 10, 13, 14, 16

W A Foote Mem'l Hosp v City of Jackson, 262 Mich App 333; 686 NW2d 9 (2004) 12

W E Burnside Inc v Bangor, 77 Mich App 618; 259 NW2d 160 (1977) 15, 17, 18

Wayne County v Michigan State Tax Commission, 261 Mich App 174; 682 NW2d 100 (2004) 8

Wells Fargo Rail Corp v State of Michigan, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 359399) 19

Wexford Medical Group v City of Cadillac, 474 Mich 192; 713 NW2d 734 (2006) 8

Statutes

MCL 205.701 8

MCL 205.735 ..... passim

MCL 205.735(1) 16

MCL 205.735(2) 12

MCL 205.735(2)m 11

MCL 205.735(a)(6) 17

MCL 205.735a 8, 17, 18, 19

MCL 205.735a(3) 9

MCL 205.735a(6) 9, 20, 21

MCL 211.1 8

MCL 211.24c 15

MCL 211.9m ..... passim

MCL 211.9m(2) 5

MCL 211.9m(2)(c) 9

MCL 211.9m(3) 5, 8

MCL 211.9n ..... passim

MCL 211.9n(2) 5

MCL 211.9n(2)(c) 9

MCL 211.9n(3) 5, 8

RECEIVED by MSC 10/3/2023 11:43:06 AM

MCL 41.726(3) 16

Court Rules

MCR 2.116(C)(4) 4, 8
MCR 7.215(J)(1) 11
MCR 7.305(B) 2
MCR 7.305(C)(2)(a) v

Constitutional Provisions

Const 1963, art 6, § 28 7

RECEIVED by MSC 10/3/2023 11:43:06 AM

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JUDGMENT APPEALED FROM

Respondent-Appellant Byron Township files this application for leave to appeal the Michigan Court of Appeals' August 22, 2023 decision in *Sixarp LLC d/b/a Praxis Packaging Solutions v Byron Twp*.[1] Pursuant to MCR 7.305(C)(2)(a) the application was timely made within 42 days of the decision.

[1] *Sixarp LLC d/b/a Praxis Packaging Solutions v Byron Twp,* ____ Mich App ___; ___ NW2d ___ (2023) (COA Docket No. 361888). As of the date of the application the decision has not yet been published, but was designated as "for publication." A copy is attached to this filing as Exhibit 1. The Michigan Tax Tribunal decision (Final Opinion and Judgment) is attached as Exhibit 2.

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QUESTIONS PRESENTED FOR REVIEW

I. Can the Michigan Tax Tribunal's statutorily defined jurisdiction be expanded by Michigan Courts?

Michigan Tax Tribunal:	No
Appellant:	No
Michigan Court of Appeals:	Yes
Appellee:	Yes

II. Can the Michigan Tax Tribunal be delegated equitable powers by the Michigan Court of Appeals?

Michigan Tax Tribunal:	No
Appellant:	No
Michigan Court of Appeals:	Yes
Appellee:	Yes (presumed)

III. Does a due process analysis consider all relevant information known by the claiming party?

Michigan Tax Tribunal:	Yes
Appellant:	Yes
Michigan Court of Appeals:	No
Appellee:	No (presumed)

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INTRODUCTION

By resurrecting and adopting *Parkview Mem Ass'n v Livonia*, the Court of Appeals has confirmed two lines of conflicting case law.[2] The *Parkview* line holds that the Tribunal's jurisdiction is malleable and can be bent, modified, or waived to accommodate due process. The other line, led by *Elec Data Sys Corp v Flint Twp* holds that the Tribunal's jurisdiction is strictly defined and cannot be modified.[3]

Appellant Byron Township ("Township") is not the only one to note these dueling lines of case law and the inherent contradiction it causes. The Michigan Court of Appeals held that "[t]his Court has been inconsistent when interpreting whether the prerequisites to the Tax Tribunal's acquisition of jurisdiction stated under MCL 205.735 implicated subject-matter jurisdiction—and therefore could not be waived or forfeited—or were merely procedural and could be waived or forfeited."[4] The Sixth Circuit Court of Appeals agreed in *Howard v City of Detroit*, noting that *Parkview* is sometimes followed, sometimes not, and that "[t]here is simply no clear, direct, published holding from the Michigan Court of Appeals or the Michigan Supreme Court that statutory jurisdictional requirements for the Michigan Tax Tribunal will be waived to remedy denials of due process."[5]

Perhaps most telling of the conflict is comparing this case with *Strata Oncology Inc v Dep't of Treasury*.[6] Both involved published Court of Appeals decisions issued 30 days apart that reviewed the Tribunal's jurisdiction. This case relied on *Parkview* for its analysis, *Strata* relied on *Electronic Data*. Two panels addressed the same issue within a month and found

[2] *Parkview Mem Ass'n v Livonia,* 183 Mich App 116; 454 NW2d 169 (1990).
[3] *Elec Data Sys Corp v Flint Twp*, 253 Mich App 538; 656 NW2d 215 (2002).
[4] *New Covert Generating Co v Covert Twp*, 334 Mich App 24, 50; 964 NW2d 378 (2020).
[5] *Howard v City of Detroit*, 40 F4th 417, 427 (CA 6, 2022).
[6] *Strata Oncology Inc v Dep't of Treasury*, ____ Mich App ___ ; ___ NW2d ___ (2023) (COA Docket No. 362431).

RECEIVED by MSC 10/3/2023 11:43:06 AM

different cases to be controlling. The tension between the two lines of case law is a regular occurrence, a legal principle of major significance, and relevant to Michigan's budget and revenue as it concerns the ability to bring untimely challenges to taxes.[7] As explained below, Township believes this Court should either grant the application or reverse in lieu and expressly overrule *Parkview*.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS[8]

Petitioner-Appellee Sixarp LLC ("Praxis")[9] believed its personal property was exempt from taxation as Eligible Manufacturing Personal Property under MCL 211.9m and/or MCL 211.9n for the 2021 tax year.[10] In early February 2021, Praxis filed Michigan Department of Treasury ("Treasury") form 5278 with Township requesting that the exemption be granted. On February 9, 2021, Township's assessor denied the exemption request using another Treasury form, the Assessor Denial of Request for Exemption as Eligible Manufacturing Personal Property, before the March Board of Review ("March Board") closed.[11]

Township's March Board met on March 2, 2021 for its organizational meeting, and again on March 8 and 9 to hear taxpayer petitions. Praxis did not appear at the March Board, schedule an appointment to appeal, nor submit a petition form or letter request.[12]

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[7]MCR 7.305(B).

[8]The facts have been briefed before the Tribunal and the Court of Appeals extensively. Only the facts relevant to the limited issues on appeal are set forth herein.

[9]"Praxis" was the designation assigned by the Court of Appeals and will be continued here for clarity.

[10]The statutes are functionally the same with the exception that 9m refers to "qualified new" property while 9n refers to "qualified previously existing" property. The statutes function in tandem.

[11]Township's Motion for Summary Disposition, Exhibit B, Tribunal docket lookup line item 19.

[12]*Id*. at Exhibit C.

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The failure to appeal to the March Board. Township provided Praxis several notices regarding the 2021 March Board and the need to appeal to that body for the Tribunal to have subject-matter jurisdiction if a further appeal was desired. The Assessor Denial stated that:

> A taxpayer who timely and properly filed form 5278 may appeal an assessor's denial of the EMPP exemption to the March Board of Review under MCL 211.30 . . . .
>
> Filing a protest with the Board of Review is necessary to protect your right to further appeal an EMPP exemption dispute to the Michigan Tax Tribunal. Michigan Tax Tribunal forms are available . . . .[13]

Township also sent Praxis, via mail, a Notice of Assessment reflecting the rejection of the exemption. That Notice stated, in part:

> IF YOU BELIEVE THESE VALUES ARE INCORRECT YOU MAY APPEAL TO THE BOARD OF REVIEW WHICH WILL MEET MARCH 8 FROM 9:00 A.M. TO NOON, AND FROM 1 P.M. TO 5 P.M. MARCH 9 FROM 1:00 P.M. TO 5:00 P.M. AND FROM 6 P.M. TO 9 P.M. TO APPEAL THESE VALUES, CALL 616-878-6033 BEFORE MARCH 5 FOR AN APPOINTMENT WITH THE BOARD OF REVIEW. MEETINGS CAN BE ATTENDED EITHER IN PERSON, VIRTUAL, OR BY LETTER APPEAL. PETITION FORMS MUST BE COMPLETED AND ARE AVAILABLE AS IN THE PARAGRAPH ABOVE. LETTER APPEALS MUST BE RECEIVED BY MARCH 5, 2021. THE BOARD OF REVIEW MEETS IN THE TOWNSHIP HALL AT 8085 BYRON CENTER AVE . . . .[14]

The March Board meeting schedule was also posted on Township's website and at Township Hall beginning February 1, 2021 through the final meeting date.[15]

Praxis argued before the Tribunal that Township "did not provide any Board meeting dates or otherwise provide the requisite information that a taxpayer would need in order to

[13] *Id.* at Exhibit B.
[14] *Id.* at Exhibit F.
[15] *Id.* at Exhibits E, D.

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perfect an appeal to the Board . . . ."[16] Praxis never denied receiving the Assessor Denial or the Notice of Assessment and, indeed, had retained a professional to appeal to the March Board who had contacted Township's assessor before the March Board closed.[17] Praxis did untimely file, via a retained professional, a letter appeal on March 10, 2021.[18] It had knowledge of the denial prior to the 2021 March Board.

The Court of Appeals extensively discussed a posting in the Grand Rapids Press on February 21, 23, and 25 that erroneously stated, in one section, that the March Board would meet on March 8, 9, and 10, 2021, but only provided specific meeting times for March 8 and 9.[19] Praxis never referenced the Grand Rapids Press in its motion for summary or in its response to Township's motion for summary. Indeed, Praxis never indicated it was even aware of the Grand Rapids Press notices or relied on them in any way before the Tribunal. The posting was not introduced into the record by Praxis, but by Township.[20] Praxis actually argued that "[w]hether or not the dates of the board's meetings were contained in public postings *is irrelevant*."[21] The first time Praxis raised the Grand Rapids Press notification was in its Court of Appeals' reply brief, and stated that it had no notice of the existence of that specific notice during the relevant proceedings.

Tribunal. On April 12, 2022, the Tribunal granted Township's Motion for Summary Disposition pursuant to MCR 2.116(C)(4) finding that Praxis' failure to timely protest the

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[16]Praxis' Motion For Partial Summary Disposition, Tribunal docket lookup line item 20, page 20.

[17] Final Opinion and Judgment ("FOJ") (Exhibit 2), Tribunal docket lookup line item 35, pages 10-11, 13-14.

[18] *Id*.

[19]*Sixarp LLC* (Exhibit 1) at 5, 11, and 13.

[20]Township's Motion for Summary Disposition, Exhibit G, Tribunal docket lookup line item 19.

[21]Praxis' Response to Township's Motion for Summary Disposition, Tribunal docket lookup line item 28, page 8 (emphasis added).

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Assessor Denial to the March Board "deprives the Tribunal of any jurisdiction."[22] Addressing Praxis' argument that "it was not provided appropriate notice of the times and dates at which the BOR would meet . . .," the Tribunal made a finding of fact that "this information was explicitly stated under 'March Board of Review Information' provided to [Praxis] on the Notice of Assessment. Specifically, that notice indicates that the [March Board] will meet at certain specific times on March 8 and March 9."[23] The Tribunal also noted that Praxis contended "that the Tribunal has statutory jurisdiction over this appeal under MCL 205.735a . . . ."[24]

Court of Appeals. The Court of Appeals had a different reading. It read three elements into MCL 211.9m(3) and 211.9n(3) that required the denial notify Praxis "(1) in writing (2) of the reason for the denial and (3) advising Praxis that the denial had to be appealed to the March Board of Review . . . by filing a combined document" referenced in MCL 211.9m(2) and n(2).[25] The notice met requirements (1), (2), and (3) insofar as the denial indicated a March Board protest was a condition precedent to a Tribunal appeal, and included the statute that governed when the March Board could meet.[26] The denial, however, omitted that a combined document needed to be filed.[27] As found by both the Tribunal and the Court of Appeals, however, the omission of the combined document language did not deprive Praxis of any rights as the issue was not that Praxis filed the wrong document; rather, the issue was that Praxis attempted to protest to the 2021 March Board after it closed.[28]

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[22]FOJ (Exhibit 2) at 16.
[23]*Id*. at 11-12.
[24]*Id* at 4.
[25]*Sixarp LLC* (Exhibit 1) at 9.
[26]*Id*. at 10.
[27]*Id*.
[28]*Id*. ("This was an accurate finding . . .."); FOJ (Exhibit 2) at 13.

RECEIVED by MSC 10/3/2023 11:43:06 AM

The issue, however, was that Praxis did "present evidence suggesting that it received no information about the Board of Review's meeting schedule from [the Assessor], and that Byron Township published conflicting information about that schedule."[29] Specifically, that the denial itself did not indicate the dates the March Board met, that the Notice of Assessment indicated an appointment with the March Board must be set by March 5th, and that the Grand Rapids Press publication indicated the Board would meet March 1 through March 10, 2021. Leaving undisturbed the finding that the March 10, 2021 letter appeal was untimely and that Praxis had notice of the denial before the March Board met for the first time, the Court of Appeals held that "in instances of inadequate notice, this Court may waive the protest requirement before the Board of Review and allow the case to proceed before the MTT."[30]

This finding was based on a published Court of Appeals decision from April 1990, *Parkview Mem Ass'n v Livonia*.[31] The Court also cited *Morehouse v Mackinaw Twp* and *Mich State Univ v Lansing*, two unpublished decisions, that "followed *Parkview*" and were found to be "persuasive."[32] Read together with the Grand Rapids Press publication that allegedly "created confusion about the days on which the Board of Review would meet," the Court of Appeals found it had the power to waive the Tribunal's jurisdictional requirements and ordered the case to "proceed as if the protest requirement were satisfied" on remand.[33]

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[29] *Sixarp LLC* (Exibit 1) at 11.

[30] *Id*. at 12.

[31] 183 Mich App 116.

[32] *Sixarp LLC* at 12; *Morehouse v Mackinaw Twp,* unpublished per curiam opinion of the Court of Appeals, issued March 17, 2009 (Docket No. 281483); *Mich State Univ v Lansing,* unpublished per curiam opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 250813). These cases are included because they were relied on the Court of Appeals MCR 7.215(C)(1).

[33] *Sixarp LLC* at 12.

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The Court also addressed Praxis' due process arguments. Holding that while MCL 211.9m and n "on their face, comport with due process . . . . Byron Township failed to comply with the obligations imposed by the statutes and, therefore, it deprived [Praxis] of due process."[34] The remedy was to allow "the MTT to hear this case as a matter of equity, despite [Praxis'] failure to first protest to the Board of Review . . . ."[35]

This appeal followed.

STANDARD OF REVIEW

The standard of review that controls the Court's review is contained in Section 28 of Article VI of the Michigan Constitution, which provides:

> All final decisions, finding, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law . . . .
>
> In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation. [Const 1963, art 6, § 28.]

Thus, appellate review of a decision of the Michigan Tax Tribunal is "very limited."[36] Absent an allegation of fraud (no fraud is alleged here), an appellate court must limit its review

[34] *Id*. at 13.
[35] *Id*.
[36] *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 630; 806 NW2d 342 (2011); *Fradco, Inc, v Dep't of Treasury*, 495 Mich 104, 112; 845 NW2d 81 (2014).

RECEIVED by MSC 10/3/2023 11:43:06 AM

to whether the Tribunal committed an error of law or adopted a wrong legal principle.[37] Moreover, Appellant bears the burden of proof in an appeal from a decision of the Tribunal.[38]

As subject-matter jurisdiction, or lack thereof, encompasses a questions of law, a grant or denial of a motion for summary deposition under MCR 2.116(C)(4) is reviewed de novo.[39] "The goal of statutory interpretation is to give effect to the Legislature's intent as determined from the language of the statute."[40] In interpreting statutes, this Court must "give the words of a statute their plain, ordinary meaning unless the Legislature employs a term of art."[41] Specific to claims for exemption from taxation, the General Property Tax Act provides that "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."[42] The taxpayer has the burden of proving it is entitled to an exemption "by a preponderance of the evidence."[43]

ARGUMENT

Unlike Michigan's Article VI Courts, the Tribunal's jurisdiction is a purely statutory creation.[44] MCL 205.735a and MCLs 211.9m and 9n act in tandem to address the Tribunal's jurisdiction over claims of an EMPP denial. "Under the doctrine [of *in pari materia*], statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law."[45] MCLs 211.9m(3) and 211.9n(3), which are

[37] *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008); *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006); *Wayne County v Michigan State Tax Commission*, 261 Mich App 174, 186; 682 NW2d 100 (2004).
[38] *Podmajersky v Dep't of Treasury*, 302 Mich App 153, 162 (2013).
[39] *Henry v Laborers' Local 1191*, 495 Mich 260, 273, 848 NW2d 130 (2014).
[40] *Bukowski v City of Detroit,* 478 Mich 268, 273; 732 NW2d 75 (2007).
[41] *Id.* at 274.
[42] MCL 211.1.
[43] *Promed Healthcare v Kalamazoo,* 249 Mich App 490, 495; 644 NW2d 24 (2002).
[44] MCL 205.701 *et seq*.
[45] *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015).

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identical in terms of jurisdictional reuirements, required that the protest of Township's denial of Praxis' 2021 EMPP claim be brought to the 2021 March Board before in order for the Tribunal to have jurisdiction over an appeal of the denial. The parties and the Court of Appeals agree on this. A similar protest requirement is also contained in MCL 205.735a(3) as "[e]xcept as otherwise provided . . . by law, for an assessment dispute as to the valuation *or exemption* of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6)."

MCLs 211.9m and 211.9n, laws, require a March Board protest under MCL 205.735a(3). That both MCL 205.735a(6) and MCLs 211.9m(2)(c) and n(2)(c) share the same 35 day appeal period confirms that they should be read together. The denial notice was issued before the 2021 March Board and the Tribunal made a finding of fact, not disturbed on appeal, that Praxis had notice of the denial prior to the March Board's first meeting.[46] The Tribunal matter was filed on April 13, 2021, which is more than 35 days after the Assessor Denial was received by Praxis.[47] No March Board protest was timely made; rather, Praxis filed its appeal on March 10, 2021 after the Board closed on March 9, 2021.[48]

In this case, the Court of Appeals created a loophole to the Tribunal's jurisdiction by relying on *Parkview* to conclude that "in instances of *inadequate notice*, *this Court* may waive the protest requirement before the Board of Review and allow the case to proceed before the MTT."[49] This was not based on any due process claim. The Court *then* found there was also a due process issue and directed the "MTT to hear this case as a matter of equity, despite [Praxis'] failure to first protest to the Board of Review." These holdings should be reversed.

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[46]FOJ (Exhibit 2) at 11 and 12.
[47]Tribunal docket lookup line item 2.
[48]FOJ at 12.
[49]*Sixarp LLC* (Exhibit 1), at 12 (emphasis added).

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I. *PARKVIEW* IS BAD LAW AND DOES NOT SUPPORT THE COURT OF APPEALS' CONCLUSION

Understanding the error of relying on *Parkview* requires a summary of that case and what it relied on, *Electronic Data* and what impact it had on *Parkview*, how the two lines view *Parkview* after *Electronic Data*, the justification of the continued use of *Parkview*, and how that reading is not correct.

A. Parkview

In *Parkview*, the Tribunal dismissed a case for lack of jurisdiction under MCL 205.735 as the matter was not first protested to the March Board.[50] The issue, however, was that "the last day the board of review convened was April 3, 1988 – two days before respondents mailed the assessment notices."[51] In short, the taxpayer did not have notice in time to protest. The only case discussed in any detail was this Court's holding in *W & E Burnside Inc v Bangor Twp*.[52] The *Parkview* Court determined it was appropriate to "adopt the Supreme Court's remedial approach in *Burnside* here" and remand to the Tribunal to hear the merits of the case.[53] This was based on the finding that the "late notices were not given in a manner reasonably calculated under all of the circumstances to apprise petitioners of the assessments and to afford them an opportunity to be heard."[54] To empower the Tribunal to hear the matter on remand the Court held:

> the 'jurisdictional' requirements of MCL 205.735; MSA 7.650(35) -- including the protest requirement of subsection (1) and the requirement set forth in subsection (2) that petitions regarding an assessment dispute be filed not later than June 30 of the tax year --

[50] 183 Mich App at 118.
[51] *Id*. at 117.
[52] *W & E Burnside Inc v Bangor Twp,* 77 Mich 950*l*, 314 NW2d 196 (1978).
[53] *Parkview*, 183 Mich App at 120.
[54] *Id*.

RECEIVED by MSC 10/3/2023 11:43:06 AM

> as procedural requirements for perfecting an appeal in the Tax Tribunal.[55]

As MCL 205.735 was purely procedural, the Tribunal could "assume subject-matter jurisdiction" on remand.[56] This case was published in April 1990, before the precedential cutoff in MCR 7.215(J)(1).

Applying *Parkview* to this case is erroneous for multiple reasons. The first being that the issue in this case was supposedly inadequate notice, not untimely notice. These are fundamentally different things. One prevents an appeal as the aggrieved party does not even have notice of the denial to file a protest before the window closes. The other provides notice of the denial and, like in this case, an opportunity to be heard, even if the notice may not be in strict compliance with the statute. Praxis had notice in time to appeal and did not, which is different than the facts of *Parkview*.

B. ***Electronic Data Sys Corp v Flint Twp***

Electronic Data Sys Corp v Flint Twp, a 2002 case, held MCL 205.735 "is not a notice statute, but is a jurisdictional statute that governs when and how a petitioner invokes the Tax Tribunal's jurisdiction.[57] Based on MCL 205.735(2)m "the jurisdiction of the tribunal . . . is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved'--is a jurisdictional statute."[58] In that case, the Tribunal dismissed the matter under MCL 205.735 as it was not filed by the June 30 deadline in the statute. The Court went on to note that "[b]oth our Supreme Court and this Court have clearly stated that the time

[55] *Id*. at 121.
[56] *Id*. at 121-22.
[57] 253 Mich App at 542.
[58] *Id*. at 543.

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requirements contained in MCL 205.735(2) are jurisdictional in nature" and cited to *Szymanski v Westland*.[59]

W A Foote Mem'l Hosp v City of Jackson, a 2004 case also involving a timing issue under MCL 205.735, more succinctly stated that the "requirements of MCL 205.735(2) are jurisdictional . . . ."[60] Both cases are published.

C. Subsequent Cases

The *Electronic Data* line. A host of cases have cited *Electronic Data* for its holding that the requirements of MCL 205.735 are jurisdictional.[61] Fewer have discussed both that case and *Parkview*. *Pacific Props v Shelby Twp* noted that "*Parkview* was decided before 1990, and therefore it is not binding precedent. Rather, both this Court and our Supreme Court have held that MCL 205.735(2) is not merely a notice statute; it is a jurisdictional statute governing when and how a petitioner may invoke the MTT's jurisdiction."[62] As the matter in *Pacific Props* was not timely raised "[t]he hearing officer correctly determined that the parties could not waive defects in the tribunal's jurisdiction and that the tribunal lacks the equitable power to ignore the language of the statute."[63]

Jehovah Shalom Church of God v City of Detroit, a 2020 case, offers the strongest rejection holding "*Parkview's* assertion that MCL 250.735 sets forth procedural, rather than jurisdictional, requirements therefore cannot survive this Court's decisions in *Electronic Data*

[59] *Id*. at 543; *Szymanski v Westland*, 420 Mich 301,305; 362 NW2d 224 (1984).

[60] *W A Foote Mem'l Hosp v City of Jackson,* 262 Mich App 333, 335; 686 NW2d 9 (2004).

[61] See, e.g., *Mikelonis v Alabaster Twp*, 307 Mich App 606, 608; 861 NW2d 354 (2014); *Grimm v Dep't of Treasury*, 291 Mich App 140, 144; 810 NW2d 65 (2010); *In re Petition of Wayne Co Treasurer*, 286 Mich App 108, 114; 777 NW2d 507 (2009); *Leahy v Orion Twp*, 269 Mich App 527, 532; 711 NW2d 438 (2006).

[62] *Pacific Props v Shelby Twp,* unpublished per curiam opinion of the Court of Appeals, issued March 1, 2005 (Docket No. 249945) at 11. This case is included, and relevant, because it is one of the only cases to address both *Electronic Data* and *Parkview*. MCR 7.215(C)(1).

[63] *Id*. at 11.

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Sys Corp and *WA Foote Mem Hosp*."[64] Rather, "the tribunal is without jurisdiction to consider appeals filed outside the deadlines imposed by statute."[65]

The *Parkview* line. A much smaller number of cases cite *Parkview*. One of the two cases to discuss the case after *Electronic Data* is *Michigan State Univ v City of Lansing*. In that 2005 case the Tribunal dismissed an appeal as untimely, but the taxpayer noted that "the city's notice of assessment was not received until July 10, 2021, at which time a protest before the board was not possible as the board had already convened and concluded its session."[66] The Court recognized "that *Parkview* is not binding authority under MCR 7.215(J)(1) and that later binding cases from this court have stated generally that the requirements of MCL 205.735 are jurisdictional and must be satisfied in order for the MTT to invoke its subject-matter jurisdiction."[67] Nonetheless, "it must be remembered that *Parkview* was predicated on a Supreme Court decision which is, of course, binding precedent that trumps opinions emanating from this Court"—i.e., *Burnside*.[68] It was also noted that "the city itself cites *Parkview* with favor and presents no argument whatsoever as to why the principles from the case should not be applied in the case at bar."[69]

Morehouse v Mackinaw Twp attempted to distinguish *Electronic Data* as the "focus in [that case] was on the fact that . . . the notice at issue was received by the tribunal, not by the

[64] *Jehovah Shalom Church of God v City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued April 23, 2020 (Docket No. 248320) at 12. This case is included, and relevant, because it is one of the only cases to address both *Electronic Data* and *Parkview*. MCR 7.215(C)(1).

[65] *Id*. at 8.

[66] *Mich State*, unpublished per curiam opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 250813) at 3-4.

[67] *Id*. at 12.

[68] *Id*.; *W & E Burnside Inc*, 77 Mich 950*l*.

[69] *Id*. at 13.

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taxpayer."[70] It also described "the procedural requirements for perfecting an appeal in the Tribunal. The relevant statute states as follows" and cited MCL 205.735.[71] The Court adopted and followed "consistent with *Burnside* . . . the approach set forth in *Parkview*, except for that portion of *Parkview's* analysis that concludes the requirements of MCL 205.735 are procedural, not jurisdictional."[72] *Morehouse* involved a situation whereby a property was uncapped but the assessor "did not notify petitioners of the increase and did not inform petitioners of their right to an appeal with the Tribunal if the claim were filed within the [35 day] statutory time limit."[73] With no notice the taxpayers could not appeal to the December Board of Review and the Tribunal dismissed the case concluding that the failure to protest to the Board deprived the Tribunal of jurisdiction over the matter.

Parkview and its line have only been applied in cases where notice was not received in time to protest to the March Board. It has never been applied to notice that was timely received and defective in some way as was the case here. Applying cases involving no notice, which fundamentally implicate due process, to this case is not correct or supported.

Even if *Parkview* should be applied to situations like this case, the decision is fundamentally flawed. The *Parkview* line reads the decision as containing two discrete holdings: 1) *W & E Burnside Inc* sanctioned the use of a "remedial approach" to impute jurisdiction in cases of untimely notice and 2) interpreting MCL 205.735 as procedural and not jurisdictional. That line views the invalidation of the second holding by *Electronic Data* as not implicating, or impugning in any way, the first holding.

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[70] *Morehouse*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2009 (Docket No. 281483), at 7.

[71] *Id*. at 5.

[72] *Id*. at 9.

[73] *Id*.

RECEIVED by MSC 10/3/2023 11:43:06 AM

Courts that dismiss *Parkview* appear to believe that the holdings are necessarily connected and that the invalidation of the second necessarily implicates the first. While there are no published decisions expressly addressing the conflict between the two lines, a review of *W E Burnside* and subsequent application of that decision by this Court shows the *Parkview* line's reading is wrong.

W E Burnside and *Highland-Howell Dev Co LLC*

W E Burnside Inc v Bangor involved taxpayers whose assessment was increased from $48,000 in 1974 to $100,000 in 1975.[74] As found by the Court of Appeals, the taxpayer was required to protest the increase to the Board of Review for the Tribunal to have jurisdiction, but were unable to "as neither had notice of the increase until well after the meetings."[75] Under the existing notice statute, MCL 211.24c, the taxpayer was only required to be provided notice under MCL 211.24c if more than 30% of the parcels had an assessment increase.[76] This was a temporary situation as the Court of Appeals noted that "as of December 23, 1976, it is mandatory that notice be sent in all instances of an increased valuation of property and that percentage determinations will be unnecessary in the future."[77] The case was initially filed in Bay County Circuit Court, and removed to the Tribunal where the case was dismissed "because plaintiffs had failed to exhaust their *administrative remedies*."[78] The Court of Appeals held that if the 30%

[74] *W E Burnside Inc v Bangor,* 77 Mich App 618, 621; 259 NW2d 160 (1977). Due to the concise nature of this Court's Opinion the facts and background will be taken from the Court of Appeals' decision.

[75] *Id*. at 621.

[76] *Id*. at 622.

[77] *Id*. at 625.

[78] *Id*. at 620.

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threshold was hit, no notice was necessary and the assessment is valid; if not, the assessment was invalid and remanded to the *Circuit Court* to determine if the threshold was hit.[79]

In lieu of leave to appeal, this Court reversed and remanded to the *Tribunal* to determine if there should have been notice and, if notice was required, whether notice was provided.[80] If notice was required and not provided, the assessment was invalid.[81] This Court also held that even if no notice was required "the tribunal must still determine whether or not the assessment increase was excessive and that there is no other bar to granting relief."[82] The Opinion is concise, short on analysis, and subject to a variety of readings.

This Court cited *W E Burnside* in *Highland-Howell Dev Co LLC v Marion Twp*, a 2007 case, for the proposition that "the statutes at issue here cannot be construed in a manner that would deny petitioner due process of law."[83] That case involved a sewer special assessment levied in 1996 following a hearing where impacted taxpayers could formally protest. The 1996 assessment included a trunk line across the taxpayer's property. "[A]fter the time for challenging the special assessment roll had passed" the trunk line across the taxpayer's property was eliminated, but the removal of the trunk line was not formally ratified until 2004.[84] The taxpayer appealed within 30 days of the 2004 ratification and the Tribunal dismissed as there was no objection or timely appeal to the earlier adoption of the special assessment, as required by MCL 205.735 and 41.726(3).

This Court reversed the dismissal as MCL 205.735(1) "cannot be construed to require petitioner to have objected to the removal of the trunk line across its property at the hearing since

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[79] *Id*. at 625.
[80] 77 Mich 950*l* (1978).
[81] *Id*.
[82] *Id*.
[83] *Highland-Howell Dev Co LLC v Marion Twp*, 478 Mich 932, 933; 733 NW2d 761 (2007).
[84] *Id*. at 932.

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that removal had not yet taken place at the time of the hearing."[85] Rather, "MCL 205.735(2) grants the tribunal jurisdiction over petitioner's 2004 petition because the 2004 resolution is a 'final decision' and petitioner filed a written petition within 30 days after that 'final decision.'"[86]

Township believes that the appropriate reading of *W E Burnside* was set forth in *Highland-Howell Dev Co*. Specifically, that in instances where no notice is provided that the Tribunal's jurisdictional statutes should not be read in such a way that denies due process; rather, a "remedial approach" that allows for an appeal within the Tribunal's jurisdictional constraints should be embraced. For example, if notice is either not provided or not received in time to protest to the March Board, then MCL 205.735(a)(6) would apply as "[i]n all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination." That time period would run from the date notice was actually received, which would preserve due process and read the statute to preserve due process. *W E Burnside*, however, does not sanction an expansion of the Tribunal's jurisdiction beyond the plain language of the statute. For instance, when there was timely notice and the taxpayer did not act on its opportunity to be heard.

This is the same reading set forth in *Electronic Data* and the cases that follow its ruling. It is also the result called for by the plain language of MCL 205.735a. As noted by the Court of Appeals, "[i]n the absence of statutory authority, the Tax Tribunal lacks subject-matter jurisdiction and should not proceed further except to dismiss the action. Such defects are

[85] *Id* at 933.
[86] *Id*.

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considered so serious that a tribunal is duty-bound to dismiss a plaintiff's claim even if the defendant does not request it."[87]

Parkview is based on a reading of *W E Burnside* that was rejected by *Highland-Howel* and overruled by *Electronic Data*. MCL 205.735a is jurisdictional and the "remedial approach" cannot expand that jurisdiction. *Parkview* and cases that follow it are not good law and should be clearly overruled. As applied to this case, that would require the Tribunal's finding be affirmed as there was no protest to the 2021 March Board despite Praxis having timely notice of that denial and the opportunity to be heard.

II. THE NOTICE IN THIS CASE WAS ADEQUATE

Embracing inadequate notice to create jurisdiction in a published opinion establishes a vague and impossible to define standard that will only encourage litigation and cause confusion. Praxis had notice that an appeal to the March Board was required, of the dates the March Board would meet, and that the Assessor Denial would need to be in writing. Despite this notice, it did not timely file a protest to the March Board. Inadequate notice was not defined by the Court of Appeals in this case. If the focus turns only on the notice itself and not the other information a taxpayer had, the inquiry does not consider other relevant facts that should be considered within the analysis. It will also encourage the parties to litigate specific language in denial notices while ignoring the surrounding facts. The standard is not defined, usable, or clear and will engender litigation whenever there are minute differences from prior cases.

[87] *Strata Oncology*, ____ Mich App ___ ; ___ NW2d ___ (2023) (COA Docket No. 362431), at 8.

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A. The Due Process Issue

The Court of Appeals also erred in this case when it ordered the Tribunal to "hear this case as a matter of equity" to cure what it saw as a denial of due process. Both the order for the Tribunal to hear the case in equity and the finding of a due process issue are incorrect and must be reversed.

The equity holding is facially incorrect as "the Tax Tribunal does not have powers of equity."[88] It is "an administrative tribunal only and not a court possessing general equitable and legal powers."[89] "In the absence of an express legislative conferral of authority, an administrative agency generally lacks the powers of a court of equity."[90] A review of MCL 205.735a shows no powers of equity conferred on the Tribunal and neither MCL 211.9m or 211.9n indicate that when considering the specific exemption under those statutes the Tribunal is imbued with equitable power.

The holding that there was a due process deprivation because the notification requirements of MCL 211.9m and 211.9n were not followed in this case is inconsistent with due process and its prior application to the Tribunal. There is no dispute in this case that a property right is involved. Nor is there a dispute that due process applies to the Tribunal and the parties agree that "notice of the proceedings and a meaningful opportunity to be heard" is necessary.[91] The State is, however, "afforded great flexibility in satisfying the requirements of due process in the field of taxation."[92] This is "because of the significant interest states have in their own

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[88] *Elec Data Sys Corp,* 253 Mich App at 548 (citing *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346, 359; 411 NW2d 169 (1987)).

[89] *Mich Mut Liability Co v Baker*, 295 Mich 237, 242; 294 NW 168 (1940) (quotation marks and citation omitted).

[90] *Delke v Scheuren*, 185 Mich App 326, 332; 460 NW2d 324 (1990).

[91] *Wells Fargo Rail Corp v State of Michigan*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 359399); slip op at 9 (citation omitted).

[92] *By Lo Oil Co v Dep't of Treasury*, 267 Mich App 19, 29; 703 NW2d 822 (2005).

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financial stability" and the "substantial governmental interest in the prompt and efficient collection of taxes."[93]

MCL 211.9m and n provide a straightforward path. If a denial is issued before the first meeting of the "March board of review that follows the organizational meeting" a protest to the March board is necessary. If issued after that meeting, it is to the March board *or* the Tribunal "within 35 days of the denial notice."[94] There is a built-in statutory mechanism to address cases of late or no notice. In this case the denial notice was issued prior to the March Board; indeed, the notice was issued February 9, 2021—28 days before the March Board adjourned and 63 days before an appeal with the Tribunal was initiated.[95] This 35 day appeal period is mirrored in MCL 205.735a(6), which provides a catchall appeal provision to the Tribunal from "all other matters."

The Court of Appeals, however, held that because the requirement that a "combined document" be submitted was not explicitly stated in the denial itself, there was a due process concern.[96] Also, that there was confusion over the March Board meeting dates due to a publication in the Grand Rapids Press.

The newspaper dates issue was a red herring. At the Tribunal level the newspaper was not noted in Praxis' motion for summary disposition or response to Township's. There was never a claim that Praxis was even aware of the Grand Rapids Press publication of the Board of Review dates. A due process claim cannot be sustained based on something the taxpayer was not aware of—especially when, as found by the Tribunal, multiple other notices with the correct dates were provided. Moreover, if the actual notice is reviewed it clearly identifies that the Board is actually meeting on March 8 and 9 and any reasonable individual reading the notice itself would notice

[93] *McKesson Corp v Division of Alcoholic Beverages & Tobacco*, 496 US 18, 37 (1990).
[94] MCL 205.735a(6).
[95] *Sixarp LLC* (Exhibit 1), at 10.
[96] *Id* at 12.

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the reference to March 10th, see that date not repeated anywhere else, and be on notice that date is likely not reliable or should be followed up on.[97]

The other error was finding that notice provided was not sufficient simply because the writing requirements and specific documents were not stated in the denial itself. The Tribunal held that "Mr. Karsten [Praxis' retained professional] was advised that the appeal needed to be made in writing, not verbally."[98] Submitting a protest in writing would require the submission of documents. The focus on the specific language of the denial also masks that Praxis' failure to go to the March Board was not predicated on its failure to submit the proper documents in writing, it was that the filing was not timely. The Court of Appeals' fixation on the denial itself sets aside the undisputed fact that Praxis had notice and an opportunity to be heard and simply did not timely seize the opportunity. There was no due process violation in this case.

The Court of Appeals also failed to consider that if the denial notice issued on February 9, 2021 is considered to be the final determination on the issue, Praxis still could have tried to file an appeal under MCL 205.735a(6)'s 35 day allowance. That provision has been used in other cases of lack of notice to start the jurisdictional timer.[99] Praxis, however, filed its appeal on April 13, 2021. 35 days prior to that is March 9, 2021, and Praxis had notice of denial in February of 2021, making its appeal untimely. The finding of a due process issue in this case requires a hyper focus on one element and one document while setting aside all of the other information and knowledge Praxis had about what it needed to do to preserve its rights. There was no due process violation.

[97]Township's Motion for Summary Disposition, Exhibit G, Tribunal docket lookup line item 19.

[98]FOJ (Exhibit 2) at 13.

[99]See, e.g, *Highland-Howell Dev Co LLC v Marion Twp*, 478 Mich 932, 933.

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CONCLUSION

In this case the Court has the chance to rectify an issue that has split the Court of Appeals and clarify how *Burnside* should be interpreted and applied. Consistent with this Court's prior opinions and the *Electronic Data* line of case, MCL 205.735 should be read as jurisdictional and the Tribunal's jurisdiction limited to the statutory text that empowers it, which necessitates overruling *Parkview* and affirming the Tribunal's decision in this case. That the Court of Appeals had to resurrect a 1990 decision, empower the Tribunal with equity, and find a due process issue by focusing on the denial notice itself and not the other information that Praxis had is indicative of the weakness of Praxis' claim in this case. Rather than jump through those multiple hoops, applying the plain language of the Tribunal's jurisdictional statutes and the Tribunal's undisturbed findings of fact lead to the conclusion that dismissal was proper in this case.

RELIEF REQUESTED

Bryon Township respectfully requests that this Court:

1. In lieu of granting the application, reverse the Court of Appeals, expressly overrule *Parkview*, and affirm the Tribunal's Final Opinion and Judgment; or, if that is not proper;
2. Schedule oral argument on the application; or, if that is not proper;
3. Grant the application and direct the parties to file briefs on the issues this Court determines relevant.

HALLAHAN & ASSOCIATES, P.C.

/s/ Laura M. Hallahan

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Dated: October 3, 2023

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief complies with the word and format limitations of MCR 7.305(A)(1). The Brief contains 6,946 words (8,101 entire document).

/s/ Laura M. Hallahan

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CERTIFICATE OF SERVICE

On the date below I served via the Court's efile system Respondent-Appellee's Application for Leave on:

Jackie J. Cook
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I declare that the statements above are true to the best of my information, knowledge and belief.

/s/ Laura M. Hallahan
Laura M. Hallahan

Dated: October 3, 2023

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EXHIBITS

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

SIXARP, LLC, doing business as PRAXIS PACKAGING SOLUTIONS,

Petitioner-Appellant,

v

TOWNSHIP OF BYRON,

Respondent-Appellee.

FOR PUBLICATION
August 22, 2023
9:00 a.m.

No. 361888
Tax Tribunal
LC No. 21-000523-TT

Before: HOOD, P.J., and SHAPIRO and YATES, JJ.

HOOD, P.J.

Petitioner, SIXARP, LLC, doing business as Praxis Packaging Solutions (Praxis), appeals as of right the order of the Michigan Tax Tribunal (MTT) denying Praxis's motion for partial summary disposition and granting summary disposition in favor of respondent, the Township of Byron (Byron Township). We reverse and remand for further proceedings.

I. BACKGROUND

This case originates from a decision denying Praxis a tax exemption for personal property, known as the eligible manufacturing personal property (EMPP) tax exemption. Praxis provides packaging services for consumer products, handling packaging primarily for over-the-counter products and prescription pharmaceuticals, cosmetics, foods, and beverages. It operates a manufacturing plant in Byron Township, where it uses various production processes, equipment, and technology to convert those products into finished goods. The manufacturing equipment that Praxis uses at the Byron Township facility is the subject of its attempt to obtain the EMPP tax exemption.

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In February 2021, Praxis applied for the EMPP exemption related to its equipment by filing a combined document.[1] On February 9, 2021, Timothy Baker, Byron Township's assessor, denied Praxis's request for the EMPP tax exemption. The denial form explained an EMPP exemption request should be denied where the personal property at issue does not "meet the eligibility requirement requirements of MCL 211.9m and MCL 211.9n." The form explained the assessor "must notify the taxpayer of the denial and their right to appeal."

Baker denied Praxis's exemption request because he found Praxis's equipment did not meet the definition of eligible manufacturing personal property as that term is defined in MCL 211.9m and MCL 211.9n. His full explanation provided:

> I certify that based on my review, the qualified new personal property and/or the qualified existing personal property claimed on Form 5278 does not meet the definition of Eligible Manufacturing Personal Property as defined by MCL 211.9m and/or MCL 211.9n, therefore the Eligible Manufacturing Personal Property exemption is denied.

The denial also included a notice of appeal rights. It stated:

> **Notification of Taxpayers Right of Appeal**
>
> A taxpayer who timely and properly filed Form 5278 may appeal an assessor's denial of the EMPP exemption to the March Board of Review under MCL 211.30. In the case of a qualified error as defined in MCL 211.53b, an appeal may be made to the July or December Board of Review. The July or December Board of Review may not hear an appeal of a denial of the exemption from the March Board of Review.
>
> Filing a protest with the Board of Review is necessary to protect your right to further appeal an EMPP exemption dispute to the Michigan Tax Tribunal. Michigan Tax Tribunal forms are available at www.michigan.gov/taxtrib.

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[1] A taxpayer must claim an EMPP tax exemption in a "combined document." See MCL 211.9m(2). "The combined document shall be in a form and manner prescribed by the department of treasury." MCL 211.9m(2)(a). Further, MCL 2119.m(2)(c) provides:

> The combined document prescribed in this section must be completed and delivered to the assessor of the township or city in which the qualified new personal property is located by February 20 of each year . . . . If the combined document prescribed in this section is not timely delivered to the assessor of the township or city, a late application may be filed directly with the March board of review before its final adjournment by submitting the combined document prescribed in this section. The board of review shall not accept a filing after adjournment of its March meeting. An appeal of a denial by the March board of review may be made by filing a petition with the Michigan tax tribunal within 35 days of the denial notice.

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On February 17, 2021, the assessor's office mailed Praxis a notice of assessment indicating that the March Board of Review would meet on March 8, 2021, and March 9, 2021. It informed Praxis that it could appeal to the Board any values it believed incorrect. It also provided a telephone number to call "before March 5 for an appointment with the Board of Review" and indicated that meetings could be attended "either in person, virtual, or by letter appeal." The notice of assessment further indicated that "letter appeals must be received by March 5, 2021," and provided the location of the Board's meetings. It also stated that a protest to the Board was necessary to protect Praxis's right to "further appeal valuation and exemption disputes" to the MTT.

On February 21, 2021, February 23, 2021, and February 25, 2021, the Grand Rapids Press published the March Board of Review's meeting schedule. The postings indicated that the Board would "convene on the 8th day of March, 2021 and shall sit not less than three calendar days to review the 2021 Assessment Roll of the Township of Byron and to hear complaints of persons considering themselves aggrieved by these values." They also indicated that taxpayers could file a "protest by letter without a personal appearance . . . ." The newspaper postings provided the location of the Board's meeting, as well as the days and times: March 8, 2021, from 9:00 a.m. to 5:30 p.m. and March 9, 2021, from 1:00 p.m. to 9:00 p.m. At the bottom of the posting, it stated that appointments with the Board could "be made by contacting the Assessor's Office from March 1th [sic] through March 10th."

On February 23, 2021, Praxis received notice of Baker's EMPP tax exemption denial. On February 26, 2021, Timothy Karsten, Praxis's finance controller from August 2000 until November 2021, contacted Baker to provide notice of Praxis's appeal of the exemption denial, request a hearing date, and learn the requirements for an appeal. According to Karsten, instead of providing a hearing date or the Board's schedule, Baker told Karsten to email a letter appeal. Baker, Karsten said, did not provide a deadline for submission of the letter. Karsten also indicated that Baker did not state that refiling the combined document was necessary for the appeal.

Praxis retained Lisa Pohl, a financial services professional, to handle Praxis's appeal of the EMPP exemption denial. Karsten advised Pohl of his communications with Baker, including the instructions Baker provided for filing an appeal. Karsten emailed Pohl about his February 26, 2021 conversation with Baker, indicating that Baker suggested submitting a letter appeal instead of appearing in-person, but did not provide a deadline for submission.

In early March 2021, Pohl left a voicemail for Baker. She advised him that she was handling Praxis's appeal of the exemption denial, expressed her unfamiliarity with letter appeals, asked about appeal procedures and deadlines, and requested an in-person hearing with the March Board of Review. On March 2, 2021, Baker returned Pohl's call and left a voicemail. According to Pohl's uncertified transcription of the voicemail, Baker stated:

> Hi Lisa, this is Tim Baker from Byron Township Assessing. I am returning your phone call. The, uh, to your question as far as the, uh, assessment, yeah, I think the letter appeal would be the best. Just state your arguments and, uh, and then send in a letter form. We need to get you a petition, so you can sign the petition so there's something a little more formal with it. Um, so, if you can, um send me an e-mail, um, with your letter, and then I can send back a petition for you to sign.

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> Um, I'd also need you to include the agency agreement you have with the, uh, um, owners of the personal property. My, uh, e-mail that you can send it to, and it's a general e-mail, is assessor – a-s-s-e-s-s-o-r-@byrontownship, all spelled out, .o-r-g. And then give me a call if you have any, uh, additional questions. Thank you. Bye.

Baker did not provide a hearing date for the appeal, a deadline for filing the appeal, or the Board's meeting schedule. He also failed to advise Pohl that Praxis had to refile the combined document with the Board to perfect its appeal.

On March 2, 2021, the same day as Baker's voicemail, the March Board of Review held its first meeting. According to Baker, "[t]his first meeting was an organization meeting where the certified Assessment Rolls were received and initial corrections made." On March 8, 2021, and March 9, 2021, the Board held its second and third meetings, where it heard appeals about valuation and exemption status. It adjourned at 9:00 p.m. on March 9, 2021, because "all in person, virtual, and letter appeals had been heard and resolved." Baker attended all sessions of the 2021 March Board of Review and had reviewed all personal property parcels before the Board. He stated that none of Praxis's representatives appeared before the March 2021 Board, nor did Praxis file any documentation.

Pohl prepared a letter on Praxis's behalf—based on Baker's instructional voicemail—and emailed it to Baker on March 10, 2021. The letter explained the basis for Praxis's appeal of the exemption denial. Pohl believed Baker, based on his voicemail, would send her a petition to complete after she sent the necessary documents, but he never did. Instead, on March 11, 2021, Baker emailed Pohl stating: "I am sorry, but the March Board of Review has adjourned at 9:00 p.m. on 3/9/2021[.]" "Within minutes of receiving" Baker's email, Pohl responded, stating:

> The taxpayer requested a hearing and you did not give them one. You told the taxpayer to remit a letter without providing a due date. You communicated with me and did not provide a due date. The assessor guidelines do not indicate that an assessor cannot consider an appeal if it [is] not filed by the time of the last hearing for the March Board of Review.
>
> You were on notice that the taxpayer was going to appeal. The taxpayer followed your directions. What recourse does the taxpayer have for following your directions and being denied the exemption?

According to Pohl, Baker never responded to her email, and she did not receive any further communication from him. Neither the March Board of Review, nor Byron Township, ever contacted her about Praxis's appeal of the exemption denial.

In an affidavit, Baker stated that although he had "verbal discussions with [Praxis]" about the exemption denial, he "never informed [Praxis] that [he] would take an appeal of the denial" to the Board. He also stated that he "never . . . indicated that anything less than an in person appearance, virtual appearance, or letter appeal would be sufficient to bring the matter before the March Board."

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Relevant to Byron Township's arguments below and on appeal, the assessor's office sent several notices to Praxis or posted them in public spaces. These notices provided the March Board of Review's meeting schedule. They included a posting on the Byron Township website, a posting on the township hall, and a posting in the Grand Rapids Press on February 21, 2021, February 23, 2021, and February 25, 2021. The dates posted on the website and on the township hall were consistent with those in the notice of assessment. The posting in the Grand Rapids Press also included those dates. As noted, the newspaper postings also indicated that "Board of Review appointments may be made by contacting the Assessor's Office from March 1th [sic] through March 10th."

In mid-April 2021, Praxis filed a petition with the MTT, raising five claims. Four of the claims alleged violations of Praxis's right to due process, related to failures by Baker in providing notice to Praxis about its appeal rights. These alleged failures included failing to notify Praxis of the Board's meeting schedule and appeal deadlines, and failing to provide an adequate explanation for the exemption denial. Praxis's fifth claim asserted that it qualified for the EMPP exemption.

After answering Praxis's complaint, largely denying the allegations and raising several affirmative defenses, Byron Township, in mid-December 2021, moved for summary disposition under MCR 2.116(C)(4) and (C)(10). Byron Township argued that it provided Praxis sufficient notice and an opportunity to be heard after denying its EMPP exemption request, but Praxis failed to appeal the denial to the Board of Review before seeking relief in the MTT. This, Byron Township argued, deprived the MTT of jurisdiction over Praxis's petition. Byron Township asserted that its written notice of the exemption complied with MCL 211.9m and MCL 211.9n, and provided an adequate explanation for the denial. It also argued that Praxis's arguments were based on language not present in those statutory provisions.

Praxis also moved for partial summary disposition under MCR 2.116(C)(10). Praxis argued that Byron Township's exemption denial contained "canned language" that was "highly ambiguous" and did not actually inform Praxis of the reason for the denial. It also argued that Baker failed to comply with MCL 211.9m(3) and MCL 211.9n(3) when he failed to inform Praxis that it had to re-file its combined document to perfect its appeal to the March Board of Review. Praxis contended that Byron Township failed to notify it of the Board's meeting schedule and the deadline to protest. It insisted that because Byron Township failed to follow the notice requirements in MCL 211.9m and MCL 211.9n, it deprived Praxis of its right to appear before the March Board of Review. Praxis argued that, as a result, the MTT should have jurisdiction over Praxis's claims. It also argued that, alternatively, Byron Township's actions violated Praxis's due-process rights.

Before a decision from the MTT on the competing dispositive motions, Praxis applied for the EMPP exemption for the 2022 tax year. Byron Township again denied the exemption. Its denial notice had changed, however. Compared to the 2021 denial notice, the 2022 denial notice provided a more detailed explanation of the reason for the denial. Namely, it provided several options for the assessor to mark to explain the denial. In 2022, the assessor made an "X" mark next to an explanation stating: "You did not entirely own, lease, or occupy the real property upon which the personal property at issue was located as required by MCL 211.9m(6)(c) & (g)." The denial notice also expanded the portion related to the right to appeal, stating:

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> If you timely and properly filed Form 5278, a protest to appeal may be filed with the Byron Township 2022 March Board of Review. A proper and timely protest to the Byron Township 2022 March Board of Review is necessary to retain your right to appeal to the Michigan Tax Tribunal. A protest to the March Board of Review must be made pursuant to the requirements of MCL 211.9m, MCL 211.9n, and MCL 211.30. This includes, but is not limited to, filing Form 5278 with the March Board of Review before its final meeting. For the 2022 tax year the Byron Township March Board of Review will meet as follows: **DATES**
>
> **March 14, 2022 9:00am-5:30pm**
>
> **March 15, 2022 1:00pm-9:00pm**[.]

In early March 2022, Praxis filed a letter protest with the March Board of Review contesting the denial of its 2022 EMPP exemption request, and providing information to support that it qualified for the exemption. The March Board of Review evaluated Praxis's appeal and concluded that its equipment qualified for the EMPP exemption.

After responses from both parties, in mid-April 2022, and without a hearing, the MTT denied Praxis's motion for partial summary disposition and granted Byron Township's motion for summary disposition. Regarding Praxis's argument that the explanation for the denial was inadequate, the MTT concluded that Praxis failed to demonstrate that MCL 211.9m(3) and MCL 211.9n(3) required a "more specific answer" and the language of the denial "mirror[ed]" the language in both provisions. Next, the MTT concluded that Praxis "was not deprived of any rights as a result" of Byron Township's decision not to inform Praxis that it had to "re-file the combined document with the [Board of Review]." The MTT found that Praxis's appeal was "not considered because it was not timely filed, not because [it] failed to file the combined document." The MTT also rejected Praxis's contention that it did not receive notice of the Board of Review's meeting schedule, noting that this information was "explicitly" provided in the notice of assessment. It also found that the notice of assessment informed Praxis that it could appeal in-person, virtually, or by appeal letter.

The MTT concluded that it lacked jurisdiction to address Praxis's argument that its equipment qualified for the EMPP exemption because Praxis did not appear before the March Board of Review. The MTT found that Praxis's failure to protest the exemption denial to the Board of Review deprived the MTT of jurisdiction and, thus, summary disposition was appropriate under MCR 2.116(C)(4), in Byron Township's favor. It concluded, however, that summary disposition under MCR 2.116(C)(10) was "not appropriate because significant facts remain in dispute with respect to whether the subject property meets the definition of EMPP." Praxis moved for reconsideration, which the MTT denied. This appeal followed.

II. STANDARDS OF REVIEW

"Unless there is fraud, this Court's review of MTT decisions is limited to determining whether the MTT erred in applying the law or adopted a wrong legal principle." *West Mich Annual Conference of the United Methodist Church v Grand Rapids*, 336 Mich App 132, 137; 969 NW2d 813 (2021) (quotation marks and citation omitted). "The issue of subject-matter jurisdiction

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presented in this case involves questions of statutory interpretation and constitutional law, which we review de novo." *Wells Fargo Rail Corp v State of Michigan*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 359399); slip op at 3 (citation omitted).

> The goal of statutory interpretation is to determine and apply the intent of the Legislature. The first step in determining legislative intent is to examine the specific language of the statute. If the language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. The provisions of a statute must be read in the context of the entire statute to produce a harmonious whole. This Court must consider the object of the statute and the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose. [*Yopek v Brighton Airport Ass'n, Inc*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 359065); slip op at 4-5 (quotation marks and citations omitted).]

"Although agency interpretations of a statute are entitled to 'respectful consideration,' 'they are not binding on courts and cannot conflict with the plain meaning of the statute.' " *Empire Iron Mining Partnership v Tilden Twp*, 337 Mich App 579, 586; 977 NW2d 128 (2021) (citation omitted). "We deem the [MTT's] factual findings conclusive if they are supported by competent, material, and substantial evidence on the whole record." *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008) (quotation marks and citations omitted).

This Court reviews de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). "Summary disposition under MCR 2.116(C)(4) is proper when a 'court lacks jurisdiction of the subject matter.' " *Wells Fargo Rail Corp*, ___ Mich App at ___; slip op at 3, quoting MCR 2.116(C)(4). "For jurisdictional questions under MCR 2.116(C)(4), this Court determines whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate a lack of subject matter jurisdiction." *Wells Fargo Rail Corp*, ___ Mich App at ___; slip op at 3 (quotation marks and citation omitted).

III. JURISDICTION OF THE MICHIGAN TAX TRIBUNAL

Praxis argues that the MTT wrongly concluded that it lacked jurisdiction over this case when Byron Township's assessor failed to comply with the notice requirements in MCL 211.9m(3) and MCL 211.9n(3). Praxis contends that, because of the assessor's failure to comply with its statutory obligations, Praxis should be able to bypass the requirement that it first protest to the Board of Review before appealing to the MTT. We agree. Byron Township's notice adequately informed Praxis of the basis for the denial, but it did not adequately inform Praxis of the time or manner for appealing the denial.

A. THE ELIGIBLE MANUFACTURING PERSONAL PROPERTY TAX EXEMPTION AND RELEVANT STATUTORY PROVISIONS

In December 2012, "initial legislation was passed that significantly changed the taxation of personal property" in Michigan. Michigan Department of Treasury State Tax Commission, *Assessor Guide to Eligible Manufacturing Personal Property Tax Exemption and ESA*, p 4

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<https://www.michigan.gov/taxes/property/ppt/personal-property-tax-exemptions> (accessed July 12, 2023). "The Acts, as amended, exempt about ½ of personal property from ad valorem taxation through two main provisions: 1) Small Business Taxpayer Exemption (MCL 211.9o) and 2) [EMPP] Exemption (MCL 211.9m and MCL 211.9n)." *Id*. "MCL 211.9m and MCL 211.9n provide the statutory authority for the [EMPP] Tax Exemption" and are "essentially identical except for the 'type' of personal property they exempt." *Id*. At baseline, "eligible manufacturing personal property" is defined as "all personal property located on occupied real property if that personal property is predominantly used in industrial processing or direct integrated support." MCL 211.9m(6)(c).

MCL 211.9m(1) exempts "qualified new personal property" from the collection of taxes. "Qualified new personal property" is defined as property that is both "eligible manufacturing personal property" and is "new personal property." "New personal property," in turn, is defined as "property that was initially placed in service in this state or outside of this state after December 31, 2012 or that was construction in progress on or after December 31, 2012 that had not been placed in service in this state or outside of this state before 2013." MCL 211.9m(6)(f). "Effectively this means that any eligible manufacturing personal property placed in service in 2013 and after is exempt from ad valorem personal property taxation and subject only to the [Essential Services Assessment]." *Assessor Guide to Eligible Manufacturing Personal Property Tax Exemption and ESA*, p 4.

MCL 211.9n, on the other hand, exempts "qualified previously existing personal property" from the collection of taxes. MCL 211.9n(1). "Qualified previously existing personal property" is defined as personal property that is both "eligible manufacturing personal property" and "[w]as first placed in service within this state or outside this state more than 10 years before the current calendar year." MCL 211.9n(6)(c)(*i*) and (*ii*). "Effectively this means that in 2016, EMPP placed in service in 2005 and earlier is exempt from ad valorem personal property taxation and subject only to the [Essential Services Assessment]." *Assessor Guide to Eligible Manufacturing Personal Property Tax Exemption and ESA*, p 5.

Denials of EMPP exemption requests are covered by MCL 211.9m(3) and MCL 211.9n(3). At the time Praxis requested the EMPP exemption and Byron Township denied it, MCL 211.9m(3) provided:

> If the assessor of the township or city believes that personal property for which the form claiming an exemption is timely filed each year under subsection (2)(c) is not qualified new personal property or the form filed was incomplete, the assessor may deny that claim for exemption by notifying the person that filed the form in writing of the reason for the denial and advising the person that the denial shall[2] be appealed to the board of review under section 30 by filing a combined

[2] Relevant here, the Legislature amended MCL 211.9m(3) by enacting 2021 PA 153, effective December 27, 2021. After 2021 PA 153, MCL 211.9m(3) read, in relevant part, that the assessor "may deny that claim for exemption by notifying the person that filed the form in writing of the reason for the denial and advising the person that the denial *must* be appealed to the board of

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> document as prescribed under subsection (2). If the denial is issued after the first meeting of the March board of review that follows the organizational meeting, the appeal of the denial is either to the March board of review or the Michigan tax tribunal by filing a petition and a completed combined document as prescribed under subsection (2), within 35 days of the denial notice. The assessor may deny a claim for exemption under this subsection for the current year only. If the assessor denies a claim for exemption, the assessor shall remove the exemption of that personal property and amend the tax roll to reflect the denial and the local treasurer shall within 30 days of the date of the denial issue a corrected tax bill for any additional taxes. [MCL 211.9m(3) as enacted by 2017 PA 261, effective December 31, 2017; footnote added.]

Similarly, MCL 211.9n(3) provided:

> (3) If the assessor of the township or city believes that personal property for which the form claiming an exemption is timely filed each year under subsection (2)(c) is not qualified previously existing personal property or the form filed was incomplete, the assessor may deny that claim for exemption by notifying the person that filed the form in writing of the reason for the denial and advising the person that the denial, shall be appealed to the board of review under section 30 by filing a combined document as prescribed under subsection (2). If the denial is issued after the first meeting of the March board of review that follows the organizational meeting, the appeal of the denial is either to the March board of review or the Michigan tax tribunal by filing a petition and a completed combined document as prescribed under subsection (2), within 35 days of the denial notice. The assessor may deny a claim for exemption under this subsection for the current year only. If the assessor denies a claim for exemption, the assessor shall remove the exemption of that personal property and amend the tax roll to reflect the denial and the local treasurer shall within 30 days of the date of the denial issue a corrected tax bill for any additional taxes. [MCL 211.9n(3) as enacted by 2017 PA 261, effective December 31, 2017.]

Thus, under MCL 211.9m(3) and MCL 211.9n(3), Byron Township's assessor, Timothy Baker, could deny Praxis's claim for the exemption by notifying it (1) in writing (2) of the reason for the denial and (3) advising Praxis that the denial had to be appealed to the Board of Review under MCL 211.30 by filing a combined document as prescribed under MCL 211.9m(2) and MCL 211.9n(2).

B. ANALYSIS

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review under [MCL 211.30] by filing a combined document as prescribed" under MCL 211.9m(2). (Emphasis added). See 2017 PA 261, effective December 31, 2017. Thus, the amended version changed "shall" to "must." The same change was made with respect to MCL 211.9n(3). Compare 2021 PA 154, effective December 27, 2021, with 2017 PA 261, effective December 31, 2017.

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Baker denied Praxis's request for the EMPP exemption and issued a written notice to Praxis on February 9, 2021. Baker therefore complied with the first requirement of MCL 211.9m(3), that the denial be made in writing. Praxis maintains that the notice did not provide the reason for the denial. It acknowledges that the denial included an explanation for the denial: that Praxis's equipment did not meet the definition of eligible manufacturing personal property. But it argues that the explanation was so broad as to prevent Praxis from understanding the denial in order to meaningfully contest it. We disagree.

On the one hand, as Praxis notes, determining how its equipment fails to meet the definition of eligible manufacturing personal property requires reference to several statutory provisions. See MCL 211.9m(6)(c). See also MCL 211.9m(6)(b) (defining "direct integrated support" as used in MCL 211.9m(6)(c)) and (e) (defining "industrial processing" as used in MCL 211.9m(6)(c) to be defined as that term is defined in MCL 205.54t and MCL 205.94o). On the other hand, Baker's explanation that Praxis's equipment did not meet the definition of eligible manufacturing personal property *is* "the reason for the denial." See MCL 211.9m(3). The statute does not explicitly require more detail than what was given. And if Praxis believed that its equipment met the definition of eligible manufacturing personal property, then it could have raised that issue with the March Board of Review and demonstrate how it did so. Although more detail would have certainly been helpful for Praxis, the statutory language does not require more detail than what Baker provided Praxis in terms of why he denied the exemption request. We therefore disagree with Praxis that the denial notice did not provide the reason for the denial.

The defect, however, is with the third requirement: notice of the time and manner for appeal. The notice had to advise Praxis that it had to appeal its denial to the Board of Review under MCL 211.30 by filing a combined document as prescribed under MCL 211.9m(2) and MCL 211.9n(2). Baker's denial notice advised Praxis that the denial had to be appealed to the Board of Review under MCL 211.30, but it omitted mention of the requirement that Praxis file a combined document as prescribed by MCL 211.9m(2) and MCL 211.9n(2). This effectively prevented Praxis from complying with the requirements for perfecting its appeal before the March Board of Review.

The MTT found that it was "undisputed" that the denial notice did not advise Praxis that it had to re-file the combined document with the Board of Review. It found, however, that Praxis "was not deprived of any rights as a result" because Praxis's appeal "was not considered because it was not timely filed, not because [Praxis] failed to file the combined document." This was an accurate finding; Praxis's authorized representative, Pohl, sent the letter appeal to Baker on March 10, 2021. But there was conflicting information about the period during which the March Board of Review met. The denial notice explained that "[f]iling a protest with the Board of Review [was] necessary to protect" Praxis's right to "further appeal an EMPP exemption dispute to the [MTT]." The denial also directed Praxis to MCL 211.30, which provides details about when the March Board of Review may meet. See MCL 211.30(1) through (4). Although MCL 211.30(1) indicates that the Board meets on the second Monday in March (in 2021, this was March 8th), MCL 211.30(2) allows a township's governing body to authorize, "by adoption of an ordinance or resolution, alternative starting dates in March when the board of review shall initially meet . . . ." Those alternative starting dates "shall be the Tuesday or Wednesday following the second Monday of March." MCL 211.30(2). (Here, this would have been either March 9, 2021, or March 10, 2021.) Byron Township disavowed the applicability of this alternative start date provision and

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indicated it did not have any such ordinance or resolution allowing an alternative start date for the March Board of Review. Praxis did not present any evidence to the contrary.

Praxis did, however, present evidence suggesting that it received no information about the Board of Review's meeting schedule from Baker, and that Byron Township published conflicting information about that schedule.[3] First, although the denial notice indicated that Praxis had to file a protest with the Board of Review to preserve its right to appeal in the MTT, the denial notice did not include any information about the dates on which the Board of Review met. Second, the notice of assessment provided a meeting schedule for the March Board of Review, indicating it was meeting on March 8, 2021, from 9:00 a.m. to 12:00 p.m., and from 1:00 p.m. to 5:00 p.m. that same day, and on March 9, 2021, from 1:00 p.m. to 5:00 p.m., and from 6:00 p.m. to 9:00 p.m. The notice of assessment also stated that "to appeal these values [provided in the notice of assessment], call 616-878-6033 before March 5[, 2021] for an appointment with the Board of Review." And it stated that "letter appeals must be received by March 5, 2021." Third, and somewhat contrary to the dates in the notice of assessment, the postings in the Grand Rapids Press indicated that appointments for the Board of Review could be made by contacting the Byron Township Assessor's Office from March 1, 2021, through *March 10, 2021* (though it also states that the Board would meet on March 8, 2021, and March 9, 2021). This could be interpreted as the Board of Review was in session until March 10, 2021, or that a taxpayer could make an appointment as late as March 10, 2021. Finally, according to Karsten and Pohl, Baker provided neither of them with the dates on which the Board of Review would meet to handle EMPP exemption denials. He also never provided them with a deadline for filing their letter appeal, despite informing them that submitting a letter appeal to him was the "best" option.

In *Parkview Mem Ass'n v Livonia*, 183 Mich App 116, 117-118; 454 NW2d 169 (1990),[4] the city mailed tax assessment notices to the petitioners two days after the last day on which the board of review met. The *Parkview* Court acknowledged that "a condition precedent to the Tax Tribunal's exercise of its jurisdiction to review the assessment of [the] petitioners' property was that [the] petitioners protest the assessments to the board of review." *Id*. at 118-119. Despite this protest requirement, the *Parkview* Court concluded that the petitioners' claims should be heard, explaining:

> We adopt the Supreme Court's remedial approach in [*W & E Burnside, Inc v Bangor Twp*, 402 Mich 950*l*; 314 NW2d 196 (1978)] here. Respondents' notices

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[3] Praxis's argument focuses on the defectiveness of the notice Byron Township provided. This encompasses its argument that the dates in the Grand Rapids Press suggested the Board of Review would be in session until March 10, 2021. See *Glasker-Davis v Auvenshire*, 333 Mich App 222, 228; 964 NW2d 809 (2020) ("[S]o long as the issue itself is not novel, a party is generally free to make a more sophisticated or fully developed argument on appeal than was made in the trial court.").

[4] Although *Parkview* is not strictly binding pursuant to MCR 7.215(J)(1) because it was issued before November 1, 1990, as a published opinion, it nevertheless "has precedential effect under the rule of stare decisis" pursuant to MCR 7.215(C)(2). See *Legacy Custom Builders, Inc v Rogers*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 359213); slip op at 5 n 1.

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> of assessment were sent in violation of MCL 211.24c(5) [now subsection (4)] . . . . Under that statute the assessments remain valid. Nevertheless, respondents' late notices were not given in a manner reasonably calculated under all the circumstances to apprise petitioners of the assessments and to afford them an opportunity to be heard. Petitioners will thus be denied due process unless they are given an opportunity to be heard. Under the Supreme Court's *Burnside* decision, petitioners are not entitled to challenge the assessments in circuit court despite respondents' improper notice. Based on these considerations and consistent with the Supreme Court's *Burnside* decision, we conclude that petitioners' claims should be heard by the Tax Tribunal. [*Parkview*, 183 Mich App at 120 (citations omitted).]

Parkview strongly supports the conclusion that the MTT should hear Praxis's claims. The notices here created confusion about the days on which the Board of Review would meet. Several of the notices indicated that the Board would meet on March 8, 2021, and March 9, 2021. But the newspaper publications—published *after* the notice of assessment was sent to Praxis—indicated that appointments before the Board could be booked from March 1, 2021, through March 10, 2021. The assessor, Baker, compounded the confusion by encouraging Praxis to file a letter appeal but not providing information about the deadline for doing so, despite repeated requests from Karsten and Pohl. Although the notice of assessment indicated that letter appeals had to be filed by March 5, 2021, when Pohl and Karsten contacted Baker about the letter appeal, he never provided them with a deadline by which they had to file the letter appeal.

This Court has followed *Parkview* in *Morehouse v Twp of Mackinaw*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2009 (Docket No. 281483), and *Mich State Univ v Lansing*, unpublished per curiam opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 250813). In *Morehouse*, the petitioners did not receive notice until after the Board of Review met. *Morehouse*, unpub op at 3-4. Following *Parkview*, the *Morehouse* Court affirmed the MTT's decision to hear the case, despite the petitioners' failure to first appeal to the Board of Review. *Id*. at 4. Similarly, in *Mich State Univ*, this Court concluded there was "no evidence to contradict MSU's position" that the notice of assessment "was actually received" after the deadline for it to protest to the Board of Review. *Mich State Univ*, unpub op at 3. The *Mich State Univ* Court affirmed the MTT's exercise of jurisdiction and, citing *Parkview*, concluded that "[i]f a taxing authority can avoid board and tribunal review of assessments by mailing untimely notices, a property owner's due process rights are unquestionably impaired." *Id*. at 5.

Although *Morehouse* and *Mich State Univ* are unpublished, we find them persuasive. See *Barclae v Zarb*, 300 Mich App 455, 469; 834 NW2d 100 (2013) (finding unpublished decision, though not binding, to be "instructive and persuasive" and adopting its analysis). They, along with *Parkview*, support the principle that in instances of inadequate notice, this Court may waive the protest requirement before the Board of Review and allow the case to proceed before the MTT. Based on the conflicting information in the various notices and publications, as well as Baker's failure to provide sufficient information about the deadline for filing the letter appeal, and his failure to inform Praxis of the need to re-file its combined document, these circumstances warrant waiver of the protest requirement. Accordingly, we remand to the MTT for the case to proceed as if the protest requirement were satisfied.

IV. DUE PROCESS

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Praxis argues that Byron Township deprived it of due process when its assessor failed to comply with the provisions of MCL 211.9m(3) and MCL 211.9n(3). To remedy this deprivation, Praxis argues, the MTT should be vested with jurisdiction to consider Praxis's exemption claim. We agree.

"Courts examine procedural due process questions in two steps: first, we ask whether the State has interfered with a protected liberty or property interest; second, we inquire whether the procedures leading to the deprivation of that interest were constitutionally sufficient." *Duckett v Solky*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 357346); slip op at 6, citing *Kentucky Dep't of Corrections v Thompson*, 490 US 454, 460; 109 S Ct 1904; 104 L Ed 2d 506 (1989). Regarding the first inquiry, the parties do not dispute that there was a property interest at stake that implicates due process. Regarding the second inquiry, "[f]undamentally, due process requires that a party receive notice of the proceedings and a meaningful opportunity to be heard." *Wells Fargo Rail Corp*, ___ Mich App at ___; slip op at 9 (quotation marks and citation omitted). "To comport with these procedural safeguards, the opportunity to be heard must be granted at a meaningful time and in a meaningful manner." *Bonner v Brighton*, 495 Mich 209, 235; 848 NW2d 380 (2014) (quotation marks and citation omitted).

Praxis does not contend that MCL 211.9m(3) and MCL 211.9n(3) on their face provide insufficient notice and an opportunity to be heard. Rather, it argues that the failure to follow these adequate procedures amounts to a violation of due process. Both provisions require the assessor to notify the taxpayer in writing of an exemption denial, with an explanation for the denial and with information about how to perfect an appeal with the Board of Review. See MCL 211.9m(3); MCL 211.9n(3). These provisions, on their face, comport with due process. The issue here is whether the application of these statutes in this particular case violated Praxis's right to due process. For the reasons already articulated, we conclude that it did.

To briefly restate, the assessor failed to inform Praxis that it had to re-file its combined document to perfect its appeal before the Board of Review, as required under MCL 211.9m(3) and MCL 211.9n(3). There was also conflicting information about the Board's exact schedule, namely there was a question of whether it would meet on March 10, 2021, based on the posting in the Grand Rapids Press. And Baker, the assessor, never provided Praxis's representatives with the Board's schedule or the deadline for protesting to the Board of Review, despite multiple requests from them. So, although MCL 211.9m(3) and MCL 211.9n(3) facially comport with due process, Byron Township failed to comply with the obligations imposed by the statutes and, therefore, it deprived Praxis of due process. Allowing the MTT to hear this case as a matter of equity, despite Praxis's failure to first protest to the Board of Review, remedies this deprivation. See *Wells Fargo Rail Corp*, ___ Mich App at ___; slip op at 11-12 (recognizing courts' equitable power that "has traditionally been reserved for unusual circumstances" and applying equitable tolling to toll the period of limitations as a matter of equity) (quotation marks and citation omitted).

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Noah P. Hood
/s/ Douglas B. Shapiro
/s/ Christopher P. Yates

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SIXARP, LLC, d/b/a Praxis Packaging Solutions,
Petitioner,

v

Byron Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 21-000523

Presiding Judge
Victoria L. Enyart

ORDER DENYING PETITIONER'S MOTION FOR PARTIAL SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

The parties filed the respective motions for summary judgment, with respect to the issue of jurisdiction, on December 14, 2021. Petitioner's Motion seeks partial summary disposition under MCR 2.116(C)(10). Respondent's Motion seeks summary disposition under MCR 2.116(C)(4) and (C)(10). Responses to the opposing party's motions were timely filed on January 4, 2022.

The Tribunal has reviewed the Motions, responses, and the evidence submitted and finds that denying Petitioner's Motion is appropriate. Further, granting Respondent's Motion under MCR 2.116(C)(4) and denying Respondent's Motion under MCR 2.116(C)(10) is appropriate.

PETITIONER'S CONTENTIONS

In support of its Motion, Petitioner states its combined document was timely filed with Respondent's assessor and qualifies as EMPP. Petitioner contends Respondent

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erred in denying the exemption and that Respondent's assessor erred in following several statutory notice requirements, including its failure to notify Petitioner of the reason for denying the exemption in writing, failure to notify Petitioner that it must file the combined document with the BOR, and failure to notify Petitioner of the due date for filing the combined document with the BOR, as well as times, dates, and location of the Board meeting. Petitioner contends Respondent's notice requirements under MCL 211.9m(3) and MCL 211.9n(3) exceed the statutory obligations for property tax assessments. Petitioner also states that Respondent's actions violated its constitutional due-process rights.

In support, Petitioner states that it engages in industrial processing at the subject real property and that the subject personal property meets the definition of EMPP. It states that Respondent's assessor denied the exemption application using a sample form and lacking specificity by listing the reason for denial as the sample reason used on the sample form. Petitioner also contends the denial failed to notify Petitioner that the combined document was to be re-filed with the BOR, the times, dates, and location of the BOR, the manner in which the BOR was to be held, and the method of submitting a protest to the BOR.

Petitioner contends that its former agent, Mr. Karsten, contacted the assessor by telephone on February 26, 2021 to advise the assessor of Petitioner's intention to appeal the denial. Petitioner contends that the assessor discouraged Petitioner from appearing at the BOR and told Petitioner instead to file a letter. Petitioner also contends the assessor failed to notify Petitioner of any deadline or its requirement to re-file the combined document. Petitioner also contends a separate agent left the

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assessor a voicemail to request a hearing and for explanation of the appeal process. It states that the assessor's voicemail in response fails to indicate that re-filing the combined document was required, the time, date, or location of the meetings, or any deadline to comply. Thereafter, Petitioner states that it submitted a letter appeal with authorization letter on March 10, 2021 but was informed the following day that the BOR had adjourned, thereby depriving Petitioner of the opportunity to appeal.

Petitioner contends that Respondent's assessor failed to notify Petitioner in writing of the reason for the denial, failed to indicate that the combined document must be re-filed with the BOR, failed to notify Petitioner of the time, date, and location of the BOR, and failed to submit Petitioner's appeal to the BOR. Specifically, Petitioner argues that there are many reasons why property may not meet the definition of EMPP and that the subject denial lacks specificity. Petitioner argues this portion of the statute exists to allow Petitioner the opportunity to amend and correct its combined document and that Respondent's actions deprived it of this opportunity. Additionally, Petitioner argues that the denial notice erred in not mentioning the filing of a combined document with the BOR. Further, Petitioner contends that Respondent failed to provide pertinent information about the BOR meetings to allow the taxpayer to perfect an appeal to the BOR. Petitioner states that its appeal letter was filed within the timeframe outlined in MCL 211.30, which was the notice provided with respect to the appeal procedure in the denial letter. Finally, Petitioner contends that Respondent failed to schedule Petitioner a BOR appointment or advise the BOR that Petitioner's agents twice verbally requested to appear at the BOR.

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Petitioner contends that the Tribunal has statutory jurisdiction over this appeal under MCL 205.735a because of Respondent's actions depriving Petitioner of its opportunity to appear before the BOR. Alternatively, Petitioner contends that its right to due process under the 14th Amendment to the U.S. Constitution was violated because it did not have a fair opportunity to challenge Respondent's denial and because it timely appealed the decision once the defective due-process decision was discovered. Finally, Petitioner contends that it shall demonstrate entitlement to EMPP for the subject property once the Tribunal determines it has jurisdiction.

RESPONDENT'S RESPONSE TO PETITIONER'S CONTENTIONS

In support of its response, Respondent contends that Petitioner's arguments do not conform with the plain language of statute and that Respondent contends its motion is correct that the Tribunal lacks jurisdiction.

Respondent contends that Petitioner's error caused it to miss the BOR and therefore resulted in this appeal. Respondent contends that the assessor's denial adequately advised Petitioner of the denial, the reason for the denial, and Petitioner's right to appeal that appeal to the March BOR. Respondent contends these requirements were met and that other requirements were erroneously stated by Petitioner. Respondent contends that the denial reason was sufficient because a detailed denial is not mandated by the statute and because the use of a standardized form does not render the denial ineffective.

Respondent contends that Petitioner was sufficiently advised of the need to file a protest with the BOR in the assessor's denial notice and that this notice sufficiently advised Petitioner on perfecting that appeal. Respondent contends that information

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about appealing to the BOR was disseminated through multiple other channels. Respondent contends the assessor never informed Petitioner to not file a BOR appeal. Respondent claims that the reference to MCL 211.30 was sufficient to advise Petitioner of its rights before the BOR and the appropriate filing deadline.

Respondent contends that there is a clear statutory distinction, under MCL 211.9m and MCL 211.9n, between the assessor and the BOR and that a verbal protest to the assessor is not sufficient to constitute a written protest to the BOR. Respondent contends that, while the subject property does not qualify as EMPP, the Tribunal lacks jurisdiction to make such a determination.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that Petitioner owns and sought an eligible manufacturing personal property (EMPP) exemption for Parcel No. 41-50-15-020-701 for the 2021 tax year by timely filing Form 5278, the combined personal property statement and EMPP exemption application (combined document). Respondent states that the assessor denied that application in writing on February 9, 2021. The assessor denies the exemption claim because the assessor determined that the subject personal property did not meet the definition of EMPP. Respondent states that its 2021 March Board of Review (BOR) met on March 2, 8, and 9, closing on the final date, and that Petitioner did not contact the assessor about appealing to the BOR until March 10, 2021.

Respondent contends that Petitioner's failure to appeal the assessor's denial to the 2021 March BOR violates the procedural appeal requirement of MCL 211.9m and MCL 211.9n. Respondent contends that Petitioner was required to appeal the denial to

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the BOR and that the Tribunal lacks jurisdiction over Petitioner's direct appeal. Respondent states that its denial notice complies with the statutory requirements of an EMPP denial notice.

Respondent contends that Petitioner's claims of inadequate notice are without merit. Respondent argues it was not statutorily required to notify Petitioner of the meeting times and dates for the BOR yet did so upon the notice of denial as well as through general publication. Respondent states it was not required to provide the location of the BOR meeting but did so. Respondent contends that Petitioner had adequate notice that it was required to appeal the assessor's denial to the BOR. Respondent contends that the assessor's denial notice adequately states the reason for denial. Respondent contends that Petitioner suffered no constitutional deprivation of a result of the denial process.

Respondent contends that there is no evidence to support Petitioner's contention that it did appeal to Respondent's BOR. Respondent contends that a verbal indication that a party seeks to appeal is not sufficient and that the written appeal must be made to the BOR. Respondent concludes that a plain reading of the statute and the facts of this case indicate that the Tribunal lacks jurisdiction to consider Petitioner's appeal.

PETITIONER'S RESPONSE TO RESPONDENT'S CONTENTIONS

In support of its response, Petitioner contends that it was deprived of the condition precedent of a BOR appeal in this case by the actions of Respondent's assessor. Specifically, Petitioner contends that the assessor failed to notify Petitioner for the reason for the denial, failed to notify Petitioner of the requirement to re-file the

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exemption application with the BOR, and failed to make a BOR appointment for Petitioner despite Petitioner twice requesting such an appointment.

Petitioner contends that Respondent failed to notify it of the reason for denial in writing and failed to notify it that it was required to file a combined document with the BOR. Petitioner states that the assessor's failure to advise Petitioner of these facts deprived it of important notice prior to the BOR. In contrast to the specified denial reasoning present when an assessor denied a principal residence exemption, as demonstrated by Form 2742, or as required in the Revenue Act,[1] Petitioner contends that the assessor's subject denial does not rise to the level of specificity required by MCL 211.9m and 211.9n.

Petitioner contends that Respondent's written means failed to satisfy Respondent's statutory obligations. The Notice of Assessment indicates the method by which a taxpayer may appeal a property's value but does not reference EMPP, does not specify the reason for denial, and does not advise that the combined document must be re-filed to the BOR. Petitioner contends that public notice also was insufficient to satisfy the statutory requirements and that those notices failed to mention EMPP.

Petitioner contends that Respondent's reliance upon a sample document released by the Michigan Department of Treasury does not arise to the level of satisfying its statutory obligation. Petitioner argues that the provided language indicating that the subject does not meet the definition of EMPP does not rise to the level of specificity required by statute. Petitioner further contends that the statutory

[1] MCL 205.22. Petitioner also relies upon *Montgomery Ward & Co, Inc v Dep't of Treasury*, 191 Mich App 674 (1991) and *Winget v Dep't of Treasury*, 26 MTT 531 (2011).

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burden of advising Petitioner that the combined document must be re-filed to the BOR was not met.

Petitioner further states that it attempted to schedule BOR appearance through communication with the assessor on February 26 and March 2, 2021 but that Respondent's assessor frustrated those attempts through non-communication and miscommunication.

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, Petitioner moves for partial summary disposition under MCR 2.116(C)(10), and Respondent moved for summary disposition under MCR 2.116(C)(4) and (C)(10).

Dismissal under MCR 2.116(C)(4) is appropriate when the "court lacks jurisdiction of the subject matter." When presented with a motion pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties.[3] In addition, the evidence offered in support of or in opposition to a party's motion will "only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion."[4] A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.[5]

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[2] See TTR 215.
[3] *Id.*
[4] MCR 2.116(G)(6).
[5] See *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).

RECEIVED by MSC 10/3/2023 11:43:06 AM

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 "when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law."[6]

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.[7] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[8] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[9] 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.[10] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[11]

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[6] *Lowrey v LMPS & LMPJ, Inc,* 500 Mich. 1, 5; 890 NW2d 344 (2016) (citation omitted).
[7] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[8] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[9] *Id.*
[10] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[11] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

RECEIVED by MSC 10/3/2023 11:43:06 AM

CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion under MCR 2.116(C)(10) and finds that denying the Motion is warranted. Further, granting Respondent's Motion under MCR 2.116(C)(4) and denying Respondent's Motion under MCR 2.116(C)(10) is warranted.

The General Property Tax Act[12] allows for the exemption from ad valorem taxation of personal property that is qualified new or qualified previously existing personal property.[13] To claim an exemption, the party shall file the combined document with the assessor prior to February 20.[14]

MCL 211.9m(3) and MCL 211.9n(3) each states in pertinent part:

> If the assessor . . . believes that personal property for which the form claiming an exemption is timely filed . . . is not qualified . . . personal property or the form filed was incomplete, the assessor may deny that claim for exemption by notifying the person that filed the form in writing of the reason for the denial and advising the person that the denial must be appealed to the board of review under [MCL 211.30] by filing a combined document as prescribed under subsection (2).

Here, Petitioner contends that the assessor failed to appropriately notify Petitioner of the reason for denial in writing. While a written reason for denial was undisputedly provided, Petitioner claims that the stated reason is not sufficiently detailed. The denial form states the exemption request is denied because "the qualified new personal property and/or the qualified existing personal property claimed on (the

[12] MCL 211.1 *et seq.*
[13] MCL 211.9m(1), MCL 211.9n(1).
[14] MCL 211.9m(2), MCL 211.9n(2).

RECEIVED by MSC 10/3/2023 11:43:06 AM

combined document) does not meet the definition of (EMPP) as defined by MCL 211.9m and/or MCL 211.9n, therefore the (EMPP) is denied." Petitioner correctly contends there are several components in determining whether property qualifies as EMPP, but Petitioner did not demonstrate that a more specific answer is required to comply with statute. The language, in fact, supports the opposite conclusion because it mirrors the statutory language from MCL 211.9m(3) and MCL 211.9n(3), permitting the assessor to deny the exemption request if the property is not qualified new or previously existing personal property or if the form filed was incomplete. To find that Petitioner's failure to appeal the denial to the BOR was caused by Respondent's failure to detail the reason(s) for denial in greater specificity requires a finding that the language used in the denial does not sufficiently comply with the statutory requirement to state the reason for denial in writing, but that finding is not supported here where the denial form uses the same language as the relevant statutory subsection.

Petitioner contends that it was not informed that it was required to re-file the combined document with the BOR. This claim is undisputed, yet the Tribunal finds that Petitioner was not deprived of any rights as a result. Petitioner's appeal of the assessor's denial was not considered because it was not timely filed, not because Petitioner failed to file the combined document. Petitioner therefore cannot establish that Respondent's failure to comply with this statutory requirement violated Petitioner's due-process rights.

Petitioner also contends that it was not provided by appropriate notice of the times and dates at which the BOR would meet or the manner in which the BOR would meet. The Tribunal disagrees, as this information was explicitly stated under "March

RECEIVED by MSC 10/3/2023 11:43:06 AM

Board of Review Information" provided to Petitioner on the Notice of Assessment. Specifically, that notice indicates that the BOR will meet at certain specific times on March 8 and March 9. It is not disputed that Petitioner's written appeal was not filed with the assessor until March 10, which is outside of the statutorily required appeal period under MCL 211.9m(3) and MCL 211.9n(3). Reliance upon the general BOR dates under the General Property Tax Act is not appropriate when more specific dates were provided to Petitioner through the Notice of Assessment and the public notice process. The notice of assessment also indicates that appeals to the BOR may be made in-person, virtually, or by appeal letter, directly contradicting Petitioner's assertion that no notice was provided of the manner in which the BOR would be conducted.

Respondent's overall actions, taken as a whole, did not deprive Petitioner of any meaningful opportunity to appeal to the BOR and therefore did not deprive Petitioner of its due-process rights. No person in Michigan shall be deprived of property without due process.[15] Despite Petitioner's arguments, Respondent supplied sufficient notice regarding the reason for denial and manner of appeal. Further, its failure to notify Petitioner of the requirement to file the combined document with the BOR did not meaningfully deprive Petitioner of any rights given Petitioner's failure to timely file any written appeal of the assessor's denial.

Petitioner also contends that denying its Motion and granting Respondent's Motion is unjust because it deprives Petitioner of the opportunity to prove its case at hearing, whereas Respondent has no such limitation if Petitioner's Motion is granted. Petitioner contends that the subject property meets the definition of industrial

[15] Mich Const, Art I, § 17.

RECEIVED by MSC 10/3/2023 11:43:06 AM

processing and should therefore qualify for the exemption. However, the Tribunal cannot consider these arguments in any case where it lacks jurisdiction. The Tribunal cannot grant any relief based on this argument because it is based in equity, and the Tribunal lacks any power to grant relief in equity.[16]

Respondent's Motion correctly contends that Petitioner was provided sufficient notice of the times and dates of the BOR. As discussed above, the Tribunal finds that Respondent's fulfillment of its responsibilities under MCL 211.24c(1) satisfies its obligation under MCL 211.9m(3) and MCL 211.9n(3). Although Respondent failed to properly advise Petitioner that it was required to re-file the combined document with the BOR, that fact is moot because the BOR's lack of jurisdiction over the assessor's denial was the result of Petitioner's failure to timely appeal the denial in writing, not its failure to re-file the combined document.

In response to Respondent's contention that no timely appeal was made, Petitioner also contends that its former agent, Mr. Karsten, spoke with Respondent's assessor by phone on or about February 26, 2021. To that end, the Notice of Assessment does indicate that a taxpayer wishing to appeal the Notice of Assessment could call that office prior to March 5. Notwithstanding, Petitioner has not shown that it was deprived of any right by the assessor's failure to take any action based upon the phone call. Petitioner states that Mr. Karsten was advised that the appeal needed to be made in writing, not verbally. That instruction comports with the plain statutory language of MCL 211.9m and MCL 211.9n. Although Petitioner contends that Mr.

[16] See *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346 (1987), *Elec Data Sys Corp v Flint Twp,* 253 Mich App 538 (2002), and *VanderWerp v Plainfield Twp*, 278 Mich App 624 (2008).

RECEIVED by MSC 10/3/2023 11:43:06 AM

Karsten was not advised on the phone call of the time and date by which the written appeal was required to be filed, the Tribunal finds, as previously indicated, Petitioner was already advised of that information on the notice of assessment.

As a result, the undisputed facts on the record support a finding of summary disposition for Respondent under MCR 2.116(C)(4). Petitioner's failure to perfect the assessor denial at the BOR as required by statute deprives the Tribunal of any jurisdiction. As such, and because the Tribunal has no equitable power to waive or otherwise disregard a statutory requirement or filing deadline, it has no authority to grant Petitioner the relief requested.[17] Summary disposition in favor of Respondent under MCR 2.116(C)(4) is therefore appropriate. However, summary disposition in favor of Respondent under MCR 2.116(C)(10) is not appropriate because significant facts remain in dispute with respect to whether the subject property meets the definition of EMPP.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Partial Summary Disposition is DENIED under MCR 2.116(C)(10).

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is GRANTED under MCR 2.116(C)(4).

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is DENIED under MCR 2.116(C)(10).

IT IS FURTHER ORDERED that the case is DISMISSED.

[17] See *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346 (1987), *Elec Data Sys Corp v Flint Twp,* 253 Mich App 538 (2002), and *VanderWerp v Plainfield Twp*, 278 Mich App 624 (2008).

RECEIVED by MSC 10/3/2023 11:43:06 AM

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.

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 Victoria K. Enjart

Entered: April 12, 2022
bw

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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