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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

APPELLANT'S RESPONSE BRIEF ON ITS APPLICATION

ORAL ARGUMENT REQUESTED

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June 25, 2024

RECEIVED by MSC 6/25/2024 4:02:53 PM

TABLE OF CONTENTS

INDEX OF AUTHORITIES iii

INTRODUCTION 1

RESPONSES TO FACTUAL CLAIMS 1

ARGUMENT 3

I. THE DENIAL NOTICE AND DUE PROCESS. 3

A. The Denial Requirements of MCLs 211.9m and n 4

B. Notice of Denial and Due Process 4

C. MCLs 211.30 and 211.29 6

II. THE MARCH BOARD PROTEST IS NOT WAIVABLE. 7

A. The Administrative Procedures Act ("APA") 7

B. *Harrow v Department of Defense* 8

C. *Parkview* and the Tribunal's Jurisdiction. 8

III. THE TRIBUNAL CANNOT EXERCISE JURISDICTION OVER THIS CASE 9

CONCLUSION 11

CERTIFICATE OF WORD COUNT

PROOF OF SERVICE

RECEIVED by MSC 6/25/2024 4:02:53 PM

INDEX OF AUTHORITIES

Cases

Alan v County of Wayne, 388 Mich 210; 200 NW2d 628 (1972) 4, 5

Elec Data Sys Corp v Flint Twp, 253 Mich App 538; 656 NW2d 215 (2002) 8, 9, 11

Harrow v Dep't of Defense, 218 L Ed 2d 502; 144 S Ct 1178 (2024) 8

Highland-Howell Dev Co LLC v Marion Twp, 478 Mich 932; 733 NW2d 761 (2007) 8, 11

Jehovah Shalom Church of God v City of Detroit, unpublished per curiam opinion of the Court of Appeals, issued April 23, 2020 (Docket No. 348320) 9

Liberty Hill Housing Corp v City of Livonia, 480 Mich 44; 746 NW2d 282 (2008) 10

Parkview Mem Ass'n v Livonia, 183 Mich App 116; 454 NW2d 169 (1989) 8, 11

ProQuest LLC v Twp of Ypsilanti, ___ Mich ___; ___ NW2d ___ (Order issued June 14, 2024) (MSC Case No. 166549) 10

SBC Health Midwest Inc v City of Kentwood, 500 Mich 65; 894 NW2d 535 (2017) 10

Spranger v City of Warren, 308 Mich App 477; 865 NW2d 52 (2014) 5, 9

Trussell v Decker, 147 Mich App 312; 382 NW2d 778 (1985) 5

W & E Burnside Inc v Bangor Twp, 77 Mich App 618; 259 NW2d 160 (1977), rev'd 402 Mich 950l (1978) 8, 9

Walgreen Co v Macomb Twp, 280 Mich App 58; 760 NW2d 594 (2008) 5

Statutes

MCL 205.731 10

MCL 205.735a 10

MCL 205.735a(3) 7

MCL 205.735a(6) 7

MCL 211.1053(j) 2

MCL 211.1057(1) 2

MCL 211.122 1

MCL 211.29 ..... 6, 7

MCL 211.30 ..... 4, 6

MCL 211.9m 4, 6, 8

MCL 211.9m(2)(c) 10

MCL 211.9m(3) 4, 6, 10

MCL 211.9n 4, 6, 8
MCL 211.9n(2)(c) 10
MCL 211.9n(3) 4, 6, 10
MCL 24.271 7
MCL 24.287 7
MCL 24.321 7
MCL 24.328 7
MCR 7.215(C)(1) 9

Internet Materials

Jackie Cook, *Understanding the Tax Notice of Assessment* <https://www.novaralaw.com/publication-understanding-the-notice-of-assessment> (accessed June 18, 2024) 5

Public Acts

2014 PA 92 1
2021 PA 153 1

Michigan Administrative Code

Mich Admin Code R 792.10215 7

Federal Statutes

5 USC §7703(b)(1) 8

RECEIVED by MSC 6/25/2024 4:02:53 PM

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INTRODUCTION

The parties agree on the fundamental facts of this Eligible Manufacturing Personal Property ("EMPP") exemption case: 1) Petitioner-Appellee Sixarp, LLC d/b/a Praxis Packaging Solutions ("Praxis"[1]) received its notice of denial prior to the first March Board of Review ("March Board") meeting date;[2] 2) Praxis knew of the actual March Board meeting dates from the Notice of Assessment;[3] and 3) Praxis' appeal to the March Board was not acted on because it was untimely—not because of the filing itself.[4] Against the backdrop of these facts the law is clear: the Michigan Tax Tribunal ("Tribunal") did not and does not have jurisdiction to hear this case without fundamentally and incorrectly modifying the Tribunal's jurisdiction and delegating the Tribunal equitable powers.

RESPONSES TO FACTUAL CLAIMS

In its brief, Praxis avers that Respondent-Appellant Byron Township ("Township") made several misstatements of fact. That is not true and each claim shall be addressed:

Claim 1: The Michigan Department of Treasury ("Treasury") Form.

The Assessor Denial of Request for Exemption ("Assessor Denial") used by Township for the tax year at issue states on its face that it was issued "under the authority of the General Property Tax Act ("GPTA"), Public Act 206 of 1893, and the Essential Services Assessment Act, Public Act 92 of 2014, as amended."[5] MCL 211.122, a statute within the GPTA, states that "[t]he *state treasurer* shall prescribe or approve all forms, blanks, and record books required under this act"

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

[2] Township's Supplemental Brief, Appendix 2, Tribunal Final Opinion and Judgment at 11-12 (hereinafter FOJ).

[3] *Id.*

[4] *Id.* at 13.

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

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and requires that those documents be used.[6] MCL 211.1057(1) of the Essential Services Agreement Act similarly denotes the department as being in charge of the administration of that Act.[7] The Assessor Denial could only have been issued by Treasury. What forms do or do not appear on the August 11, 2022 or September 1, 2022 printouts of a Treasury website cited by Praxis are not indicative of the website as of March 2021 or that the form was not in fact issued by Treasury.[8]

Claim 2: The Grand Rapids Press Posting.

Praxis has never claimed nor argued it knew about the Grand Rapids Press publications regarding the 2021 March Board of Review. Praxis has already conceded that "[w]hether or not the dates of the [March] board's meetings were contained in public postings is irrelevant."[9]

Claim 3: The Tax Professional and the March Board.

Lisa Pohl, the hired professional, had knowledge of the March Board. To quote from Township's Supplemental Brief a "February 26, 2021 email disclosed by Praxis in discovery from its finance controller to Lisa Pohl reveals that—two weeks before the March board meetings—the controller 'spoke with [Township's assessor] at the Byron [T]ownship office and he suggested that we submit a letter for the appeal instead of going in person.'"[10]

---

[6] Emphasis added.

[7] MCL 211.1053(j) defines "department" as "department of treasury."

[8] In support of its premise that the form is not in fact from Treasury, Praxis cites to Exhibit R and Q from its Court of Appeals brief, the same are dated in the sentence above. Praxis' Court of Appeals Brief at fns. 8 & 10.

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

[10] Township's Supplemental Brief at 3 (citing Township's Answer in Opposition to Petitioner's Motion for Summary Disposition, Exhibit I, Tribunal docket lookup line item 27).

RECEIVED by MSC 6/25/2024 4:02:53 PM

Claim 4: Notice of the March Board Dates.

The Tribunal held that "Petitioner also contends that it was not provided appropriate notice of the times and dates at which the [March Board] would meet or the manner in which the [March Board] would meet. The Tribunal disagrees, as this information was explicitly stated under March Board of Review Information provided to Petitioner on the Notice of Assessment. Specifically, that notice indicates that the [March Board] will meet at certain specific times on March 8 and March 9."[11] Having the actual dates provides actual knowledge of the dates. Despite this finding, which has never been disturbed, Praxis has continued to argue, without support, it did not have knowledge of the meeting dates.[12]

Praxis, however, did incorrectly present a claim as fact in its brief. Specifically, that Praxis "twice called the assessor and asked for a scheduled appointment, and twice the assessor denied those requests."[13] That allegation, made without a citation, is not supported by the record. Instead, the affidavit of Praxis' own controller indicates that when he called the Assessor that he was told to "email him a letter for the appeal" and later conveyed to Ms. Pohl "the instructions [the Assessor] provided for filing an appeal."[14]

ARGUMENT

I. THE DENIAL NOTICE AND DUE PROCESS.

In its arguments to this Court, Praxis does not dispute that it received the 2021 Notice of Assessment and thus knew the actual days the March Board would meet. Instead, Praxis argues the Notice of Assessment is irrelevant, as it addressed valuation rather than the exemption claim. This is a faulty argument as the valuation would reflect any exemption applied to the property and

[11] FOJ at 11-12.
[12] Praxis' Court of Appeals Brief at 20-21.
[13] Praxis' Supplemental Response Brief at 16.
[14] Praxis' Court of Appeals' Appendix at 103a, paragraphs 5 and 6

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thus does address the exemption request. Praxis alternatively argues that an analysis of proper notice must be limited to the four corners of the Assessor Denial itself. This argument is also without merit.

A. The Denial Requirements of MCLs 211.9m and n.

Praxis argues the denial notice is deficient for a variety of reasons. Per the statute, however, all that is required is that the denial: 1) be in writing, 2) state the reason for the denial; and 3) advise that the denial had to be appealed to the March Board under MCL 211.30 by filing a combined document.[15] Praxis' attempt to graft further requirements onto the denial to create a deficiency in the document is not appropriate and is contrary to the plain language of MCLs 211.9m(3) and n(3).[16]

B. Notice of Denial and Due Process.

This Court's decision in *Alan v County of Wayne* is cited extensively for the proposition that the notice "alone—must be enough to enable the taxpayer to make a meaningfully informed decision" and that this court rejected the argument that "other sources of information could cure defects on the face of the notice."[17] That is not true. *Alan* involved a complex municipal bond situation where, in short, crucial details were "curiously absent" in notice to taxpayers but "brought home over and over again in notices to bondholders."[18] There was no such bait and switch here and this is not a bond case. Moreover, this Court did not establish any bright line rules for what needed to be included in a denial notice to satisfy due process and, instead, held that "the notice

[15] MCLs 211.9m(3) and n(3).

[16] Moreover, the 2022 Notice of Denial is irrelevant as that year, and that denial, are not at issue in this case.

[17] Praxis' Supplemental Brief at 11, 12; *Alan v County of Wayne*, 388 Mich 210; 200 NW2d 628 (1972).

[18] *Alan*, 388 Mich at 332.

RECEIVED by MSC 6/25/2024 4:02:53 PM

may not be misleading under all the circumstances."[19] That this Court looked at the taxpayer notice and the bondholder information supports that the inquiry in this case is not limited to a single notice document but all relevant facts.

Praxis specifically cites to footnote 84 in *Alan* to support not looking outside the Assessor Denial itself, but this Court simply held that the government cannot "mislead the people in required notices" and cannot cure that error "in unofficial news report or by the public rumor mill."[20] The Notice of Assessment that provided the dates here was a formal document that applied to the same tax parcel, applied to the same tax year, was issued by Township, and addressed the same core issue—property taxes. The Notice of Assessment is sent every year.[21] *Alan* is not applicable here and there is no due process concern in this case when all the facts are properly considered. *Trussell v Decker*, which cited *Alan*, is similarly inapplicable as the notice in that case omitted a method of protest while the March Board was clearly identified in this case.[22] *Spranger v City of Warren* is similarly inapplicable as the taxpayer in that case had "a scheduled hearing before the board of review" that they were not informed of which is not the untimely filing situation at issue in this case.[23]

As the review in this case must consider "all the circumstances[,]" the Assessor Denial itself can be reviewed acknowledging that it was received by a taxpayer who filed an EMPP application. The Assessor Denial was in writing, indicated why the request was denied, and that

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[19] *Id*. at 353.

[20] *Id*. at fn. 84; Praxis' Supplemental Brief at 12.

[21] *Walgreen Co v Macomb Twp*, 280 Mich App 58, 64; 760 NW2d 594 (2008). The claim that it is not sent every year is curious in light of Counsel for Praxis stating on her firm's website that "Notices of Assessment are sent out every year . . . ." Jackie Cook, *Understanding the Tax Notice of Assessment* <https://www.novaralaw.com/publication-understanding-the-notice-of-assessment> (accessed June 18, 2024).

[22] *Trussell v Decker*, 147 Mich App 312; 382 NW2d 778 (1985).

[23] *Spranger v City of Warren*, 308 Mich App 477, 483; 865 NW2d 52 (2014).

RECEIVED by MSC 6/25/2024 4:02:53 PM

"[f]iling a protest with the Board of review is necessary to protest your right to further appeal an EMPP exemption dispute to the Michigan Tax Tribunal" and that the appeal of the "assessor's denial of the EMPP exemption [is] to the March Board of Review under MCL 211.30."[24] Any taxpayer could read the "Notification of Taxpayers Right of Appeal" and understand the filing was with the March Board. Any taxpayer could reasonably see the same March Board referenced in the Notice of Assessment and understand they are for the same thing and thus know the dates the March Board met. If any questions regarding the dates of the March Board still remained after receiving the Notice of Assessment, there were a multitude of other sources—including, but not limited to, the assessor—from which that same taxpayer could have obtained further notice of the action needed to perfect an appeal.

The issue in this case was not what Praxis filed with the March Board, as that was not why the matter was not heard. The issue is that Praxis filed untimely despite knowing the March Board's meeting dates. The deficiencies alleged by Praxis with the Assessor Denial are premised on enhanced notice requirements that simply do not exist. The Assessor Denial meets the requirements of MCLs 211.9m and n and satisfies the requirements of due process. The fact due process has been satisfied in this case is only further amplified by the multiple other forms of notice Praxis received.

C. MCLs 211.30 and 211.29.

Praxis argues that the focus must be on MCL 211.30 for the dates the March Board met and thus the Court must also consider MCL 211.29. Township has never argued that the dates of the March Board actually appear in MCL 211.30. The statute was referenced in the Assessor Denial as its inclusion is required by MCLs 211.9m(3) and n(3). Township's position has always

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

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been that the dates were in the Notice of Assessment.[25] Praxis' argument is merely a method by which to include MCL 211.29 and thus the newspaper posting, that Praxis admitted was irrelevant, to either create a due process issue or have its filing be timely.[26] This argument has no basis in fact or law.

II. THE MARCH BOARD PROTEST IS NOT WAIVABLE.

The plain language of MCL 205.735a(3) establishes that a protest to the March Board is required unless a specific exception applies. Praxis would have this Court believe that the exceptions in the statute have swallowed the rule. This would be news to, among many others, any residential taxpayer that is required to go to the March Board for the Tribunal to have jurisdiction.[27]

A. The Administrative Procedures Act ("APA").

The Tribunal has duly promulgated rules that "govern practice and procedure in all contested cases" before the Tribunal.[28] These rules cite portions of the APA when an applicable Tribunal rule does not exist.[29] Praxis correctly notes that the Tribunal's rules do not address jurisdictional issues in cases where a deficient notice is claimed. This is, however, not because the APA should be consulted, it is because neither the Tribunal nor the APA can promulgate rules regarding the Tribunal's jurisdiction. That power is reserved for the Legislature that codified the Tribunal's jurisdiction, and notice, in statute. The APA is irrelevant to the Tribunal's jurisdiction as explicitly defined in the GPTA or the issues in this case.

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[25] *Id.* at 9.

[26] Praxis' Response to Township's Motion for Summary Disposition at 8, Tribunal docket lookup line item 28.

[27] MCL 205.735a(6).

[28] Mich Admin Code R 792.10215. The Tribunal's rules were updated effective October 6, 2023 but this language was unchanged from that in place as of the dates relevant to this case.

[29] *Id*. Specifically, MCL 24.271 to 24.287, and MCL 24.321 to 24.328.

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B. *Harrow v Department of Defense*.[30]

"While federal precedent may often be useful as guidance in this Court's interpretation of laws with federal analogues, such precedent cannot be allowed to rewrite Michigan law."[31] *Harrow* involved federal statue 5 USC §7703(b)(1) that set a 60-day appeal period for a decision from the Merit Systems Protection Board.[32] MCLs 211.9m and n are not analogous to the statute in *Harrow* and the case is not applicable. Even if considered, the proposition that the word jurisdiction needs to appear in the statute to be jurisdictional is clearly rejected by the Court: "Congress of course need not use 'magic words' to convey that such a requirement confines a court's authority."[33] The same is true here.

C. *Parkview* and the Tribunal's Jurisdiction.

The parties agree on the relevant case law from this Court: *W & E Burnside, Inc v Bangor Twp* and *Highland-Howell Dev Co LLC v Marion Twp*.[34] The parties have opposite interpretations of those cases. Township has stated its position in detail and Praxis' position is quite simply wrong. This is best proven by Praxis' failure to address *Electronic Data Systems Corp v Flint Twp* outside of a single reference in a footnote and, instead, relying on *Parkview Mem Ass'n v Livonia* to support its argument.[35]

In short, *Parkview* held that the Tribunal's jurisdictional requirements were procedural and could be waived.[36] *Electronic Data* was decided 11 years after *Parkview* and held that the

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[30] 218 L Ed 2d 502;144 S Ct 1178 (2024).
[31] *Garg v Macomb Co Comm Mental Health Serv*, 472 Mich 263, 283; 696 NW2d 646 (2005).
[32] *Harrow*, 218 L Ed 2d at 505.
[33] *Id*. at 507.
[34] *W & E Burnside*, *Inc v Bangor Twp*, 77 Mich App 618; 259 NW2d 160 (1977), rev'd 402 Mich 950l (1978); *Highland-Howell Dev Co LLC v Marion Twp*, 478 Mich 932; 733 NW2d 761 (2007).
[35] *Elec Data Sys Corp v Flint Twp*, 253 Mich App 538; 656 NW2d 215 (2002); *Parkview Mem Ass'n v Livonia*, 183 Mich App 116; 454 NW2d 169 (1990).
[36] *Parkview*, 183 Mich App at 121.

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Tribunal's jurisdictional statutes were, in fact, jurisdictional and cannot be waived.[37] The Court of Appeals has explicitly said that *Parkview* was overruled by *Electronic Data*.[38] The criticism of *Parkview* and its progeny detailed extensively in Township's briefing is not predicated on age, it is that *Parkview* is based on a faulty reading of *W & E Burnside* that has already been rejected by the Court of Appeals and must be rejected by this Court as well. Praxis' position that jurisdiction is waivable would require this court overrule *Electronic Data*—a fact Praxis never addresses. *Spranger*, cited by Praxis, is not relevant as there was a due process issue in that case due to a lack of notice of the hearing date—which did not occur here.[39]

III. THE TRIBUNAL CANNOT EXERCISE JURISDICTION OVER THIS CASE.

Rather than address the question posed by this Court—can the Michigan Tax Tribunal exercise jurisdiction over this case?—Praxis avers that issue "is not before this Court" and the focus should instead be on whether the Court of Appeals can force jurisdiction onto the Tribunal.[40] Had the Court been interested in Praxis' question, the Court would have asked for briefing on it. Praxis' abdication of the stated issue for a different one can only be characterized as an admission that the Tribunal does not have jurisdiction.

Praxis' argument that the Court of Appeals can determine the Tribunal's jurisdiction places two equally wrong burdens on the Court of Appeals—to act as a quasi-legislative body and as a trier of fact. The former is required because to modify the Tribunal's jurisdiction requires

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[37] *Elec Data Sys Corp*, 253 Mich App at 542-543.

[38] *Jehovah Shalom Church of God v City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued April 23, 2020 (Docket No. 348320) at 12. This case is included, and relevant, because it is one of the only cases to address both *Electronic Data* and *Parkview*. MCR 7.215(C)(1). It was included in the Appendix to Township's Supplemental Brief to this Court.

[39] *Spranger v City of Warren*, 308 Mich App 477, 484; 865 NW2d 52 (2014).

[40] Praxis' Supplemental Brief at 3.

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modifying statutes—e.g., MCLs 205.735a, 211.9m(3), and 211.9n(3)—and the latter has the Court of Appeals constantly determining jurisdictional matters instead of the Tribunal.

Praxis never addresses the delegation of equitable powers to the Tribunal in this case necessary for the Tribunal to hear the case. Justice Welch, writing in concurrence of a denial for leave to appeal an EMPP claim, wrote in an Order issued June 14, 2024 that "the MTT lacks equitable authority to account for plaintiff's unique circumstances."[41] Township argued the same on appeal.

The focus on MCL 205.731 ignores that statute must be read *in pari materia* with MCL 205.735a, as well as MCLs 211.9m(2)(c) and n(2)(c).[42] Jurisdiction cannot be established solely under MCL 205.731—or any assessment levied in the last 100 years could be challenged. MCL 205.735a as well as MCLs 211.9m(2)(c) and n(2)(c) cannot be rendered "mere surplusage."[43]

[41] *ProQuest LLC v Twp of Ypsilanti*, ___ Mich ___; ___ NW2d ___ (Order issued June 14, 2024) (MSC Case No. 166549).

[42] *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 73; 894 NW2d 535 (2017).

[43] *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 57; 746 NW2d 282 (2008).

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CONCLUSION

The Court of Appeals erred in this case when it found a due process issue, resurrected *Parkview* and a malleable jurisdictional standard for the Tribunal, and empowered the Tribunal with equity that the Legislature did not. Affirming the Tribunal and the strict jurisdictional limits set forth in *Electronic Data* which follows the finding in *Highland-Howell Dev Co LLC* is appropriate.

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing brief complies with the word count limitation (no more than 3,200 words) and format requirements of MCR 7.212(G). The brief contains 3,190 words including headings, footnotes, citations and quotations contained in the Introduction, Argument, and Conclusion sections of its Reply Brief. (3,998 words in entire document).

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I declare that the statement above is true to the best of my information, knowledge and belief.

Dated: June 25, 2024

/s/Laura M. Hallahan
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