

STATE OF MICHIGAN
IN THE SUPREME COURT

Superior Hotels, LLC,

Petitioner/Appellant,

v

Township of Mackinaw,

Respondent/Appellee,

Supreme Court Docket No. 138696
Court of Appeals No. 276836
MTT Docket No. 313228

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PETITIONER/APPELLANT'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

This appeal concerns whether the State Tax Commission has jurisdiction under MCL 211.154(1) to increase the taxable value of Petitioner/Appellant Superior Hotels, LLC's ("Petitioner") real property when no portion of the real property was omitted from the assessment and no dispute as to the taxable status of the real property existed. This appeal also concerns whether "assessment value" as used in MCL 211.154(1) may be interpreted to mean taxable value and fifty (50) percent of the true cash value of the property subject to taxation, even though taxable value and assessed value are two separate concepts under Michigan's General Property Tax Act ("GPTA"), MCL 211.1, *et seq.*

Petitioner contends that the State Tax Commission does not have jurisdiction to increase the taxable value of real property under MCL 211.154(1), when no portion of the property was omitted from the assessment and no dispute as to the taxable status of the real property existed. Furthermore, taxable value and assessed value are not one in the same. Petitioner relies on the plain language of the GPTA and the Court of Appeals' decision in *City of Detroit v Norman Allan & Co*, 107 Mich App 186; 309 NW2d 198 (1981), and subsequent unpublished Court of Appeals' opinions interpreting MCL 211.154(1).

The State Tax Commission's March 15, 2005 Order increased the taxable value for the subject property for tax years 2001, 2002 and 2003, pursuant to Respondent Township of Mackinaw's ("Respondent") request submitted under MCL 211.154. (Official Order dated March 15, 2005, Appendix 6a). Petitioner filed a Petition with the Michigan Tax Tribunal on March 15, 2005, asserting that the State Tax Commission does not have jurisdiction over issues solely related to the mathematical calculation of taxable value under these circumstances and requesting that the Tribunal rescind the State Tax Commission's March 15, 2005 Order. (Petition dated March 15, 2005, Appendix 7a).

On February 23, 2007, the Michigan Tax Tribunal entered its Final Opinion and Judgment, Order Granting Petitioner's Motion for Summary Disposition, holding that the State Tax Commission did not have jurisdiction under MCL 211.154 to correct an error in the calculation of the taxable valuation of the subject property for previous years under these circumstances. (Final Opinion and Judgment, Order Granting Petitioner's Motion for Summary Disposition, Appendix 9a).

The Court of Appeals reversed the Michigan Tax Tribunal's February 23, 2007 Order. (*Superior Hotels, LLC v Township of Mackinaw*, 282 Mich App 621; 765 NW2d 31 (2009) (Appendix 17a). This Court granted leave to appeal by its Order dated July 9, 2009. (Appendix 30a). This Court has jurisdiction under MCR 7.301(A)(2) and MCR 7.302.

STATEMENT OF QUESTION PRESENTED FOR REVIEW

WHETHER THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE STATE TAX COMMISSION HAS JURISDICTION TO INCREASE THE TAXABLE VALUE OF PETITIONER/ APPLICANT SUPERIOR HOTELS, LLC'S REAL PROPERTY UNDER MCL 211.154(1) WHEN NO PORTION OF THE REAL PROPERTY WAS OMITTED FROM THE ASSESSMENT AND NO DISPUTE AS TO THE TAXABLE STATUS OF THE REAL PROPERTY EXISTED?

Petitioner/Appellant answers "yes."

Respondent answers "no."

Court of Appeals answered "no."

INTRODUCTION

The Michigan Tax Tribunal's Opinion and Order entered February 23, 2007, holding that Respondent cannot correct or increase the taxable values for the subject property under MCL 211.154 should be upheld. Respondent did not establish that a portion of the real property was omitted from assessment or that the taxable status of the subject property was reported incorrectly. In reversing the Michigan Tax Tribunal's Opinion and Order, the Court of Appeals held: "'assessment value' as used in § 154 means either 'taxable value' or 50 percent of the true cash value of property subject to taxation as those terms are defined in Michigan's Constitution and statutes." *Superior Hotels, LLC*, 282 Mich App at 633. (Appendix 23a). The Court of Appeals relied on this construction of MCL 211.154(1) to hold that the State Tax Commission had jurisdiction under this provision to change the taxable value of the subject property when no portion of the real property was omitted from assessment and the taxable status of the property was not at issue.

Petitioner seeks relief from this Court, because the Court of Appeals' construction of the term "assessment value" in MCL 211.154 has broadened the jurisdiction of the State Tax Commission and now provides another avenue for assessors to correct errors in the mathematical calculation of taxable value under MCL 211.154 when the GPTA already provides a remedy under MCL 211.53b before the Michigan Tax Tribunal.

STATEMENT OF FACTS

Petitioner and Respondent stipulated to all pertinent facts at issue in this matter. The Joint Stipulation of Facts is incorporated by reference and is attached at Appendix 5.

The real property that is the subject of these proceedings is located in Mackinaw Township, Cheboygan County, and is identified as parcel number 16-012-V07-052-004-00. (Appendix 31a-32a, ¶¶ 2, 3 and 6). Classified as commercial real property, the subject property was designed for and used as a hotel. (Appendix 31a-32a, ¶¶ 3, 4 and 5). Petitioner began construction of a hotel known as "Baymont Inn" on the subject property in 1997, and completed construction of "Baymont Inn" in 1998. (Appendix 32a, ¶ 7).

The Joint Stipulation of Facts and Final Opinion and Judgment of the Michigan Tax Tribunal also reflect the following:

Respondent assessed the subject property as 50% complete as of December 31, 1997 and calculated the 1998 assessed value and taxable value accordingly. Respondent assessed the subject property as 100% complete on December 31, 1998 but calculated the 1999 taxable value by applying the applicable inflation rate to the 1998 taxable value. The 1998 taxable value was based on a 50% completion calculation. Respondent assessed the subject property as 100% complete for the 1999 tax year and such assessment was reflected on the assessment roll. No portion of the subject property was omitted from the assessment by Respondent.

(Appendix 9a, p 1, and Appendix 32a, ¶¶ 8-11).

The assessor's record for the subject property is attached at Appendix 34a, and shows the following for the subject property for 1998 and 1999:

	LAND VALUE	BUILDING VALUE	ASSESSED VALUE	TAXABLE VALUE
1998	\$240,625	\$547,075	\$787,700	\$787,700
1999	\$240,600	\$1,302,200	\$1,542,800	\$800,303

(Appendix 41a).

The assessment record shows that the assessor continued to use the taxable value from the preceding years for the tax years at issue while at the same time assessing the property as 100% complete.

	ASSESSED VALUE	SEV	TAXABLE VALUE
2001	\$1,763,000	\$1,763,000	\$841,604
2002	\$1,763,000	\$1,763,000	\$868,535
2003	\$1,773,100	\$1,773,100	\$881,563

(Appendix 6a and 36a-38a).

Pursuant to MCL 211.154, Respondent sought review with the State Tax Commission, asserting that taxable property has been incorrectly reported or omitted. Respondent claimed that this resulted in a miscalculation of taxable value for the subject property in 2001, 2002 and 2003. "The Michigan State Tax Commission accepted Respondent's 154 Petition and increased the 2001, 2002, and 2003 taxable values for the subject property." (Appendix 10a, p 2). However, calculation of taxable value and the determination of fifty (50) percent of true cash value, or the assessed value, are not one and the same.

STANDARD OF REVIEW

When reviewing a decision of the Michigan Tax Tribunal, the court's authority is limited. See *Michigan Milk Producers Ass'n v Department of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). "In the absence of an allegation of fraud, [the Court's] review of a Tax Tribunal decision is limited to determining whether the Tribunal committed an error of law or adopted a wrong legal principle." *Id.* citing *Michigan Bell Telephone Co v Department of Treasury*, 229 Mich App 200, 206; 586 NW2d 770 (1998). The court may not disturb factual findings of the Tax Tribunal if "they are supported by competent, material, and substantial evidence on the whole record." *Michigan Milk Producers Ass'n*, 242 Mich App at 490-491 (external citations omitted).

Although statutory interpretation is a question of law subject to *de novo* review, the court will "generally defer to the Tax Tribunal's interpretation of a statute that it is charged with administering and enforcing." *Id.* at 491, citing *Canterbury Healthcare, Inc v Department of Treasury*, 220 Mich App 33; 558 NW2d 444 (1996); *Maxitrol Co v Department of Treasury*, 217 Mich App 366, 370; 551 NW2d 471 (1996).

ARGUMENT

THE STATE TAX COMMISSION DOES NOT HAVE JURISDICTION UNDER MCL 211.154(1) TO INCREASE OR CHANGE THE TAXABLE VALUES OF PETITIONER'S REAL PROPERTY WHEN NO PORTION OF THE PROPERTY WAS OMITTED FROM THE ASSESSMENT AND THE TAXABLE STATUS OF THE PROPERTY WAS CORRECTLY REPORTED.

A. The Michigan Tax Tribunal's Opinion and Order.

The Michigan Tax Tribunal held that MCL 211.154 only confers jurisdiction on the State Tax Commission in situations where a portion of the property was omitted from the assessment, or the status of a property is misrepresented, such as when a taxpayer incorrectly claims that the property is tax exempt. (Appendix 12a-13a, pp 4-5). The parties stipulated that the status of the property as exempt or taxable was not at issue, and the parties agreed that no portion of the property was omitted from the assessment. Furthermore, as discussed *infra* at p 2-3, the assessor's file shows that the subject property was assessed as one hundred (100) percent complete in 1999 and in subsequent tax years. (See also Appendix 34a-53a).

The Michigan Tax Tribunal's Opinion relied on the language of the GPTA, *City of Detroit v Norman Allan & Co*, 107 Mich App 186; 309 NW2d 198 (1981), and *Eagle Glen Golf Course v Surrey Twp*, unpublished opinion per curium of the Court of Appeals, issued April 19, 2002 (Docket No. 224810) (Appendix 100a). The Michigan Tax Tribunal also asserted that Respondent should have sought relief under MCL 211.53b, as the miscalculation of taxable value was a clerical

error that did not result from omission of a portion of the property from assessment.¹ (Appendix 14a).

B. The Court of Appeals' Opinion.

The Court of Appeals held that MCL 211.154 "conferred administrative jurisdiction on the S[tate] T[ax] C[ommission] to correct erroneous property tax assessments in specific limited circumstances. Specifically, the S[tate] T[ax] C[ommission] may correct an 'assessment value' that results in an 'assessment change.'" *Superior Hotels*, 282 Mich App at 630. (Appendix 22a).

The Court of Appeals further observed:

The first sentence of § 154 establishes the limited circumstances to which it applies. There must be an 'assessment value' that needs to be corrected as a result of taxable property having been 'incorrectly reported or omitted.' We agree with the Tax Tribunal's observation in *SSAB Hardtech, Inc v State Tax Commission*, MTT Docket No. 288672 (2004):

¹MCL 211.53b provides in part as follows:

(1) If there has been a qualified error, the qualified error shall be verified by the local assessing officer and approved by the Board of Review. . . . If approved, the Board of Review shall file an affidavit within 30 days relative to the qualified error with the proper officials and all affected official records shall be corrected. If the qualified error results in an overpayment or underpayment, the rebate, including any interest paid, shall be made to the taxpayer, or the taxpayer shall be notified and payment made within 30 days of the notice. . . .

(2) Action pursuant to this section may be initiated by the taxpayer or the assessing officer.

* * *

(8) As used in this section, 'qualified error' means one or more of the following:

(a) A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes.

It is reasonable to conclude that Section 154 only applies when the assessment was based upon the incorrect reporting or omission.

We also conclude that 'assessment value' as used in § 154 means either 'taxable value' or 50 percent of the true cash value of property subject to taxation as those terms are defined in Michigan's Constitution and statutes.

Id. at 633 (emphasis added) (Appendix 23a).

C. **The Legislature Did Not Intend to Provide the State Tax Commission With Jurisdiction Under MCL 211.154 to Correct Clerical Errors in the Calculation of Taxable Value.**

Petitioner agrees with the standards set forth in the Court of Appeals' opinion for the construction of statutory language. See *Superior Hotels*, 282 Mich App at 629 (Appendix 21a).

In particular:

In reading a statute, this Court must assign to every word or phrase its plain and ordinary meaning unless the Legislature has provided specific definitions or has used technical words or phrases that have acquired a peculiar and appropriate meaning in the law. MCL 8.3a; *Ford Motor Co v Woodhaven*, 475 Mich 425, 439; 716 NW2d 247 (2006). Also, we must not read statutory words or phrases in isolation but rather read each word or phrase and its placement in the context of the whole act. *Mayor of Lansing, supra* at 167-168. Thus, we must consider 'both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999) (citation omitted).

Id.

Michigan voters approved Proposal A in 1994, "which amended article 9, § 3 of the Michigan Constitution." *Toll Northville, Ltd v Northville Twp*, 480 Mich 611; 743 NW2d 902 (2008). To implement Proposal A, the Legislature amended several portions of the GPTA via 1994 PA 415. At that time, the Legislature amended several portions of the GPTA to reflect the new concept of taxable value, and to demonstrate that taxable value and assessed value were not

one in the same. Among the statutory provisions amended were MCL 211.27, MCL 211.27a, MCL 211.30, MCL 211.30c, and MCL 211.34d. MCL 211.154 was not amended under 1994 PA 415. If the Legislature had intended that assessment value also meant taxable value in MCL 211.154, it would have said so.

Nevertheless, even if the Court of Appeals' interpretation of "assessment value" in MCL 211.154(1) is correct, the facts of this property tax dispute do not bring the provisions of § 154 into play. This is not a circumstance where the assessment was based upon the incorrect reporting of property or the omission of any property. As the assessment roll and records show, the entire amount of the property was recorded by the assessor and included in the assessment. However, the assessor made an error in calculating taxable value of the property and did not include the addition to the property in the calculation. (Appendix 34a-53a).

MCL 211.27a provides in pertinent part:

1. Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under Section 3 of article IX of the state constitution of 1963.
2. Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
 - a. The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property state equalized valuation in 1994.
 - b. The property's current state equalized valuation.
3. Upon transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer.

4. If the taxable value of property is adjusted under subsection (3), a subsequent increase in the property's taxable value is subject to the limitations set forth in subsection (2) until a subsequent transfer of ownership occurs.

Taxable value and assessed value are two separate concepts that cannot be interchanged pursuant to the provisions of MCL 211.27a and Section 3 of Article IX of the State Constitution of 1963. The assessed value of taxable property is defined as fifty (50) percent of the property's true cash value, while taxable value is a mathematical calculation subject to the limitations set forth in MCL 211.27a(2), (3) and (4).

Pursuant to MCL 211.27a(11)(a), the term "additions" as used in that section is defined in MCL 211.34d. Section 34d(1)(b) provides,

For taxes levied after 1994, 'additions' means, except as provided in subsection (c), all of the following:

i. Omitted real property. As used in this subparagraph, 'omitted real property' means previously existing tangible real property not included in the assessment. **Omitted real property shall not increase taxable value as an addition unless the assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment.** The assessing jurisdiction has the burden of proof in establishing whether the omitted real property is included in the assessment. Omitted real property for the current and the two immediately preceding years, discovered after the assessment roll has been completed, shall be added to the tax roll pursuant to procedures established in § 154. For purposes of determining the taxable value of real property under § 27a, the value of omitted real property is based on the value and the ratio of taxable property to true cash value the omitted real property would have had if the property had not been omitted.

(emphasis added).

According to the plain language of MCL 211.34d(1)(b), the taxable value of Petitioner's property cannot be increased under MCL 211.154, because Respondent has a property record

card showing that Petitioner's real property was assessed and the construction on the property was assessed as 100% complete as of 1999 and for the tax years at issue. (See Appendix 34a-53a). Respondent should have proceeded under MCL 211.53b to correct this clerical error.²

Respondent's assessor included all real property in the assessment for the 1999 tax year.

However, the assessor neglected to increase the taxable value of the property in 1999, as set forth in MCL 211.34d(1)(b)(iii), and then continued to use that taxable value for subsequent years, including those at issue, or 2001, 2002 and 2003.

MCL 211.34d(1)(b)(iii) provides:

As used in this subparagraph, 'new construction' means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes a physical addition of equipment or furnishings, subject to the provisions set forth in section 27(2)(a) to (o). For purposes of determining the taxable value of property under section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.

The Court of Appeals' holding that "assessment value" in MCL 211.154 is defined as taxable value and fifty (50) percent of the property's true cash value is further called in to question by the language of MCL 211.34d. In that provision, the Legislature differentiated between taxable value and assessed value. If the Legislature intended "assessment value" to mean taxable value, it would have said as much. The Court of Appeals' construction of MCL 211.154 is not

²Respondent failed to appear before the Board of Review to allege that a clerical error occurred in the calculation of taxable value for the subject property. Under MCL 205.735(2), the Tribunal could not acquire jurisdiction over this dispute, because Respondent failed to challenge the underlying assessment with the local Board of Review and did not comply with the requirements of MCL 211.53b. Respondent's failure to perform the steps necessary to obtain relief it could have obtained under MCL 211.53b does not give the State Tax Commission jurisdiction under MCL 211.154(1) to correct this clerical error. The GPTA sets forth various requirements that local assessing officers, and taxpayers alike, must satisfy before the Michigan Tax Tribunal or the State Tax Commission can acquire jurisdiction of their dispute. Respondent failed to meet these requirements.

supported by the language of the GPTA as a whole. The State Tax Commission does not have jurisdiction under MCL 211.154(1) to award the relief Respondent sought.

D. No Portion of Petitioner's Real Estate was Omitted from the Assessment.

MCL 211.154(1) provides in pertinent part: "If the state tax commission determines that property subject to the collection of taxes under this act, . . . , has been incorrectly reported or omitted for any previous year, . . . , the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll." Accordingly, MCL 211.154 confers the State Tax Commission with jurisdiction over matters involving incorrectly reported or omitted property. However, the State Tax Commission does not have jurisdiction over issues related to the calculation of taxable value. Jurisdiction over issues related to the calculation of taxable value lies with the Tribunal. See *Wenona Ltd v Bangor Charter Twp*, MTT Docket 225488, 2000 WL 1192732 (July 10, 2000) (confirming that the Michigan Tax Tribunal has exclusive jurisdiction over taxable value issues) (Appendix 54a).

Respondent correctly assessed the subject property as 100% complete for the 1999 tax year and such assessment was properly reflected on the assessment roll. (Appendix 31a, ¶ 10, and Appendix 34a-53a).

In the Joint Stipulation of Facts, Respondent conceded that "no portion of the subject property was 'omitted' from the assessment by the Township." Additionally, Respondent's Brief on Appeal states as follows:

Respondent, Township of Mackinaw, assessed the motel at 50% complete as of December 31, 1997, and calculated the 1998 assessed value and taxable value as \$787,700. Respondent's assessor at the time assessed the property on December 31, 1998 as being 100% complete, but calculated the 1998 taxable value by applying the inflation rate to the 1998 taxable value, rather than the new 1999 value, which was only 50% of the actual assessed value for 1999. . . .

(Respondent's Brief on Appeal before the Court of Appeals, Appendix 72a, p 7). Respondent's reliance on *Cohn v Township of West Bloomfield*, unpublished opinion per curium of the Court of Appeals, issued November 22, 2002 (Docket No. 232917); *Rockind v Township of West Bloomfield*, unpublished opinion per curium of the Court of Appeals issued March 2, 2001 (Docket No. 214620); and *Eyde Construction Co v City of Lansing*, unpublished opinion per curium of the Court of Appeals, issued November 25, 2003 (Docket No. 239423), is misplaced. This matter does not involve omissions of new valuation caused by such things as additions, new construction or remodeling. Here, the assessor did not consider additions when determining the new taxable value for 1999, and then failed to appear before the Board of Review to correct that error pursuant to MCL 211.53b.³ Accordingly, Respondent may not proceed to correct this error through the State Tax Commission and a petition under MCL 211.154(1).

E. The Taxable Status of the Real Property Was Correctly Reported.

Likewise, this matter does not involve property that was "incorrectly reported". MCL 211.154 allows property assessments to be corrected "only if a property's status is misrepresented, such as when a taxpayer incorrectly claimed the property was tax exempt." *Michigan Basic Property Ins v Michigan State Tax Commission*, MTT Docket 296251, 2006 WL 1210783 (March 13, 2006) (Appendix 88a) citing *Eagle Glen Golf Course v Surrey Twp*, unpublished opinion per curium of the Court of Appeals, issued April 19, 2002 (Docket No. 224810) (Appendix 100a). Further, MCL 211.154 confers jurisdiction on the State Tax Commission to correct assessments only "where the status of the property, i.e. taxable or exempt,

³However, Respondent's former assessor did use these additions when calculating the new assessed value for 1999. (Appendix 9a, p 1; Appendix 32a, ¶¶ 8-10; and Appendix 34a-53a).

as opposed to its value, is in dispute." *Broadcasting Partners, Inc v City of Oak Park*, unpublished opinion per curium of the Court of Appeals, issued April 18, 1997 (Docket No. 181517) (emphasis added) (Appendix 103a). The State Tax Commission does not have jurisdiction pursuant to MCL 211.154 "to correct an assessor's error in mistakenly undervaluing the property because MCL 211.154 does not apply to property conceded to be taxable but alleged to be improperly assessed." *Eagle Glen Golf Course, supra*, at *2. (Appendix 101a). Finally, once an assessment period has run, the assessed value is no longer subject to change. *Leahy v Orion Twp*, 269 Mich App 527, 531; 711 NW2d 438 (2006). Thus, the fixed assessment value must be used where a statutory assessment formula calls for the use of a now-unchallengeable assessed value. *Id.*

Here, the State Tax Commission assumed jurisdiction for the express purpose of correcting an assessor's mathematical error in calculating taxable value. (Appendix 6a; Appendix 32a, ¶¶ 15 & 17; and Treasury Form L-4154, Appendix 105a). The State Tax Commission increased the 2001, 2002 and 2003 taxable values of the property based on the Township's Notice of Property Incorrectly Reported or Omitted from Assessment Roll. (Appendix 6a; Appendix 32a, ¶¶ 15 & 17; and Appendix 105a). According to the plain language of MCL 211.154, MCL 211.27a and MCL 211.34d, the State Tax Commission did not have the authority to assume jurisdiction for this purpose and its March 7, 2005 Order must be set aside.

At no time during these proceedings has either party disputed the taxable status of the subject property, and, as the Michigan Tax Tribunal recognized in its Final Opinion and Judgment, *City of Detroit v Norman Allan & Co*, 107 Mich App 186; 309 NW2d 198 (1981) and subsequent caselaw recognizing this holding, are controlling on this issue. MCL 211.154

permits the State Tax Commission to correct assessments "only if a property's status is misrepresented, such as when a taxpayer incorrectly claimed that the property was tax-exempt." *Eagle Glen Golf Course, supra*, at *1 (Appendix 101a); see also *City of Detroit*, 107 Mich App at 191-192. Instead, "the issue in such cases is the proper status of the property, whether it is amendable to taxation in the first place." *City of Detroit*, 107 Mich App at 191-192.

Additionally, the Michigan Tax Tribunal's Final Judgment and Order relied on *Centre Management v City of Ferndale*, unpublished opinion per curium of the Court of Appeals issued August 10, 2004 at *2 (Docket No. 248266) (Appendix 107a), which held that:

MCL 211.154 [does] not confer jurisdiction on the STC to correct an assessor's error in mistakenly undervaluing the property in previous years because MCL 211.154 does not apply to property conceded to be taxable but alleged to be improperly assessed. See also *Michigan Basic Property*, MTT Docket No 296251, 2006 WL 1210783 at *21 (March 13, 2006).

(Appendix 13a-14a).

Respondent's attempts to question the precedential value of *City of Detroit* based on amendments to MCL 211.154 subsequent to the decision in *City of Detroit* are insufficient. In *Eagle Glen Golf Course*, the Court of Appeals discounted a similar argument, holding

[I]t is apparent to us that the [City of Detroit] Court did not rely *solely* on the [previous version of MCL 211.154] in reaching its decision. Indeed, it stated that its conclusion was merely 'reinforced' by the language. Accordingly, we conclude that [City of Detroit] remains precedential with regard to the issue before us. The tax commission had no jurisdiction under §154 to correct the alleged assessment mistake.

Eagle Glen Golf Course, supra, at *2. (Appendix 101a-102a). The *City of Detroit* opinion is still good law, despite amendments to MCL 211.154(1), and Respondent has provided no caselaw challenging that interpretation of MCL 211.154 in circumstances similar to those presented in this case. Accordingly, the State Tax Commission did not have jurisdiction under

MCL 211.154 to correct and/or increase the taxable value of Petitioner's real property, and the Court of Appeals' March 10, 2009 Opinion should be reversed. The Michigan Tax Tribunal's Final Opinion and Judgment, Order Granting Petitioner's Motion for Summary Disposition should be reinstated.

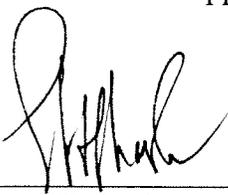
REQUEST FOR RELIEF

Petitioner/Appellant Superior Hotels, LLC respectfully requests that this Court reverse the Court of Appeals' March 10, 2009 Order and reinstate the Michigan Tax Tribunal's Final Opinion and Judgment Order Granting Petitioner's Motion for Summary Disposition dated February 23, 2007.

RESPECTFULLY SUBMITTED,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for Petitioner-Applicant

Dated: August 31, 2009

By: 

Steven H. Lasher (P28785)
Pamela C. Dausman (P64680)