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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT
On Appeal from the Michigan Court of Appeals
Hood, P.J. and Shapiro and Yates, JJ.

SIXARP, LLC d/b/a PRAXIS PACKAGING SOLUTIONS,

Petitioner-Appellee,

v

BYRON TOWNSHIP,

Respondent-Appellant.

MSC No. 166190

COA No. 361888

Tax Tribunal No. 21-000523-TT

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APPELLANT'S APPENDIX TO SUPPLEMENTAL BRIEF ON ITS APPLICATION FOR LEAVE TO APPEAL

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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.

---

[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

[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,	MICHIGAN TAX TRIBUNAL
v	MOAHR Docket No. 21-000523
Byron Township, Respondent.	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).

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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).

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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).

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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

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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.

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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).

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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).

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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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Morehouse v. Twp. of Mackinaw

Court of Appeals of Michigan

March 17, 2009, Decided

No. 281483

Reporter
2009 Mich. App. LEXIS 655 *; 2009 WL 691816

GARY D. MOREHOUSE and SUSAN C. MOREHOUSE, Petitioners-Appellees, v TOWNSHIP OF MACKINAW, Respondent-Appellant.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: **[*1]** Tax Tribunal. LC No. 00-317401.

Judges: Before: Murphy, P.J., and Fitzgerald and Markey, JJ.

Opinion

PER CURIAM.

In this property assessment dispute, respondent appeals by right from the October 5, 2007 judgment of the Michigan Tax Tribunal holding that respondent did not have the authority to retroactively uncap and increase petitioners' property value based on an oversight of paperwork in the assessor's office. We affirm.

Respondent first argues that the tribunal erred in ruling that it could not uncap and increase petitioners' property value under MCL 211.53b. We disagree. "Absent fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle." *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). The proper interpretation and application of a statute is a question of law that this Court reviews de novo. *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006).

The relevant provisions regarding errors in property tax values, and the means of correction, are found in MCL 211.53b(1), [1] which states in part:

> (1) If there has been a clerical error or a mutual mistake of fact relative to **[*2]** the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes, the clerical error or mutual mistake of fact shall be verified by the local assessing officer and approved by the board of review at a meeting held for the purposes of this section on Tuesday following the second Monday in December and, for summer property taxes, on Tuesday following the third Monday in July. . . . Except as otherwise provided in subsection (6) [relative to correcting the grant of a principal residence exemption], a correction under this subsection may be made in the year in which the error was made or in the following year only.

Neither party argues that there was a mutual mistake, so the issue here is whether respondent's failure to uncap the subject property values in 2001 was the result of a clerical error. Respondent argues that it was; petitioner [2] disagrees.

In *Int'l Place Apartments v Ypsilanti Twp*, 216 Mich App 104, 105; 548 NW2d 668 (1996), the petitioner built an apartment complex including five buildings numbered 18 through 22. The respondent assessed the apartment complex on December 31, 1986, at a time when the complex construction was only partially complete. *Id*. In 1989, the respondent discovered that a building permit was incorrectly filed and therefore did not prompt the assessor to reassess the petitioner's apartment complex when all construction was complete. *Id*. at 106-107. Upon discovering the error, the respondent sent a letter

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[1] All reference to MCL 211.53b is to that version applicable at the time in question, PA 2003 No 105, effective July 24, 2003. MCL 211.53b was last amended, with no impact on the facts of this case, by PA 2006 No 378, effective September 27, 2006.

[2] In the singular, petitioner refers to Gary **[*3]** Morehouse.

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to petitioner proposing to increase the assessment based on a clerical error requiring correction under MCL 211.53b. *Id*. at 106.

The Court held that this mistake was not a clerical error requiring correction. The Court contemplated the definition of "'clerical error,'" which is "generally 'a mistake in writing or copying.'" *Id*. at 109, quoting Black's Law Dictionary (6th ed). In considering a clerical error in context of MCL 211.53b, the Court noted that it "is directly referenced to use of the correct assessment figures, the taxation rate, and the mathematical computation relating to the **[*4]** assessment of taxes." *Id*. Thus, "the statute itself refers to errors of a typographical, transpositional, or mathematical nature." *Id*. The Court reasoned that the misfiling of a document is not a clerical error. *Id*.

As in *Int'l Place Apartments*, respondent did not make a clerical error of a typographical, transpositional, or mathematical nature. From the evidence and testimony, it is apparent that respondent, or its agents, had sufficient information to recognize that a sale had been made, including the amount of the sale and the parcel numbers as included on the real property statement. The fact that this information was "lost in the shuffle" is not enough for respondent to claim clerical error. Lost paperwork, or the improper handling of paperwork, does not equate to a clerical error, as defined by case law. Therefore, the tribunal judge correctly ruled that respondent did not have authority under MCL 211.53b to uncap and increase petitioner's property value.

Respondent next argues that the tribunal erred in ruling that it had jurisdiction to hear this appeal. We disagree. The Tax Tribunal Act, MCL 205.701 *et seq*., outlines the subject matter jurisdiction of the tribunal, which states, **[*5]** in pertinent part as follows:

> The tribunal's exclusive and original jurisdiction shall be:
>
> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.
>
> (b) A proceeding for refund or redetermination of a tax under the property tax laws. [MCL 205.731.]

The act also describes the procedural requirements for perfecting an appeal in the Tribunal. See *Parkview Mem Assoc v City of Livonia*, 183 Mich App 116, 121; 454 NW2d 169 (1990). The relevant statute states as follows:

> (2) A proceeding before the tribunal is original and independent and is considered de novo. For an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (3), except as otherwise provided in this section for a year in which the July or December board of review has authority to determine a claim of exemption for qualified agricultural property or for an appeal of a denial of a principal residence exemption **[*6]** by the department of treasury in section 37(5) and (7).
>
> * * *
>
> (3) The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved. . . . In 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, determination, or order that the petitioner seeks to review. . . . [MCL 205.735(2), (3).]

Respondent argues that petitioner's failure to file a petition in this case within 35 days of respondent's final decision was made should be fatally defective and the tribunal should not have had jurisdiction to hear this appeal.

In a prior decision, this Court strictly construed MCL 205.735, holding that "an untimely filing under MCL 205.735(2) deprived the Tax Tribunal of jurisdiction to consider the petition and the petition was properly dismissed." *Electronic Data Systems Corp v Flint*, 253 Mich App 538, 543-544; 656 NW2d 215 (2002), relying on *Szymanski v Westland*, 420 Mich 301, 305; 362 NW2d 224 (1984). However, *Electronic Data Systems Corp* is distinguishable from the **[*7]** case at hand. The focus in *Electronic Data Systems Corp* was on the fact that the taxpayer had sent its appeal petitions by first-class mail on June 30 of the tax year involved as opposed to by certified mail. *Id*. at 540. Thus, the notice at issue was that received by the tribunal, not by the taxpayer.

We agree with the tribunal that this case is akin to *Parkview Mem Ass'n v City of Livonia*, 183 Mich App 116; 454 NW2d 169 (1990), and the jurisdictional issue should be decided consistent with its reasoning. In *Parkview*, the city mailed tax assessment notices to the petitioners two days after the last day board of review convened. *Id*. at 117-118. *Parkview* noted that "a condition precedent to the Tax Tribunal's exercise of its

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jurisdiction to review the assessment of petitioners' property was that petitioners protest the assessments to the board of review." *Id*. at 118-119. In concluding that the petitioners' claims should be heard, the Court reasoned as follows::

> 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 of assessment were sent in violation of MCL 211.24c(5)[now subsection (4)] . . . **[*8]** . 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. See *Bickler v Dep't of Treasury*, 180 Mich App 205, 211; 446 NW2d 644 (1989). Petitioners will thus be denied due process unless they are given an opportunity to be heard. *Id*. 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, supra* at 120.]

In the case at hand, as in *Parkview*, petitioners were not given adequate notice that their property's assessment was going to be increased. Both parties agree that petitioners were not informed of the increase until after the December 2004 board of review meeting had taken place. As a result of the approval of the December 2004 board of review and the actions of the assessor, petitioners' property values were increased **[*9]** for tax years 2002, 2003, and 2004. Petitioner testified that when he contacted the assessor regarding the increased assessment value in January 2005, he was told that the assessor would discuss the situation with his predecessor. Respondent 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 statutory time limit. Respondent's assessor did not meet the requirements of MCL 211.27b(6) for notification after a property value was increased and did not send notice to petitioners before the December board of review. Respondent simply sent petitioners new tax bills for years 2002, 2003, and 2004 showing an outstanding balance and presumably notifying them of the increase in the taxable value of the property.

In sum, in order to protect petitioners' due process rights and consistent with *Burnside*, we adopt and follow 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.

Respondent next argues that petitioners' failure to file a property transfer affidavit authorized respondent to **[*10]** uncap and increase petitioners' property values. We disagree. MCL 211.27a(10) controls the manner in which the assessor is to be notified that a property transfer has taken place.

> The register of deeds of the county where deeds or other title documents are recorded shall notify the assessing officer of the appropriate local taxing unit not less than once each month of any recorded transaction involving the ownership of property and shall make any recorded deeds or other title documents available to that county's tax or equalization department. Unless notification is provided under subsection (6), the buyer, grantee, or other transferee of the property shall notify the appropriate assessing office in the local unit of government in which the property is located of the transfer of ownership of the property within 45 days of the transfer of ownership, on a form prescribed by the state tax commission that states the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description.

MCL 211.27a(6) lists various means of conveying title to a present interest in property, including:

> (b) A conveyance **[*11]** by land contract. The taxable value of property conveyed by a land contract executed after December 31, 1994 shall be adjusted under subsection (3) for the calendar year following the year in which the contract is entered into and shall not be subsequently adjusted under subsection (3) when the deed conveying title to the property is recorded in the office of the register of deeds in the county in which the property is located.

Here, petitioners entered into a land contract with the seller and recorded a land contract memorandum on October 22, 2001. Thereafter, petitioners' agent filled out a property transfer affidavit as required under MCL 211.27a(10). Both parties concede that the parcel identification number on the property transfer affidavit was incorrect.

But, because the petitioners' entered into, and recorded, a land contract, the assessor should have been notified pursuant to § 27a(6). MCL 211.27b(10) provides,

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"Unless notification is provided under subsection (6), the buyer . . . shall notify the appropriate assessing office." (Emphasis added.) Because the land contract was recorded with the register of deeds, notice should have been provided through the register of deeds, **[*12]** even if the property transfer affidavit did not trigger the usual internal procedures for notifying the assessor.

MCL 211.27b provides that if a buyer does not notify the appropriate assessing office of a transfer of ownership of property as required under MCL 211.27a, then that property value can be adjusted under MCL 211.27a(3). The testimony and evidence presented does not clearly establish that respondent did not receive sufficient notice of petitioners' purchase of the property. Thus, the tribunal was correct to conclude that respondent failed to establish that it did not have notice of petitioners' purchase of property in October 2001, and this conclusion is supported by competent, material, and substantial evidence. *Mount Pleasant v State Tax Comm*, 477 Mich 50, 50; 729 NW2d 833 (2007).

We affirm.

/s/ William B. Murphy

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

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MICHIGAN STATE UNIV. v. CITY OF LANSING

Court of Appeals of Michigan

February 15, 2005, Decided

No. 250813

Reporter
2005 Mich. App. LEXIS 399 *; 2005 WL 356639

MICHIGAN STATE UNIVERSITY, Petitioner-Appellee, v CITY OF LANSING, Respondent-Appellant.

Notice: [*1] THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: Tax Tribunal. LC Nos. 00-286639 ; 00-293616.

Disposition: Affirmed.

Judges: Before: Markey, P.J., and Murphy and O'Connell, JJ.

Opinion

PER CURIAM.

Respondent city appeals two orders of the Michigan Tax Tribunal (MTT or tribunal), one of which granted summary disposition in favor of petitioner MSU on its claim that certain property owned by the university located in the city is tax-exempt, and a second order that denied the city's motion for summary disposition with respect to the city's argument that the MTT did not have subject-matter jurisdiction in light of MSU's alleged failure to timely and properly appeal the tax assessment at issue. We affirm.

This Court reviews decisions of the MTT in accordance with Const 1963, art 6, § 28. *Wayne Co v Michigan State Tax Comm,* 261 Mich. App. 174, 186; 682 N.W.2d 100 (2004). "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 **[*2]** from any decision relating to valuation or allocation." Const 1963, art 6, § 28. One of the grounds listed for reversal is "error of law." We review legal issues, including issues of statutory interpretation, de novo, and this standard of review applies in MTT cases, as in other cases. See *Florida Leasco, LLC v Dep't of Treasury,* 250 Mich. App. 506, 507; 655 N.W.2d 302 (2002). All factual findings are final if supported by competent, material, and substantial evidence on the record. *Wayne Co, supra* at 186. "Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence." *Id.* at 186-187 (citations omitted).

This case involves the taxation of MSU property upon which is located the James B. Henry Center for Executive Development and an adjoining hotel whose lessee maintains it as the Candlewood Suites Hotel. The taxable years at issue are 2001 through 2003, [1] and the property had previously enjoyed tax-exempt status. The city maintained that some of the functions at the conference center **[*3]** have no educational connection and that the hotel is open to the public, is leased to a for-profit hotel chain, and has a high standard of luxury. Therefore, the city argued that the property is subject to taxation. MSU contended that the conference center is integral to the educational function of its business school and that the hotel, though open to the public, is nevertheless part of MSU's educational mission as it provides a place to stay for people who attend the conferences that the business school sponsors. MSU argued that, regardless, because the property is considered state-owned property, it is exempt from taxation.

On July 30, 2001, MSU filed an appeal with the MTT, maintaining that the city could not tax the property. MSU contended that it could not file its petition before the standard June 30th deadline and could not present a challenge to the board of review because the city's notice **[*4]** of assessment was not received until July 10, 2001, at which time a protest before the board was

[1] We presume that 2004 and 2005 are now also at issue, with the parties awaiting the disposition of this action.

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not possible as the board had already convened and concluded its session. The city countered, arguing that the property's assessment change notice was timely mailed to MSU in February 2001 and that the university could thus have made the required protest to the board of review and timely filed an appeal with the MTT. The particulars concerning the mailing of the notice will be discussed infra. The city moved for summary disposition on the basis that MSU's failure to properly and timely invoke the jurisdiction of the MTT deprived the tribunal of its subject-matter jurisdiction under MCL 205.735. Following a prehearing conference, in which the tribunal was reminded of the city's motion for summary disposition, a "summary of prehearing conference and scheduling order" was entered, in which the MTT denied the motion, ruling:

Respondent filed a Motion for Summary Disposition contending Petitioner failed to invoke the Tribunal's Jurisdiction by failing to appear and protest the exempt status before the local Board of Review. Petitioner claims that they did not receive **[*5]** notice of the tax assessment until July 10, 2001. Respondent offers as proof an affidavit indicating that a mass mailing of the tax assessment occurred on February 28, 2001. The Tribunal finds, based upon those facts there is no clear indication within the case file to determine exactly when the notice of assessment was issued for the Tribunal to determine if Petitioner failed to protest and establish jurisdiction of the tax assessment before the June 30 deadline or whether to adopt the Petitioner's position that it did not receive notice until July 10, 2001[,] where Petitioner can [challenge the] tax assessment within 30 days pursuant to MCL 205.735(2); thus, it would be unfair for the Tribunal to grant a judgment for summary disposition against Petitioner based on the information

MSU also moved for summary disposition, arguing that the property was exempt from taxation because, pursuant to the Michigan Constitution, statutes, and case law, it is public property belonging to the state. The MTT agreed and entered judgment in favor of the university.

In regard to the city's motion for summary disposition on the matter of subject-matter jurisdiction, we **[*6]** find no error in the MTT's ruling. The city relies on a letter from an account manager who works for Lason, a company that assists the city with mailing assessment notices. The letter provided:

> This is to confirm that I was the account manager on your tax assessment mailing. The larger file which was real property mailed 2/28 the quantity was 42,801. The personal property mailed 2/22, and the quantity was 3,665.

The city also relies on an affidavit by Diane Lee, who is the principle appraiser for the city and whose job function, in part, is to ensure that assessment notices are prepared and sent to taxpayers in a timely manner. She averred in pertinent part:

> 3. For a number of years the City has retained the services of Lason to provide assistance . . . .
>
> 4. I have been informed by the account manager of Lason that 42,801 real property notices of assessments were mailed by Lason on February 28, 2001 for tax year 2001.
>
> 5. I am informed and believe that of these 42,801 notices was a notice mailed to Petitioner for the tax year under appeal.

The other documents on which the city relies are a duplicate notice of assessment, which lacks any **[*7]** indication of a mailing date, and copies of general notices printed in the Lansing State Journal giving dates, times, and locations for board of review hearings.

We conclude that the MTT's determination that the city failed to provide adequate proof establishing timely mailing of the notice of assessment is supported by competent, material, and substantial evidence. In the context of summary disposition, the evidence submitted by the city, in the face of MSU's assertion that the notice was received in July 2001, was insufficient to support its position and insufficient to require the submission of documentary evidence in response; the city's evidence was so lacking that it did not give rise to a genuine issue of fact.

The letter from Lason's account manager is vague and speculative and speaks of 42,801 mailed notices without any specification. The "affidavit" by the city appraiser does not contain information based on personal knowledge regarding the mailing of an assessment notice to MSU and is merely a reassertion of the Lason letter. The other documents presented by the city add nothing to its position that the notice was timely mailed to MSU. Regardless of the mailing date, there **[*8]** was no evidence to contradict MSU's position that the notice was actually received in July 2001.

However, our analysis of this issue does not end as we must ascertain the impact of an untimely mailing of a tax assessment notice in relation to the relevant statutory provisions. The city argues that under MCL 205.735(1), if a party claims an exemption, the assessment must be protested before the board of review before the MTT acquires subject-matter jurisdiction over the dispute.

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MCL 205.735(1) provides, in pertinent part, "For an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (2)[.]" MCL 205.735(2) provides that "the jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved." Subsection (2) also provides, "In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written **[*9]** petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review[.]" Here, the case clearly involves an assessment dispute; therefore, the June 30 deadline would be applicable. Furthermore, because an exemption is claimed, a protest before the board of review would also be necessary. MCL 205.735 does not address a situation where there is an untimely notice of assessment that makes it impossible to satisfy the board of review and June 30th deadline requirements.

In *Parkview Mem Ass'n v City of Livonia,* 183 Mich. App. 116; 454 N.W.2d 169 (1990), the city mailed tax assessment notices to the petitioners two days after the board of review had concluded its duties, and therefore the petitioners were unable to protest their assessments before the board. The *Parkview* panel noted that a condition precedent to the MTT's "exercise of its jurisdiction to review the assessment of petitioners' property was that petitioners protest the assessments to the board of review." *Id.* at 118-119. This Court stated:

> We adopt the Supreme Court's remedial approach in [*W & E Burnside, Inc v Bangor Twp,* 402 Mich. 950l; **[*10]** 314 N.W.2d 196 (1978)] here. Respondents' notices of assessment were sent in violation of MCL 211.24c(5)[now subsection (4)] [2] . . . . 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. See *Bickler v Dep't of Treasury,* 180 Mich. App. 205, 211; 446 N.W.2d 644 (1989). Petitioners will thus be denied due process unless they are given an opportunity to be heard. *Id.* 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, supra* at 120.]

[*11] This Court further stated that it considered the "jurisdictional" requirements of MCL 205.735 to actually be "procedural requirements for perfecting an appeal in the Tax Tribunal." *Id.* at 121. The panel found the board protest requirement to be a codification of the doctrine of exhaustion of remedies and the June 30 deadline to be a statutory time limitation. *Id.* Neither doctrine, according to the Court, is a limitation on the subject-matter jurisdiction of the tribunal before which the claim is asserted. *Id.* The Court concluded:

> Considering the requirements of MCL 205.735 . . . as procedural requirements for the perfection of an appeal of an assessment is consistent with the remedy fashioned for the plaintiffs in the Supreme Court's *Burnside* decision. It affords taxpayers such as petitioners and the *Burnside* plaintiffs, who demonstrate that they have been deprived of notice of an assessment in time to protest before the board of review, an opportunity to obtain a review of the assessment in the Tax Tribunal. [*Parkview, supra* at 121.]

We recognize that *Parkview* is not binding authority under **[*12]** MCR 7.215(J)(1) [3] 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. See *Electronic Data Systems Corp v Flint Twp,* 253 Mich. App. 538, 542-544; 656 N.W.2d 215 (2002)(citing cases decided before and after *Parkview* was decided); *Covert Twp v Consumers Power Co,* 217 Mich. App. 352, 355-356; 551 N.W.2d 464 (1996). *Parkview,* however, is directly and more on point as it specifically addresses the failure to provide

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[2] MCL 211.24c(4), which addresses the required notice for assessment increases such as in the situation here, provides:

> The assessment notice shall be addressed to the owner according to the records of the assessor and mailed not less than 10 days before the meeting of the board of review. The failure to send or receive an assessment notice does not invalidate an assessment roll or an assessment on that property.

[3] "A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990 . . . ." MCR 7.215(J)(1). *Parkview* was issued on April 2, 1990.

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timely notice that would have allowed a party to meet the requirements of MCL 205.735 and 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. The due process concerns enunciated in *Parkview* are compelling. If a taxing authority can avoid board and tribunal review of assessments by mailing untimely notices, a property owner's due process rights are unquestionably **[*13]** impaired. Moreover, 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. The city's argument on this issue is cursory and lacks sufficient detail and analysis. An appellant may not leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. *Mudge v Macomb Co,* 458 Mich. 87, 105; 580 N.W.2d 845 (1998)(citation omitted). We therefore decline to further explore this issue and affirm the MTT's ruling on the matter. [4]

[*14] Turning to the issue whether the property is tax-exempt, we agree with the MTT that the property is not subject to taxation under Michigan law. Our constitution provides that the Legislature shall appropriate monies to maintain MSU, as well as several other institutions of higher learning. Const 1963, art 8, § 4. It further provides that "the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University[.]" Const 1963, art 8, § 5. Article 8, § 5, also describes the structure and authority of the various boards, as well as setting forth the appointment and election process. Clearly, MSU and the other public universities named in the constitution are arms of the state.

Pursuant to the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. "Public property belonging to the state, except licensed homestead lands, part-paid lands held under certificates, and lands purchased at tax sales, and still **[*15]** held by the state is exempt from taxation under this act." MCL 211.7l. The MTT ruled that the property at issue is public property belonging to the state, and thus MCL 211.7l dictates that the property is not subject to taxation. We agree.

As early as 1890, the Michigan Supreme Court in *Auditor Gen v Regents of the Univ,* 83 Mich. 467; 47 NW 440 (1890), confronted a similar issue, where real property titled in the name of the regents of the University of Michigan was assessed upon the general tax-roll of the city of Detroit. There was no question regarding the title and ownership of the land, "and the only question presented [was] whether the land was exempt from taxation." *Id.* at 468. The Court ruled:

> We are of the opinion that the land in question is exempt from taxation under the terms of the above statute [which provided that all public property belonging to this state shall be exempt from taxation]. The property held by the regents . . . in their corporate capacity is the public property of the state held by the corporation in trust for the purposes to which it was devoted. **[*16]** It does not follow that the state can have no property except such as is in the control and at the disposition of the legislature. The legislature is not the state, but only a department of the state. . . . They have said that all public property belonging to the state shall be exempted from taxation. The public property belonging to the state includes the property of all public departments of the state; such as the Michigan University . . . and other public institutions supported by the state through taxation or by funds or property appropriated by public or private generosity for that purpose. [*Id.* at 469-470.]

Likewise, in *Lucking v People,* 320 Mich. 495, 497; 31 N.W.2d 707 (1948), the plaintiff sought a court order requiring "the placing of certain property of University of Michigan on the tax roll and for other relief." The Supreme Court held:

> The lands, buildings and equipment under the management, supervision and control of the board of regents of the university are public property, owned by the State of Michigan. Such public property belonging to the State is exempt from property tax. [*Id.* at 503 (citations omitted). **[*17]**] [5]

Accordingly, we hold that MSU's property is public

[4] We also note that the jurisdictional issue only pertains to the dispute over the initial 2001 assessment because the university properly and timely challenged later assessments.

[5] In *Detroit v George,* 214 Mich. 664, 672-673; 183 NW 789 (1921), the Supreme Court also agreed that the property of a public university is property belonging to the state and is exempt from taxation.

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property belonging to the state. MCL 211.7l additionally provides that the exemption "shall not apply to lands acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the lands are located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition." The city vaguely argues that MSU failed to submit the evidence necessary to comply with this portion of MCL 211.7l and that, in general, MSU failed to submit the necessary proof to show ownership in the land and the buildings. As argued by MSU, the city's argument **[*18]** relative to documentary evidence concerning ownership and post-1966 conveyances lacks merit.

The tribunal record contains numerous copies of deeds and other real estate or conveyance documents that relate to the property which were submitted by MSU. The city stipulated below that "all the exhibits of Petitioner and Respondent are authentic." Some of the conveyance documents submitted to the MTT did not include recording information on them from the register of deeds office. MSU has now attached to its appellate brief certified copies of the conveyance documents submitted below, which reflect when they were recorded. The certified copies indicate that MSU complied with the requirements of MCL 211.7l and reflect ownership. Although the certified copies would constitute an expansion of the record, and we recognize that a party may not expand the record on appeal, *Sherman v Sea Ray Boats, Inc,* 251 Mich. App. 41, 56; 649 N.W.2d 783 (2002), the city agreed that the documents were authentic, the city did not present any documentary evidence necessary to create an issue of fact in the face of MSU's assertion that MCL 211.7l **[*19]** was applicable and its introduction of the various deeds, and the city still does not specify how MSU failed to meet the requirements of the statute or show ownership, despite the easy accessibility of the recorded information. As such, we find no basis for reversal and no basis to conclude that MSU cannot utilize the tax exemption found in MCL 211.7l.

The city's focus on the actual use of the property, as opposed to the ownership of the property, arises out of its contention that MCL 211.7n precludes a tax exemption because MSU's property is not used solely for educational purposes. We first note that the Supreme Court precedent recited above makes no distinctions between university property used for educational purposes and university property used for purposes not related to education. MCL 211.7n provides, in relevant part, that the "real estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the **[*20]** institutions were incorporated is exempt from taxation under this act." Assuming that MCL 211.7n is relevant and precludes MSU from using that particular statutory provision to gain tax-exempt status, the city fails to explain why MSU cannot seek an exemption under another statute such as MCL 211.7l. The city's position is illogical. MCL 211.7n does not demand that every nonprofit educational institution seek exemption solely under its language to the exclusion of all other statutory-exemption provisions. As stated by the MTT, the subject property is exempt from taxation pursuant to MCL 211.7l; therefore, no "use" test under MCL 211.7n is necessary. [6]

[*21] MCL 211.181, which discusses the impact of leasehold interests, does not alter our conclusion that MSU is not subject to taxation in this matter despite the fact that a lease affects the property. The statute provides:

> (1) Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.
>
> (2) Subsection (1) does not apply to all of the following:
>
> (a) Property of a state-supported educational institution, enumerated in section 4 of article VIII of the state constitution of 1963. . . .

The exception applies here as MSU is a state-supported institution under Const 1963, art 8, § 4. Furthermore, the language of the statute indicates that it would be the lessee who bears the tax burden should the statute be applicable. Pursuant to our review under Const 1963, art 6, § 28, the **[*22]** MTT did not err in ruling that

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[6] The MTT, noting that it was unnecessary, nonetheless decided to address whether the property was solely used for educational purposes. The MTT found that the property is used for educational purposes in accordance with MCL 211.7n. We decline to express an opinion on this ruling as it is unnecessary.

MSU's property is exempt from taxation.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Peter D. O'Connell

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Jehovah Shalom Church of God v. City of Detroit

Court of Appeals of Michigan

April 23, 2020, Decided

No. 348320

Reporter
2020 Mich. App. LEXIS 3007 *; 2020 WL 1963987

JEHOVAH SHALOM CHURCH OF GOD, Petitioner-Appellant, v CITY OF DETROIT, Respondent-Appellee.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Subsequent History: Leave to appeal denied by Jehovah Shalom Church of God v. City of Detroit, 2021 Mich. LEXIS 150 (Mich., Feb. 2, 2021)

Prior History: **[*1]** Tax Tribunal. LC No. 19-000130-TT.

Judges: Before: CAVANAGH, P.J., and BECKERING and GLEICHER, JJ.

Opinion

PER CURIAM.

In this property tax dispute, petitioner, Jehovah Shalom Church of God (hereafter, "the Church") appeals as of right the order of the Tax Tribunal dismissing its petition for lack of subject-matter jurisdiction. We affirm.

I. RELEVANT FACTS AND PROCEEDINGS

On February 6, 2019, petitioner filed a petition with the Tax Tribunal seeking a tax exemption for the property at issue and correction of respondent's, City of Detroit's, assessment rolls. Petitioner identified itself as a "nonprofit corporation incorporated for the purpose of operating a church and school of spiritual leadership training," owning real property located at 1551 Burlingame in Detroit, Michigan. Petitioner purchased the property in April 2013, for $160,000, and immediately requested an exemption from property taxation on the basis of the property's use "as a house of public worship and for charitable purposes."[1] The property was not taxed in 2014 or 2015.[2] However, respondent's assessment department placed the property on the tax roll for tax year 2016 at an assessed value of approximately $370,000, which reflected an alleged **[*2]** true cash value more than four (4) times the purchase price to petitioner for the property. Petitioner asserted that it received no notice of the removal of the property's tax exemption or the return of the property to the tax rolls. Respondent kept the property on the tax rolls in tax year 2017, and petitioner asserted that it again received no notice.[3] Petitioner contends that it first learned the property was on the tax rolls "late in 2018," when it received notice that the property was to be forfeited for petitioner's failure to pay outstanding property taxes.

The Tax Tribunal immediately dismissed the petition for a lack of subject-matter jurisdiction, explaining:

> The Tribunal has considered the case file and finds that Petitioner filed a petition on February 6, 2019, asserting that Respondent removed the exemption under MCL 211.7s and 7o for the 2016 and 2017 tax years. The petition is untimely as it was not filed prior to May 31 of the tax years involved.
>
> The Tribunal also has no authority over the appeal

[1] According to petitioner, the property had previously been used as a church and had been exempt from ad valorem property taxation. Petitioner contends that it filed a property transfer affidavit with the Detroit Office of the Assessor, along with a request for exemption and supporting information.

[2] Petitioner contends that because it was not taxed in 2014 and 2015, it had "no reason to doubt that its request for exemption had been approved."

[3] While respondent notes that it is highly unlikely petitioner did not receive a single one of the statutorily mandated notices required in the property tax assessment process, it also agrees that for purposes of this jurisdictional analysis it accepts petitioner's factual assertions at face value.

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> under MCL 211.53a, as Petitioner has failed to allege any fact that would establish a prima facie case indicating that the exemption was removed as the result of a clerical error (i.e., "an error of **[*3]** a transpositional, typographical, or mathematical nature") or a mutual mistake of fact (i.e., "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction").
>
> The Tribunal, likewise, has no authority over Petitioner's appeal under MCL 211.53b, as Petitioner has failed to allege any facts that would indicate that the removal of the exemption was the result of a qualified error, that Petitioners protested that qualified error to a July or December Board of Review, and that Petitioners filed their appeal within 35 days after a final decision, ruling, or determination by a July or December Board of Review, as required by MCL 205.735a(6).
>
> Further, the Tribunal has no "equitable powers" to waive or otherwise extend the statutory deadline for the filing of this appeal. [Footnotes omitted.]

On February 26, 2019, petitioner filed a motion for reconsideration. It argued that due process required the Tax Tribunal to consider the petition because petitioner did not receive notice of assessments in either 2016 or 2017.

On March 13, 2019, the Tax Tribunal entered an order denying petitioner's motion for reconsideration. The Tax Tribunal determined that **[*4]** the facts of the case, even when considered in the light most favorable to petitioner, did not indicate that petitioner timely invoked the Tax Tribunal's jurisdiction.

> In this proceeding, Petitioner contends that its first notice of the tax issue under dispute came in "late 2018." Although Petitioner does not provide a specific date or any documents to support its contention, the Tribunal finds that such materials are not necessary to determine if the proceeding is properly pending. Specifically, assuming Petitioner first received notice of Respondent's intent to foreclose on December 31, 2018, the Tribunal finds Petitioner still did not file its Petition with the Tribunal within the 35-day period under which it first had constructive notice[4] of the assessment dispute, as its Petition to the Tribunal was not submitted until February 6, 2019, which is 37 days after the final date in 2018. A timely invocation of the Tribunal's jurisdiction after constructive notice of a tax dispute is crucial, as the law assists those who are vigilant with their rights, and not those who sleep upon their rights. The Tribunal finds that Petitioner failed to appeal its valuation or exempt status within 35 **[*5]** days of constructive notice of Respondent's assessment and/or denial. [Footnotes omitted.]

Accordingly, the Tax Tribunal denied petitioner's motion for failure "to demonstrate a palpable error relative to the Order of Dismissal that misled the Tribunal and the parties and that would have resulted in a different disposition if the error was corrected." This appeal followed.

II. ANALYSIS

Petitioner concedes that its petition in the Tax Tribunal was untimely. Petitioner argues, however, that the untimeliness should be excused because respondent denied petitioner the right to due process when it failed to provide adequate notice to petitioner that it had removed the subject property's tax exemption and placed the property on the tax rolls for tax years 2016 and 2017. Petitioner asserts that due process requires the tribunal to consider the petition on the merits. We disagree. Because the Tax Tribunal did not have statutory authority to hear petitioner's petition, and because petitioner had notice of a tax dispute but did not timely avail itself of the opportunity to be heard, we affirm the Tax Tribunal's order of dismissal.

"Absent fraud, this Court's review of a Tax Tribunal decision is limited **[*6]** to determining whether the tribunal made an error of law or adopted a wrong legal principle." *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). This Court reviews de novo whether

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[4] In its brief to this Court, petitioner asserts that the tribunal "held that the Church had 'constructive notice' of the removal of the tax exemption when the Church received notice of the tax foreclosure proceedings." Petitioner then argues at length that "constructive notice" does not satisfy respondent's statutory obligation under MCL 211.24c to provide notice of an increase in the "tentative state equalized valuation or the tentative taxable value for the year." Petitioner misconstrues the tribunal's statement, which was merely that the foreclosure notice petitioner received in "late 2018" provided petitioner with constructive notice "of the assessment dispute," i.e., of the existence of a tax dispute of some sort between petitioner and respondent. The tribunal was not addressing the sufficiency of respondent's tax-related notices to petitioner.

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the Tax Tribunal has jurisdiction and whether a party's due-process rights have been violated. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2013); *Kasberg v Ypsilanti Twp*, 287 Mich App 563, 566; 792 NW2d 1 (2010).

A. JURISDICTION

The Michigan Tax Tribunal is a creation of the Tax Tribunal Act, MCL 205.701 *et seq. Michigan Props, LLC v Meridian Twp*, 491 Mich 518, 541; 817 NW2d 548 (2012). The tribunal's primary functions "are to find facts and review the decisions of agencies within its jurisdiction." *Wikman v City of Novi*, 413 Mich 617, 629; 322 NW2d 103, 106 (1982). "The jurisdiction of the Tax Tribunal is granted by statute." *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239; 477 NW2d 492 (1991). The tribunal's jurisdiction is set forth in MCL 205.735a(6), which provides in relevant part:

> (6) *The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act*, 1893 PA 206, MCL 211.34c, *as commercial real property*, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property *is invoked by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved*. The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as agricultural real property, residential real property, timber-cutover real **[*7]** property, or agricultural personal property is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved. *In 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*. . . . [Emphasis added.]

However, before the tribunal acquires jurisdiction of an assessment dispute regarding the valuation of property under subsection (6), the petitioner must protest the assessment before the board of review. MCL 205.735a(3). In the absence of statutory authority to hear an appeal, the Tax Tribunal lacks subject-matter jurisdiction over the appeal. "Defects in subject-matter jurisdiction cannot be waived and may be raised at any time." *Electronic Data Sys Corp v Flint*, 253 Mich App 538, 544; 656 NW2d 215 (2002). Further, "[t]he lack of subject-matter jurisdiction is so serious a defect in the proceedings that a tribunal is duty-bound to dismiss a plaintiff's claim even if the defendant does not request it." *Id.* "Indeed, having determined that is has no jurisdiction, a court should not proceed further except to dismiss the action." *Id.* at 544-545.

Petitioner sought a tax exemption for property classified as commercial real **[*8]** property for tax years 2016 and 2017. Pursuant to MCL 205.735a, in order for the Tax Tribunal to have subject-matter jurisdiction over such request, petitioner first had to protest the assessments before the board of review, and then file its written petition in the Tax Tribunal before May 31 of the respective tax years involved. Petitioner contends that because respondent did not timely notify it that respondent had placed the subject property back on the tax roll in tax years 2016 and 2017, it could not protest the assessments before the board of review or file a timely petition in the tribunal. Regardless, as the petition was not timely filed, the Tax Tribunal lacked jurisdiction under MCL 205.735a(6) to consider it. See *Szymanski v Westland*, 420 Mich 301, 303-305; 362 NW2d 224 (1984) (discussing that the filing deadlines of MCL 205.735, the precursor to MCL 205.735a, were jurisdictional). Contrary to petitioner's assumption, the tribunal is without jurisdiction to consider appeals filed outside the deadlines imposed by statute. *Electronic Data Sys Corp*, 253 Mich App at 548 (indicating that the Tax Tribunal "does not have powers of equity" and, therefore, "does not have the authority to grant a request for a delayed appeal").

Regarding petitioner's motion for reconsideration, the tribunal considered whether it could exercise subject-matter **[*9]** jurisdiction under that portion of MCL 205.735a(6) which states, "In 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." The tribunal determined that it could not because petitioner had not filed its petition within 35 days of receiving a "final decision, ruling, or determination." The tribunal recounted that petitioner claimed it first discovered the alleged assessment error in "late 2018," but did not file its petition until February 6, 2019. Assuming that petitioner received a "final decision, ruling, or determination" in the form of the foreclosure notice as late as December 31, 2018, petitioner did not file its petition within 35 days of that date. Therefore, the Tax Tribunal lacked jurisdiction under MCL 205.735a(6) to consider petitioner's appeal.

Not stopping there, the Tax Tribunal also considered

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whether it had jurisdiction over the petition under the General Property Tax Act, MCL 211.1 *et seq.* The General Property Tax Act provides, in pertinent part:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual **[*10]** mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest. [MCL 211.53a.]

Clerical error "refers to errors of a typographical, transpositional, or mathematical nature." *Int'l Place Apartments-IV v Ypsilanti Twp*, 216 Mich. App. 104, 109; 548 N.W.2d 668 (1996). Mutual mistake of fact "mean[s] an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Ford Motor Co v Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006).

The fact that petitioner did not pay its property tax assessments for 2016 and 2017, let alone "taxes in excess of the correct amount," would render MCL 211.53a immediately inapplicable. Nevertheless, the Tax Tribunal went on to consider whether the petition alleged facts establishing that either a clerical error or a mutual mistake had occurred. The tribunal determined that neither had occurred, and petitioner does not challenge that conclusion on appeal. Thus, the Tax Tribunal correctly determined that it lacked jurisdiction under MCL 211.53a.

Next, the tribunal looked at the possibility of exercising jurisdiction under MCL 211.53b, which provides that, if there has been a "qualified error," a taxpayer may initiate **[*11]** an action with either the July or December board of review in order to correct the qualified error. The taxpayer can then appeal the determination of the board of review by filing a written appeal with the department of treasury within 35 days. MCL 211.53b(4). A qualified error includes "[a]n error regarding the correct taxable status of the real property being assessed." MCL 211.53b(8)(f).

Assuming without deciding that petitioner's assertion that the property should have been exempt from taxation because it was used "as a house of public worship and for charitable purposes" identifies a qualified error, petitioner did not, and according to petitioner, could not, initiate an action with the July or December board of review or appeal the board of review's determination within 35 days, both of which are required under the statute. Thus, the Tax Tribunal lacked jurisdiction over petitioner's claims under the General Property Tax Act, as well as under the Tax Tribunal Act.

B. DUE PROCESS

Petitioner argues that the tribunal's failure to exercise subject-matter jurisdiction under the circumstances resulted in the violation of petitioner's due-process rights. "[T]here can be no question that, at a minimum, due process of **[*12]** law requires that deprivation of life, liberty, or property by adjudication must be preceded by notice and an opportunity to be heard." *Bonner v Brighton*, 495 Mich 209, 235; 848 NW2d 380 (2014). While a "trial court has the authority to grant summary disposition sua sponte under MCR 2.116(I)(1)," it "may not do so in contravention of a party's due-process rights." *Al-Maliki v LaGrant*, 286 Mich App 483, 489; 781 NW2d 853 (2009).

Petitioner relies on *Parkview Mem Ass'n v Livonia*, 183 Mich App 116; 454 NW2d 169 (1990), to support its contention that "an untimely filing of a petition will be excused when a notice of assessment is not sent in accordance with due process." Decided before November 1990, *Parkview* is not binding on this Court. MCR 7.215(J)(1). In addition, *Parkview* considered the requirements of MCL 205.735 to be "*procedural* requirements for the perfection of an appeal of an assessment." *Parkview*, 183 Mich App at 121 (emphasis added). This Court, however, has now made it clear that "MCL 205.735 is a *jurisdictional* statute and the time requirements for filing appeal petitions are jurisdictional in nature." *WA Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 338; 686 NW2d 9 (2004) (emphasis added). *Parkview*'s assertion that MCL 205.735 sets forth procedural, rather than jurisdictional, requirements therefore cannot survive this Court's decisions in *Electronic Data Sys Corp* and *WA Foote Mem Hosp.*

Petitioner also relies on *Lamkin v Hamburg Twp Bd of Trustees*, 318 Mich App 546; 899 NW2d 408 (2017), to contend that "even in a sua sponte dismissal, parties are still entitled to an opportunity to be heard **[*13]** under due process." In *Lamkin*, this Court reversed a trial court's sua sponte dismissal of a case for lack of standing before the plaintiff had even served the complaint on the defendant. *Id.* Relevant to the instant case, this Court determined that the circuit court committed "a fatal procedural flaw necessitating reversal" when it failed to notify the plaintiff that it was contemplating summary disposition of her claims. *Id.* at

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551. Of particular significance to petitioner is the Court's observation that such a quick dismissal left the Court with nothing to substantively review on appeal, and the Court's instruction on remand that the "circuit court must allow the parties to develop a reviewable record before reaching a judgment, summary or otherwise." *Id.* at 552. Petitioner observes that the record in this case is likewise undeveloped, and argues that the tribunal should at least have allowed for petitioner to serve respondent and the parties to submit briefs and evidence before deciding "on a possible sua sponte dismissal."

The case at bar is distinguishable from *Lamkin*. The circuit court in *Lamkin* had subject-matter jurisdiction of the matter before it; it just erred in dismissing the matter as it **[*14]** did. For reasons already stated, the tribunal correctly determined that it did not have subject-matter jurisdiction over petitioner's petition. When a court lacks subject-matter jurisdiction it "is so serious a defect in the proceedings that a tribunal is duty-bound to dismiss a plaintiff's claim even if the defendant does not request it." *Electronic Data Sys Corp*, 253 Mich App at 544. "Indeed, having determined that it has no jurisdiction, a court should not proceed further except to dismiss the action." *Id.* at 544-545. Accordingly, the Tax Tribunal was duty-bound to dismiss the petition sua sponte, and petitioner's due-process rights were not violated.

Here, it is undisputed that petitioner had notice that taxes were assessed for 2016 and 2017 when it received a foreclosure notice in late 2018. Even assuming that petitioner first received that notice as late as December 31, the last day of 2018, it still failed to timely file its petition. Petitioner had 35 days from the date it received notice of the foreclosure to file a petition with the Tax Tribunal. Petitioner did not do so. Instead, petitioner waited at least 37 days to file its petition. Under these circumstances, petitioner's due-process rights were not violated because the lack of **[*15]** notice of assessments did not impact petitioner's ability to timely file a petition once it learned that its property had been taxed. Petitioner had notice of a tax dispute and an opportunity to be heard; it simply failed to timely avail itself of that opportunity.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jane M. Beckering

/s/ Elizabeth L. Gleicher

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PACIFIC PROPS. v. TOWNSHIP OF SHELBY

Court of Appeals of Michigan

March 1, 2005, Decided

No. 249945

Reporter
2005 Mich. App. LEXIS 550 *; 2005 WL 473899

PACIFIC PROPERTIES, LLC, Petitioner-Appellant, v TOWNSHIP OF SHELBY, Respondent-Appellee.

Notice: [*1] THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: Michigan Tax Tribunal. LC No. 00-293123.

Disposition: We reverse and remand to the MTT for entry on an order granting the relief to which the parties have stipulated. We do not retain jurisdiction.

Judges: Before: Markey, P.J., and Murphy and O'Connell, JJ.

Opinion

PER CURIAM.

This case arises out of the improper assessment of taxes for Pacific Properties (Pacific's) real property situated in the Charter Township of Shelby, Macomb County. Pacific appeals by leave granted the Michigan Tax Tribunal (MTT or tribunal) dismissal for lack of jurisdiction a petition to amend the property's assessed and taxable values for tax years 1999 and 2000. We reverse and remand for entry of an order granting the relief requested.

I. Summary of Facts and Proceedings

The parties agree on the relevant facts. Pacific owns a parcel of real property (23-07-13-376-031) in Shelby Township. At its December 2000 meeting, the township's board of review erroneously revised the assessed and taxable value of the property for tax years 1999 and 2000 to include **[*2]** the value of a building that was not located on the property. Pacific was not notified of the change until January 2001 when it received its revised 2000 tax bill. Pacific asserts that it did not learn how and why this problem arose until receiving a letter from the township's attorney dated April 24, 2003, which states:

> Sometime after the March Board of Review, an employee of Shelby Township's Assessor Department came to the Assistant Assessor and indicated that property had been omitted for tax parcel 23-07-13-376-031, because there had been construction of a building on the property. The adding of the value of this building to the assessment was placed upon the December, 2000, Board of Review meeting. The Shelby Township's Assessor's office employee had the wrong parcel number on the material provided to the Assistant Assessor. The new construction was on a different parcel number.

When Pacific brought the error to the attention of the township assessor's office, the assessor contacted the State Tax Commission (STC) and was advised that Pacific must seek its relief from the tribunal. Consequently, on July 1, 2002, Assessor William D. Griffin wrote to the tribunal requesting **[*3]** that the assessed and taxable values for the subject parcel be amended for tax years 1999 and 2000 pursuant to MCL 211.53a. [1] Griffin stated in his letter that "the assessed and taxable values were revised in error as a part of the 2000 December Board of Review without properly notifying the taxpayer," and that "the taxpayer was not aware of the value change until January 2001 upon receiving the revised 2000 tax bill." Griffin requested that the assessed value of the parcel for 1999 and 2000 be changed from $ 497,840 to $ 34,500, and the taxable value changed from $ 475,650 for each year to $ 12,310

[1] MCL 211.53a provides: "Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest."

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(1999) and $ 12,540 (2000). The tribunal treated Griffin's letter as a "stipulation," docketed the matter as a petition by Pacific, and notified Griffin the filing was defective without a motion fee and address of the "petitioner."

[*4] On July 25, 2002, Pacific filed a motion with the tribunal to amend the assessed and taxable value of its property pursuant to MCL 211.53a in accordance with Griffin's letter. On August 2, 2002, the tribunal hearing officer entered an "Order Denying Parties' Stipulation for Entry of Consent Judgment," finding that the tribunal lacked jurisdiction under MCL 211.53a. The hearing officer reasoned that because Griffin stated in his letter that the "building was erroneously added to the assessment roll when in fact it did not exist," "it does not appear that the assessments for tax year(s) 1999 and 2000 were the result of a clerical error or mutual mistake of fact." The hearing officer further determined that the tribunal lacked jurisdiction over the subject assessments because Pacific had failed to timely appeal the changed assessments in accordance with the time limits required by MCL 211.27b and 205.735.

On October 9, 2002, the parties filed a joint motion for reconsideration. The parties argued that MCL 211.27b is not applicable because that section is **[*5]** limited to issues involving transfers of ownership and correcting arithmetic errors. The parties also argued that MCL 205.735 is not applicable because, although that section provides time limits for protesting an assessment, it does not delineate the MTT's subject-matter jurisdiction. The parties further contended that although MCL 205.735 might bar recovery if it were raised as an affirmative defense, the township conceded that Pacific was entitled to have the assessed and taxable value for its property for 1999 and 2000 corrected.

On December 18, 2002, the MTT denied the parties' motion for reconsideration. The hearing officer first determined that the motion was untimely [2] and that the township had no authority to waive the statutory deadline. The hearing officer then found that although the parties were correct that MCL 211.27b was inapplicable to this case, the error was inconsequential because MCL 205.735 requires compliance with the time limits to invoke the tribunal's jurisdiction, citing *Electronic Data Systems Corp v Twp of Flint*, 253 Mich. App. 538; **[*6]** 656 N.W.2d 215 (2002). The hearing officer also found no palpable error in his earlier determination that the tribunal did not have jurisdiction under MCL 211.53a because the erroneous tax assessments did not result from a clerical error or a mutual mistake of fact. Instead, the board of review failed "'to consider all relevant data,'" which was not a clerical error, citing *Int'l Place Apartments-IV v Ypsilanti Twp*, 216 Mich. App. 104; 548 N.W.2d 668 (1996). Further, although MCL 211.53a provides an exception to the jurisdictional time limits of § 735, here, the township assessor's office made a unilateral mistake; there was no mutual mistake of fact required by § 53a.

On July 25, 2003, Pacific filed a delayed application **[*7]** for leave to appeal with this Court, which was granted. This Court directed the parties to address whether jurisdiction over this issue lies with the MTT or with, for example, the STC. During these proceedings, the subject property was scheduled for a tax sale because the erroneous assessment had not been paid. The parties stipulated to stay the tax sale pending a final determination of the validity of the assessment.

II. Analysis

In the absence of fraud our review of property tax valuations or allocations on appeal from the MTT is limited by Const 1963, art 6, § 28 to "errors of law or the adoption of wrong principles." *EDS, supra* at 541; *MCI Telecommunications Corp v Dep't of Treasury*, 136 Mich. App. 28, 30; 355 N.W.2d 627 (1984). We must generally accept factual findings of the tribunal but an error of law occurs when decisions of the tribunal are not supported by competent, material, and substantial evidence on the whole record. *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich. App. 379, 388; 576 N.W.2d 667 (1998); *Kern v Pontiac Twp,* 93 Mich. App. 612, 620; 287 N.W.2d 603 (1979). **[*8]** Finally, we review de novo the questions of law presented here: whether the tribunal has jurisdiction, *Jackson Community College v Dep't of Treasury*, 241 Mich. App. 673, 678; 621 N.W.2d 707 (2000), and the interpretation and application of pertinent statutes, *WA Foote Mem Hosp v City of Jackson*, 262 Mich. App. 333, 336; 686 N.W.2d 9 (2004).

The primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature. *Wikman v Novi*, 413 Mich. 617, 631; 322 N.W.2d 103 (1982); *Ford Motor Co v Bruce Twp*, 264 Mich. App. 1, 7; 689 N.W.2d 764 (2004). We look first to the words used in the statute because they are the most reliable evidence of the Legislature's intent. *Shinholster v Annapolis Hosp*,

[2] MCL 205.752(2) provides, in part, that the "tribunal may order a rehearing upon written motion made by a party within 20 days after the entry of the decision or order."

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471 Mich. 540, 549; 685 N.W.2d 275 (2004); *Wikman, supra* at 632. We must construe an entire act as a whole and interpret particular words in one part giving due consideration to every other part so as to produce a meaning that is, if possible, an harmonious and consistent whole. *Great Lakes, supra* at 431. **[*9]** Thus, we must give effect to every word, phrase, or clause of a statute by considering its plain meaning as well as "'its placement and purpose in the statutory scheme.'" *Shinholster, supra* at 549, quoting *Sun Valley Foods Co v Ward*, 460 Mich. 230, 237; 596 N.W.2d 119 (1999). Of course, when the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *Id*.; *Ford Motor Co, supra* at 7. We must enforce clear and unambiguous statutes as written. *Shinholster, supra* at 549; *Jackson Community College, supra* at 679.

MCL 205.731 establishes the jurisdiction of the MTT by providing:

> The tribunal's exclusive and original jurisdiction shall be:
>
> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.
>
> (b) A proceeding for refund or redetermination of a tax under the property tax laws.

Whether this case is considered a "proceeding **[*10]** for direct review of a . . . determination . . . relating to assessment, [or] valuation . . . under the property tax laws," or as a "proceeding for . . . redetermination of a tax under the property tax laws," the plain and unambiguous words of § 731 provide that the tribunal has subject-matter jurisdiction over the issue presented in this case. See *Highland-Howell Development Co, LLC v Marion Twp*, 469 Mich. 673, 674, 676; 677 N.W.2d 810 (2004); *WPW Acquisition Co v City of Troy (On Remand),* 254 Mich. App. 6, 8; 656 N.W.2d 881 (2002). But a petitioner must act timely to invoke the jurisdiction of the tribunal. For "an assessment dispute . . . the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (2)." MCL 205.735(1). Under subsection (2), "the jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved", or "within 30 days after the final decision, ruling, determination, or order that the petitioner seeks **[*11]** to review." MCL 205.735(2).

Pacific's reliance on *Parkview Memorial Ass'n v Livonia*, 183 Mich. App. 116; 454 N.W.2d 169 (1990), for the proposition that the time limits in MCL 205.735(2) are not jurisdictional, but rather procedural requirements codifying the doctrine of exhaustion of remedies, is misplaced. *Parkview* was decided before November 1990, and therefore it is not binding precedent. MCR 7.215(J)(1). 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. *Szymanski v City of Westland*, 420 Mich. 301, 305; 362 N.W.2d 224 (1984); *Foote Mem Hosp, supra* at 338, citing *EDS, supra* at 542-543. The 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. *Id.* at 544, 547-548 .

Here, Pacific could not protest **[*12]** the valuations at issue before the board of review because it received no notice of the board's intent to amend the valuation at its December 2000 meeting. In addition, because the board of review did not increase the assessed value of Pacific's property for the tax years of 1999 and 2000 until December 2000, Pacific could not have filed a petition with the tribunal before June 30 of 1999 or 2000 as required under MCL 205.735(2). Pacific also failed to file a proceeding with the tribunal "within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review." *Id*. If one were to look only to the jurisdictional time requirements of § 735, it would appear that the hearing officer correctly concluded the tribunal was without jurisdiction. *EDS, supra* at 542-543.

But there are several reasons why the literal requirements of § 735 do not apply to this case. First, by the statute's own words, subsections (1) and (2) of § 735 apply to an "assessment dispute." The statute does not define "dispute." When the Legislature does not define a word, we may consult a dictionary for the word's ordinary meaning. *Halloran v Bhan*, 470 Mich. 572, 578; **[*13]** 683 N.W.2d 129 (2004). "The *Random House Webster's College Dictionary* (1992), p 388, defines "dispute" as "to engage in an argument or debate," "to argue vehemently; quarrel," "to argue against; call in question," "to quarrel or fight about; contest," "to strive against; oppose," "a debate, controversy, or difference of opinion." Applying these definitions to this case, there is simply no "dispute" between Pacific and Shelby Township regarding the correct assessed valuation for Pacific's property for the tax years 1999 and 2000. The parties agree and have

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always agreed that the property's true cash value for those years should be $ 34,500, not the amended assessed value of $ 497,840 the board of review set at its December 2000 meeting. The Michigan Constitution requires that property taxes be uniformly assessed at not more than 50 percent of a property's true cash value. Const 1963, art 9, § 3; see, also, MCL 205.737(2).

Moreover, our Supreme Court has held that the jurisdictional time limits of MCL 205.735 [3] will apply only when "'a specific provision providing a longer period of limitation does not exist. **[*14]** '" *Szymanski, supra* at 304, quoting *Wikman, supra* at 653. In that regard, the parties point to MCL 211.53a as providing a basis for the MTT's jurisdiction having to correct the undisputed assessment error that occurred in this case. We agree with the hearing officer that because the mistake here was not mutual, i.e., it was not a mistake made by both the taxpayer and the assessing officer, *Ford Motor Co, supra* at 9, MCL 211.53a does not apply. But we do conclude that the tribunal erred as a matter of law by finding that the mistaken valuation here was not the result of a clerical error within the meaning of § 53a.

In *Int'l Place, supra* at 108-109, this Court discussed the meaning of "clerical error" as contemplated by MCL 211.53b **[*15]** . After noting the Legislature had not defined "clerical error" so resort to dictionary definitions was appropriate, the Court opined:

> Black's Law Dictionary (6th ed), p 252, defines "clerical error" as generally "a mistake in writing or copying." See also *Webster's Third New International Dictionary, Unabridged Edition* (1966), p 421; *Webster's New Twentieth Century Dictionary, Unabridged Edition* (1983), p 338. Furthermore, reading the statute in context, the reference to a clerical error or mutual mistake is directly referenced to use of the correct assessment figures, the taxation rate, and the mathematical computation relating to the assessment of taxes. MCL 211.53b; MSA 7.97(2). Thus, the statute itself refers to errors of a typographical, transpositional, or mathematical nature. [*Int'l Place, supra* at 109.]

The parties have stipulated that the error in this case occurred when an employee of the assessor's office wrote down the wrong property parcel number for a newly constructed building in the township. The parcel number the employee wrote down and gave to the assistant assessor was Pacific's property at issue **[*16]** in this case. Consequently, the error here occurred because of "a mistake in writing or copying" and was "typographical," or "transpositional" in nature. In other words, the assessor's office made a "clerical error" within the meaning of the statute resulting in a valuation of Pacific's property more than 14 times its true cash value.

The next question is whether the MTT has jurisdiction under § 53a to grant relief from this obvious and undisputed error. As we have already noted, the time limitations of § 735 do not apply when another, more specific limitations period does. *Szymanski, supra* at 304; *Wikman, supra* at 653. We find the specific limitation period provided in § 53a applies to this case. Because § 53a permits a taxpayer to recover excess taxes paid in error "within 3 years from the date of payment" and because the erroneous assessed taxes have not yet been paid, the three-year limitations period has not yet expired. So, the MTT has jurisdiction to grant Pacific relief.

We reverse and remand to the MTT for entry on an order granting the relief to which the parties have stipulated. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ **[*17]** William B.Murphy
/s/ Peter D. O'Connell

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[3] Our Supreme also hinted the limitations § 735 may not apply when notice to the taxpayer is inadequate. *Szymanski, supra* at 305, n 5.