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STATE OF MICHIGAN
IN THE SUPREME COURT

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

Petitioner-Appellee,

v.

TOWNSHIP OF BYRON,

Respondent-Appellant.

_____/

Supreme Court No. 166190

Court of Appeals Case No. 361888

Tax Tribunal No. 21-000523-TT

AMICUS BRIEF OF THE MICHIGAN MANUFACTURERS ASSOCIATION

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TABLE OF CONTENTS

Page

STATEMENT OF QUESTIONS PRESENTED iv
INTRODUCTION AND SUMMARY OF THE ARGUMENT 1
STATEMENT OF INTEREST OF AMICUS CURIAE 2
STATEMENT OF FACTS 4
STANDARD OF REVIEW 4
ARGUMENT 4
I. THE COURT OF APPEALS' DECISION PROVIDES CLARITY TO MANUFACTURERS, PROTECTS THEIR STATUTORY TAX EXEMPTION RIGHTS, AND FOSTERS ECONOMIC DEVELOPMENT 4
II. THE GENERAL PROPERTY TAX ACT REQUIRES LOCAL ASSESSORS TO PROVIDE FAIR AND ADEQUATE NOTICE OF AN EMPP EXEMPTION DENIAL AND AFFORDS BUSINESSES AN OPPORTUNITY TO CONTEST THOSE DENIALS BEFORE THE MTT 7
A. The Assessor's Denial to Praxis Did Not Provide Sufficient Notice of Praxis's Appeal Rights to the Board of Review 7
B. The Assessor's Legally Deficient Denial Notice Excused Praxis from Seeking Review from the Board of Review 10
C. The MTT Has Jurisdiction to Hear Praxis's Appeal on Remand 14
CONCLUSION 15

RECEIVED by MSC 8/15/2024 10:24:00 AM

TABLE OF AUTHORITIES

Page(s)

Cases

Bickler v Dep't of Treasury,
180 Mich App 205; 446 NW2d 644 (1989) 15

Dow v State,
396 Mich 192; 240 NW2d 450 (1976) 10

Electronic Data Systems Corp v Township of Flint,
253 Mich App 538; 656 NW2d 215 (2002) 12, 13

Leahy v Orion Tp,
269 Mich App 527; 711 NW2d 438 (2006) 13

Manor House Apartments v City of Warren,
204 Mich App 603; 516 NW2d 530 (1994) 11, 14

Mich State Univ v City of Lansing, unpublished opinion of the Court of Appeals,
issued February 15, 2005 (Docket No. 250813), 2005 WL 356639 12

Morehouse v Tp of Mackinaw, unpublished opinion of the Court of Appeals,
issued March 17, 2009 (Docket No. 281483), 2009 WL 691816 ..... 11, 12

New Covert Generating Co, LLC v Tp of Covert,
334 Mich App 24; 964 NW2d 378 (2020) 14

Parkview Memorial Association v City of Livonia,
183 Mich App 116; 454 NW2d 169 (1990) ..... *passim*

Spranger v City of Warren,
308 Mich App 477; 865 NW2d 52 (2014) 15

W & E Burnside Inc v Bangor Township,
402 Mich 950L; 314 NW2d 196 (1978) 2, 11, 14

W & E Burnside Inc v Bangor Township,
77 Mich App 618; 259 NW2d 160 (1977) 11

WA Foote Memorial Hospital v City of Jackson,
262 Mich App 333; 686 NW2d 9 (2004) 13

Statutes

MCL 205.731 14

MCL 205.735 ..... 11, 12, 14

MCL 205.735a 12

MCL 211.9m ..... *passim*

MCL 211.9n ..... *passim*

MCL 211.30 .....8, 9

RECEIVED by MSC 8/15/2024 10:24:00 AM

RECEIVED by MSC 8/15/2024 10:24:00 AM

STATEMENT OF QUESTIONS PRESENTED

The MMA submits this amicus curiae brief to address the three questions presented in this Court's April 10, 2024 Order directing the Clerk to schedule oral argument on Byron Township's application for leave to appeal, directing supplemental briefing, and inviting amicus participation.

RECEIVED by MSC 8/15/2024 10:24:00 AM

INTRODUCTION AND SUMMARY OF THE ARGUMENT[1]

Since the Great Recession, Michigan has undertaken a dedicated program of economic development, including repealing the Michigan Business Tax, enacting significant tax incentives for new and out-of-state businesses, and providing tax relief to Michigan businesses through initiatives like the eligible manufacturing personal property (EMPP) tax exemption. The goal of those programs is to promote the growth and expansion of businesses in Michigan that provide jobs and economic livelihoods for thousands of Michiganders.

But the EMPP exemption process, while straightforward in theory, has been in reality riddled with confusion, inconsistency, and administrative red tape that has made it challenging for Michigan manufacturers to take advantage of the benefits the Legislature intended in enacting this tax exemption. Indeed, Praxis's experience here is a perfect example. In 2021, when the Township failed to provide adequate notice of Praxis's appeal rights, the Township denied the EMPP exemption; the very next year, when the tax forms provided more clarity, Praxis was able to obtain the exemption.

Consistent with the tax statutes, the Court of Appeals' decision here provides necessary clarity and guidance with the EMPP exemption process. It simply confirms that municipalities denying an EMPP exemption must do so with a clear explanation and notice of the taxpayer's appeal rights to the Board of Review, as required by MCL 211.9m and 211.9n and due process. The Court of Appeals also made clear that a municipality cannot capitalize on its failure to provide the requisite notice to deprive the taxpayer of an opportunity to have its appeal heard by the Michigan Tax Tribunal (MTT). That is the same principle this Court has made clear going back

[1] Under MCR 7.312(H)(5), the MMA confirms that no counsel for any party authored this brief in whole or in part and that no party made a monetary contribution intended to fund the preparation or submission of this brief. Sixarp, LLC d/b/a Praxis Packaging Solutions is a member of MMA.

RECEIVED by MSC 8/15/2024 10:24:00 AM

nearly 50 years to *W & E Burnside Inc v Bangor Township*, 402 Mich 950L; 314 NW2d 196 (1978) (mem).

Because the Court of Appeals' Opinion is consistent with the EMPP tax statutes, due process, and this Court's and the Court of Appeals' own precedents, this Court should deny leave to appeal.

STATEMENT OF INTEREST OF AMICUS CURIAE

The Michigan Manufacturers Association (MMA) is an association of Michigan businesses. The MMA was organized and exists to promote the interests of both Michigan businesses and the public in the proper administration of laws, to study matters of general interest to its members, and otherwise to promote the general business and economic climate of the State of Michigan. A significant aspect of the MMA's activities involves representing its members' interests before the state and federal courts, legislatures, and administrative agencies. Through effective representation of its membership before the judicial, legislative, and executive branches of government on issues of importance to the manufacturing community, the MMA works to foster a strong and expanding manufacturing base in Michigan. The MMA appears before this Court as a representative of approximately 2,500 private business concerns, all potentially affected by the dispute in this case.

The interests of manufacturers are coextensive with the interests of the citizens of Michigan. Simply put, manufacturing is the backbone of Michigan's economy. Manufacturing generates 15.1 percent of the gross state product, comprises 13.9 percent of total nonfarm employment, and employs 602,500 people in Michigan. And growing: from June 2009 through April 2016, employment in Michigan's manufacturing sector rose by 169,600 jobs (39.2 percent), and 34.4 percent of nonfarm jobs added in Michigan since the recession ended have been in the

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manufacturing sector. Michigan has been the national leader in new manufacturing job creation since the recession ended, outpacing the next closest states by more than 10 percent.

Manufacturing has always contributed substantially to Michigan job growth and economic output, and the promotion of a thriving manufacturing sector in Michigan is of the utmost importance to the future economic survival of this state. The issues in this case substantially affect not only the manufacturing sector, but also the economy of the State of Michigan as a whole, including employment levels, economic growth, and the ability of Michigan industries to compete in the regional, national, and global marketplaces.

The MMA's members have a clear and significant interest in the issues presented in this case. The MMA's members include hundreds of businesses that are or were subject to the State's personal property tax and have been impacted by the substantial business tax reforms that the Legislature began enacting in 2011. Those tax reforms were designed and intended to benefit Michigan businesses and promote economic growth and development. Dozens of MMA member businesses apply for the EMPP tax exemption each year following the same procedures required of Praxis. For years, those businesses have encountered confusion and red tape in navigating a tax exemption process that should be straightforward and is intended to benefit these very businesses. Manufacturers therefore have a substantial interest in determining what constitutes legally adequate notice of an EMPP exemption denial and their ability to obtain relief from the Michigan Tax Tribunal in the absence of effective notice. With this unique perspective, the MMA can provide helpful insight to assist the Court in addressing the application for leave to appeal.

RECEIVED by MSC 8/15/2024 10:24:00 AM

STATEMENT OF FACTS

The MMA adopts the statement of facts set forth in Petitioner-Appellee Praxis's Answer to Respondent-Appellant's Application for Leave to Appeal, dated October 31, 2023.

STANDARD OF REVIEW

The MMA adopts the standard of review set forth in Petitioner-Appellee Praxis's Answer to Respondent-Appellant's Application for Leave to Appeal, dated October 31, 2023.

ARGUMENT

I. THE COURT OF APPEALS' DECISION PROVIDES CLARITY TO MANUFACTURERS, PROTECTS THEIR STATUTORY TAX EXEMPTION RIGHTS, AND FOSTERS ECONOMIC DEVELOPMENT

For many years, Michigan levied a "personal property tax" on the equipment, machinery, and supplies used by businesses and manufacturers in their operations, including manufacturing equipment, furniture, tools, and computers. (See Exhibit 1: House Legislative Analysis, HB 6022, 6024-6026, SB 1065-1071 (March 1, 2013), p 1).[2] However, because the amount of the tax increased in proportion to the amount and value of the property owned, this tax inadvertently functioned as "'an investment penalty'" that discouraged new businesses from moving to Michigan and existing companies from expanding. (See Exhibit 2: Pat Schellenbarger, *Business, Republican Leaders Express Confidence in Personal Property Tax Repeal*, Bridge Michigan (April 19, 2012), quoting former Lt Governor Brian Calley).[3]

As one study described: "[T]he personal property tax raises the cost of owning machinery and equipment in the state. In turn, this lowers the returns on investment in certain types of capital,

[2] Available at https://www.legislature.mi.gov/documents/2011-2012/billanalysis/House/pdf/2011-HLA-6022-16273ADA.pdf.

[3] Available at https://www.bridgemi.com/michigan-government/business-republican-leaders-express-confidence-personal-property-tax-repeal.

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particularly for industrial firms. This lower return discourages investment in Michigan, affecting Michigan's competitive position among its peers who do not have a personal property tax. This is especially true for attracting manufacturers, who tend to bring relatively high-paying jobs to the state." (Exhibit 3: Anderson Economic Group White Paper 2011-02, *The Michigan Personal Property Tax: Effects of Repeal on Michigan's Economy and Tax Revenues* (November 17, 2011), p 1).[4] Valuing the personal property subject to the tax and administering the tax and its collection historically also involved significant compliance costs. (Exhibit 3: AEG White Paper 2011-02, *Michigan Personal Property Tax*, pp 9-10).

Consequently, in 2011, the State of Michigan began phasing out the personal property tax as part of a broader effort aimed at building Michigan's economy post-recession and promoting economic growth and development. See 2012 PA 401, 403; 2013 PA 154; 2014 PA 87; 2015 PA 119; 2016 PA 108; 2017 PA 42, 261; 2021 PA 153, 154. (See also Exhibit 4: Mackinac Center for Public Policy, Policy Brief, *Proposal 1 of 2014: Summary and Assessment* (July 2, 2014) (describing personal property tax and proposed amendments).[5] The Legislature achieved this phaseout goal by creating tax exemptions for EMPP that businesses could claim by following certain procedures laid out in the property tax statute and guidance from the Michigan State Tax Commission. (See Exhibit 1: House Legislative Analysis, HB 6022, 6024-6026, SB 1065-1071; Exhibit 5: Mich State Tax Comm'n, *Assessor Guide to Eligible Manufacturing Personal Property Tax Exemption and ESA* (revised February 2019)).[6] Since the initial package of legislation, the

[4] Available at https://www.andersoneconomicgroup.com/Portals/0/upload/AEG%20-%20PPT%20White%20Paper_PUBLIC.pdf.

[5] Available at https://www.mackinac.org/archives/2014/s2014-03.pdf.

[6] Available at https://www.michigan.gov/taxes/-/media/Project/Websites/treasury/Assessors/Assessor_Guide_to_PPT_Exemptions_101016.pdf?rev=02458b72e45e424ebf15d2d30a325803&hash=9118ADEE1ABACEE331E6D3AF17175237.

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Legislature has enacted several amendments to simplify and streamline the exemption process. See, e.g., 2021 PA 153 (eliminating requirement to reapply for exemption annually); 2017 PA 261 (modifying filing deadlines).

During that time, thousands of Michigan businesses have taken advantage of the EMPP, allowing them to reinvest more of their profits into generating Michigan jobs and fueling the local and regional economy. (Exhibit 4: Mackinac Center for Public Policy, Policy Brief, *Proposal 1 of 2014*, p 6 ("The cuts are structured to improve growth prospects. The key economic growth considerations are those influencing a business's investment opportunities. When a business runs financial projections for an expansion, it will consider the new costs of capital. Personal property taxes increase those costs. Eliminating this tax on new personal property reduces the cost of expanding for Michigan businesses. This reform influences those investment decisions.")).

However, while the personal property tax reforms were designed to set simple eligibility criteria and provide a straightforward and predictable appeals process, many manufacturers have experienced myriad problems resolving filing disputes with local units of government in the established appeal process. That includes, among other issues, confusion over the appeal procedures and timelines due to a lack of information provided by the assessor as well as substantive disputes over the eligibility of certain manufacturing property.

The Court of Appeals' decision provides necessary certainty and predictability by clarifying that the assessing governmental unit must provide the taxpayer with all of the information required by statute, and ensures that local units of government cannot negate taxpayer businesses' appeal rights to the MTT by failing to provide adequate notice. As a policy matter, the Court of Appeals decision is crucial to protecting taxpayer businesses' statutory and constitutional rights in the EMPP exemption review and appeal process and therefore to

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effectuating the Legislature's purpose to promote economic growth by Michigan businesses. Moreover, for all of the reasons explained below, that decision is also wholly consistent with the property tax laws and this Court's precedents.

II. THE GENERAL PROPERTY TAX ACT REQUIRES LOCAL ASSESSORS TO PROVIDE FAIR AND ADEQUATE NOTICE OF AN EMPP EXEMPTION DENIAL AND AFFORDS BUSINESSES AN OPPORTUNITY TO CONTEST THOSE DENIALS BEFORE THE MTT

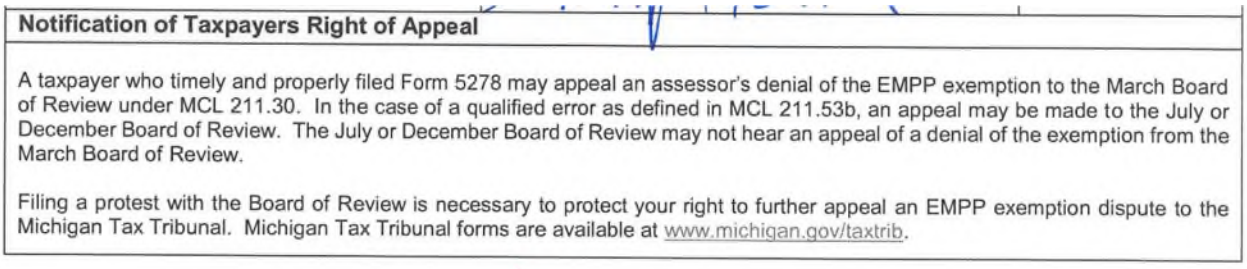
A. The Assessor's Denial to Praxis Did Not Provide Sufficient Notice of Praxis's Appeal Rights to the Board of Review

Both MCL 211.9m and MCL 211.9n address the process for denials of EMPP exemptions—the only relevant difference between the two provisions involves the age of the EMPP at issue. The statutes provide that, "*[i]f 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 [manufacturing] 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 section 30 by filing a combined document* as prescribed under subsection (2)." MCL 211.9m(3) and MCL 211.9n(3) (emphases added).

The Township assessor's denial notice failed to meet that standard here. Indeed, the Township admits that its notice failed to "advis[e]" Praxis that it must "fil[e] a combined document" in order to appeal the denial, as required by the statute. (See Byron Tp's 05/22/2024 Suppl Br at 11 ("Township does not dispute that the specific language regarding the combined

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document was omitted from the Assessor Denial[.]"). That omission is clear from the face of the denial[7]:



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.

As the Court of Appeals recognized, "[t]his effectively prevented Praxis from complying with the requirements for perfecting its appeal before the March Board of Review." (COA Slip Op at 10).

But perhaps more to the point, the notice omitted key information instructing Praxis on how to "appeal[] [the denial] to the board of review under section 30"—namely, by failing to include any information regarding the dates and times for the Board of Review meetings. (See COA Slip Op at 11 ("[T]he denial notice did not include any information about the dates on which the Board of Review met.")). And the referenced "section 30," MCL 211.30, does not set out specific dates on which the Board of Review must or will meet. In other words, if a taxpayer received only the notice provided to Praxis, that taxpayer would have no way of knowing when, where, or for how long the "March Board of Review" would meet, and thus no way to tell how to effectuate the mandatory Board of Review protest. Indeed, Praxis's experience, which resulted in the taxpayer missing the Board of Review meeting by a single day, illustrates the confusion likely to result from leaving out this key information.

On appeal, the Township nevertheless argues that Praxis was on notice of the meeting dates (March 8 and 9, 2021) because it received a separate notice of tax assessment listing certain

[7] The denial notice is available at Appendix 4 to Praxis's motion for partial summary disposition in the MTT (MTT Dkt Entry 21 (December 14, 2021)).

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meeting dates and times for the March Board of Review. (See Byron Tp's 05/22/2024 Suppl Br at 2-3). But a municipality required to issue a denial notice providing certain required information under MCL 211.9m and MCL 211.9n should not be allowed to rely on extraneous documentation—unconnected to, issued separately from, and not incorporated into the denial notice—to meet its very basic notice obligations for an exemption denial.

Regardless, even assuming that this separate notice of assessment could remedy the deficiency in the original denial, the assessment indicated that appointment requests and letter appeals must be received by or before March 5, 2021, several days before the Board of Review meetings were set to begin. (COA Slip Op at 11; Byron Tp's 05/22/2024 Suppl Br at 2). As the Court of Appeals noted, the Township assessor never advised Praxis of these filing deadlines (COA Slip Op at 11), nor does MCL 211.30 (the statute referenced in the denial notice) mention these deadlines. And other documentation published by the Township—specifically, a notice in the local Grand Rapids Press—injected further uncertainty into the process, since it suggested that "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." (COA Slip Op at 11).

In other words, as the Court of Appeals summarized:

> 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 [Praxis]. Although the notice of assessment indicated that letter appeals had to be filed by March 5, 2021, when [Praxis] contacted [the assessor] about the letter appeal, he never provided them with a deadline by which they had to file the letter appeal.

(COA Slip Op at 12 (emphasis in original)).

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Under all of the circumstances, the Township's notice was not reasonably calculated to provide the taxpayer with notice of its appeal rights and obligations, particularly when the marginal burden to the municipality of simply adding the Board of Review meeting dates would be so minimal. See *Dow v State*, 396 Mich 192, 205-206; 240 NW2d 450 (1976) ("The fundamental requisite of due process of law is the opportunity to be heard. … The opportunity to be heard includes the right to notice of that opportunity. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (quotation marks omitted)). Consequently, the Township's denial notice failed to comport with MCL 211.9m/MCL 211.9n or due process.

B. The Assessor's Legally Deficient Denial Notice Excused Praxis from Seeking Review from the Board of Review

Under this Court's and the Court of Appeals' clear precedents, the Township's failure to provide a statutorily or constitutionally adequate denial notice relieved Praxis of protesting the denial at the March 2021 Board of Review. In reaching that conclusion, the Court of Appeals relied heavily on *Parkview Memorial Association v City of Livonia*, 183 Mich App 116; 454 NW2d 169 (1990), which addressed a similar notice and protest issue in a personal property tax dispute.

In *Parkview*, 183 Mich App at 117, the last day of the board of review that year was April 3, but the city did not mail the personal property tax assessment notices until two days later, on April 5. The taxpayers subsequently appealed their tax bills to the MTT, which dismissed the petitions as untimely. *Id.* On appeal, the Court of Appeals concluded that the notices of assessment were untimely mailed and therefore the "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." *Id.* at 120. "Petitioners will thus be denied due process unless they

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are given an opportunity to be heard." *Id*. "Based on these considerations," the Court of Appeals concluded that the MTT had jurisdiction to hear the taxpayers' claims, even though they had not appealed to the board of review as required by MCL 205.735 (a parallel statute to MCL 205.735a).

In *Parkview*, the Court of Appeals applied this Court's decision in *W & E Burnside*, 402 Mich 950L (1978) (mem). There, the taxpayer sought to contest an increase in their property valuation, and argued that they had not protested before the board of review because they did not receive notice of the increase. 77 Mich App 618, 620; 259 NW2d 160 (1977). The Court of Appeals held that the MTT lacked jurisdiction because the taxpayer did not receive notice of the assessment until after the board of review meeting and had therefore failed to exhaust the remedies necessary to bring suit in the MTT. *Id*. at 623-625. This Court reversed and remanded the case to the MTT. 402 Mich 950L. See also *Manor House Apartments v City of Warren*, 204 Mich App 603, 605-606; 516 NW2d 530 (1994) (holding that taxpayer was excused from complying with board of review protest requirement in property tax dispute because such a protest would have been futile).

The Court of Appeals has continued to follow this same approach in more recent cases where the petitioner contested the adequacy of the tax notice provided by the municipality. See, e.g. *Morehouse v Tp of Mackinaw*, unpublished opinion of the Court of Appeals, issued March 17, 2009 (Docket No. 281483), 2009 WL 691816, p *3 ("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. … [W]hen 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

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and did not inform petitioners of their right to an appeal with the tribunal if the claim were filed within the statutory time limit."); *Mich State Univ v City of Lansing*, unpublished opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 250813), 2005 WL 356639, p *4 (concluding that MTT had jurisdiction to hear appeal from taxpayer even without board of review protest since city failed to prove it timely mailed assessment notice) ("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 impaired.").

In short, *Parkview* and its progeny support the proposition that, where the taxing municipality fails to provide legally sufficient notice to allow the taxpayer to appeal the exemption denial or assessment to the board of review, the taxpayer may be excused from the board of review protest requirement in MCL 205.735/MCL 205.735a before proceeding with an appeal to the MTT. Here, "[b]ased on the conflicting information in the various notices and publications, as well as [the assessor]'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." (COA Slip Op at 12). Thus, the Court of Appeals, like the court in *Parkview*, properly "waive[d] the protest requirement before the Board of Review and allow[ed] the case to proceed before the MTT." (COA Slip Op at 12).

Before this Court, the Township relies on *Electronic Data Systems Corp v Township of Flint*, 253 Mich App 538; 656 NW2d 215 (2002). (See Byron Tp's 05/22/2024 Suppl Br at 15-18; Byron Tp's 06/25/2024 Suppl Reply at 8-9). There, the petitioner mailed its tax appeal petitions to the MTT by first-class mail, "in contravention of the clear statutory requirement" that such petitions be sent by certified mail. *Id*. at 540-542. Thus, since the petition was not "'sent by

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certified mail on or before June 30 of that tax year,'" as required by the tax statute, the petitioner missed the appeal deadline and the MTT could not hear the dispute. But *Electronic Data Systems* (unlike *Parkview* and this case) did not involve or touch upon the question of whether a statutory board of review protest requirement is waivable or a strict limit on the MTT's jurisdiction. Nor, again unlike *Parkview* and this case, did *Electronic Data Systems* involve a situation where the assessing municipality failed to provide adequate notice of the board of review and appeals process. Those factors render *Electronic Data Systems* inapposite here. See *Morehouse*, 2009 WL 691816, p *3 ("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. Thus, the notice at issue was that received by the tribunal, not by the taxpayer." (citation omitted)).

Those factors likewise distinguish this case from *WA Foote Memorial Hospital v City of Jackson*, 262 Mich App 333; 686 NW2d 9 (2004), which applied *Electronic Data Systems* to determine whether the taxpayer's submission of an appeal petition to the MTT by Federal Express qualified as "certified mail." See also *Leahy v Orion Tp*, 269 Mich App 527, 532; 711 NW2d 438 (2006) (applying *Electronic Data Systems* to bar consideration of prior years' assessments where petitioner failed to protest those assessments).

In short, where the adequacy of the notice provided by the municipality to the taxpayer is at issue, *Parkview* governs; where the adequacy of the notice is not disputed and the only issue is timeliness or sufficiency of the taxpayer's appeal petition, *Electronic Data Systems* applies. Since the key question here is whether the Township's exemption denial notice met the statutory criteria under MCL 211.9m/211.9n and satisfied due process, this case falls squarely under *Parkview*, as the Court of Appeals held.

RECEIVED by MSC 8/15/2024 10:24:00 AM

C. The MTT Has Jurisdiction to Hear Praxis's Appeal on Remand

The Court of Appeals also appropriately directed the MTT to hear this dispute on remand. "MCL 205.731 does not limit the Tax Tribunal's jurisdiction on the basis of prerequisites to the assertion of jurisdiction. The prerequisites to the assertion of jurisdiction appear under MCL 205.735 for appeals commenced before January 1, 2007, and under MCL 205.735a for appeals commenced after December 31, 2006. Courts have long recognized that not all prerequisites to the assertion of jurisdiction reduce the subject-matter jurisdiction of a tribunal—some are merely claim-processing rules that do not implicate subject-matter jurisdiction." *New Covert Generating Co, LLC v Tp of Covert*, 334 Mich App 24, 49; 964 NW2d 378 (2020). See also *id*. at 50 ("[T]he decision in *W & E Burnside* suggested that the Supreme Court viewed the prerequisites as jurisdictional only in the looser sense.").

This is the same conclusion the Court of Appeals reached in *Parkview*:

> Although M.C.L. § 205.735 is couched in jurisdictional terms, however, we do not read that statute as defining the subject-matter jurisdiction of the Tax Tribunal; the jurisdiction of the tribunal is set forth at M.C.L. § 205.731. Instead, we read the "jurisdictional" requirements of M.C.L. § 205.735—including the protest requirement of subsection (1) and the requirement set forth in subsection (2) that petitions regarding an assessment dispute be filed not later than June 30 of the tax year—as procedural requirements for perfecting an appeal in the Tax Tribunal. … Neither doctrine, however, is a limitation on the subject-matter jurisdiction of the tribunal before which the claim is asserted.

Parkview, 183 Mich App at 121 (parallel citations omitted)). See also *Manor House Apts*, 204 Mich App at 604-605 (construing protest requirement in MCL 205.735 as "exhaustion requirement" rather than strictly jurisdictional even where statute described protest as necessary for MTT to acquire jurisdiction). The MTT thus has jurisdiction to hear Praxis's appeal once the Board of Review protest requirement is excused due to insufficient notice (see Section II.B., *supra*).

RECEIVED by MSC 8/15/2024 10:24:00 AM

This outcome is consistent with the Court of Appeals' published decisions in more recent cases. In *Spranger v City of Warren*, 308 Mich App 477, 478; 865 NW2d 52 (2014), the petitioner applied for a property tax poverty exemption with the city, which failed to provide notice of her specially-scheduled hearing before the board of review and subsequently denied her exemption application as insufficiently supported. On appeal, the MTT affirmed. *Id*. at 479. The Court of Appeals reached a different conclusion and held that the city and the board of review failed to afford the petitioner due process in conducting the hearing on her exemption request. There, the court made clear that, although "the Tax Tribunal lacked the authority to consider whether the procedures followed by the city of Warren and its board of review were sufficient to satisfy petitioner's constitutional right to procedural due process," the Court of Appeals had authority to consider that question. *Id*. at 484. Having answered that question in the negative, "the only available remedy is a remand for a new hearing before the Tax Tribunal." *Id*.

Framed differently, to remedy a due process violation that the MTT did not itself have jurisdiction to adjudicate, the Court of Appeals could remand the matter to the MTT to consider the underlying exemption issue. See also *Bickler v Dep't of Treasury*, 180 Mich App 205, 211-212; 446 NW2d 644 (1989) (allowing MTT to exercise jurisdiction over "delayed appeal" as a matter of equity where petitioner did not receive adequate notice of assessment).

Thus, the Court of Appeals correctly and appropriately directed the MTT "to hear this case as a matter of equity, despite Praxis's failure to first protest to the Board of Review," to remedy the due process violation from the Township's inadequate denial notice. (COA Slip Op at 13).

CONCLUSION

For all of these reasons, the MMA respectfully requests that the Court deny the application for leave to appeal.

Dated: August 15, 2024

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: */s/ Paul D. Hudson*

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CERTIFICATE OF WORD-COUNT COMPLIANCE

I hereby certify that the foregoing brief contains 4,633 words, as checked by Microsoft Word's word-count feature, in compliance with MCR 7.312(H)(3), MCR 7.312(A), and MCR 7.212(B)(1).

/s/ Paul D. Hudson

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2024, I electronically filed the foregoing document with the Clerk of the Court using the electronic system which will send notification of such filing to all attorneys of record.

/s/ Paul D. Hudson

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