

STATE OF MICHIGAN

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

SUPERIOR HOTELS LLC,
Petitioner-Appellant,

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

v.

TOWNSHIP OF MACKINAW,
Respondent-Appellee,

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RESPONDENT/APPELLEE'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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Dated: September 29, 2009

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STATEMENT OF JURISDICTION

The appeal involves the issue of 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. In addition, the Petitioner has raised the issue of 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.

Respondent contends that the State Tax Commission does have jurisdiction to increase the taxable value of real property under MCL 211.154(1). Further, Respondent contends that even though taxable value and assessed value are not same, the ruling by the Court of Appeals that "assessment" value means both taxable value and fifty (50) percent of the true cash value of the property subject to taxation is well founded in fact and law. Petitioner, as did the Michigan Tax Tribunal, relies on 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of Appeals' decision in City of Detroit v Norman Allan & Co, 107 Mich App 186; 309 NW2d 198 (1981), and subsequent unpublished Court of Appeals' opinions interpreting MCL 211.154(1).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's request submitted under MCL 211.154. (Official Order dated March 15, 2005, Appendix 6a). Petitioner then filed a Petition with the Michigan Tax Tribunal on March 15, 2005, asserting that the State Tax Commission did not have jurisdiction over issues solely related to the 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).

The Michigan Tax Tribunal, on February 23, 2007, 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 Order of February 23, 2007. (Superior Hotels, LLC v Township of Mackinaw, 282 Mich App 621; 765 NW2d 31 (2009) (Appendix 17a). This Honorable Court then granted leave to appeal by an Order dated July 9, 2009. (Appendix 30a). This Court has jurisdiction pursuant to MCR 7.301(A)(2) and MCR 7.302.

STATEMENT OF QUESTION INVOLVED

DID THE MICHIGAN COURT OF APPEALS ERR WHEN IT HELD THAT THE MICHIGAN 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/Appellee Answers: "No"

Court of Appeals Answered: "No"

INTRODUCTION

In order to avoid duplication, whenever possible in this brief, the Respondent will refer to exhibits attached to the Petitioner/Appellant's Appendix of Exhibits and the page numbers found in said Appendix of Exhibits. The Michigan Court of Appeals Opinion dated March 10, 2009, holding that the State Tax Commission has jurisdiction to correct assessment value under MCL 211.154 should be affirmed. (Appendix 19b). In this case assessment value was both omitted from taxation and incorrectly reported pursuant to MCL 211.154. (Appendix 19b).

The Court of Appeals held that "assessment value as used in §154 means either taxable value or fifty (50) percent of the true cash value of property subject to taxation as those terms are defined in Michigan's constitution and statutes." Respondent contends that this is not a broadening of the jurisdiction of the State Tax Commission, but simply a clarification of the jurisdiction of the same based upon the statutory changes which have occurred since the decision in City of Detroit v. Norman Allan & Co., 107 Mich. App. 186 (1981). (Appendix 14b).

STATEMENT OF FACTS

In 1997 Petitioner-Appellant (hereinafter "Petitioner"), Superior Hotels LLC., began construction of a motel known as the "Baymont Inn" in the Township of Mackinaw (hereinafter "Respondent"), a Michigan municipal corporation located in the County of Cheboygan and State of Michigan. The construction commenced on a parcel of real property identified by tax parcel code #16-012-V07-052-004-00, which is classified as commercial real property. Respondent, Township of Mackinaw, assessed the motel as fifty (50%) percent complete as of December 31, 1997, and calculated the 1998 assessed value and taxable value as \$787,700. Respondent's assessor at the time then assessed the property on December 31, 1998 as being 100% complete, but calculated the 1999 taxable value by applying the inflation rate to the 1998 taxable value which had been based on only a fifty (50%) percent completion calculation. This amount was then entered into the assessment roll for the 1999 tax year. (Appendix 41a). The increase in value of the motel from the fifty (50%) percent completion point to the one hundred (100%) percent completion point was incorrectly reported and was omitted. The prior assessor continued to use that taxable value, plus the applicable inflation rate, to determine taxable value for the 2001, 2002, and 2003 years which are at issue. (Appendix 36a, 37a and 38a).

Upon review by the new assessor, and the determination that the taxable value was incorrectly reported and was omitted, the Township of Mackinaw applied to the State Tax Commission under MCL 211.154 for correction of the incorrectly reported and omitted assessment value. This was done by means of submitting an L-4154 petition, which is entitled "Assessor or Equalization Director's Notice of Property

Incorrectly Reported or Omitted From Assessment Roll” (Appendix 105a and 106a).

On March 7, 2005, the State Tax Commission approved the Respondent’s request, and increased the taxable valuation for the 2001, 2002 and 2003 tax years. The Petitioner appealed the order of the State Tax Commission to the Michigan Tax Tribunal. The basis for the appeal was that the Petitioner claimed that the Michigan State Tax Commission lacked jurisdiction to make the adjustment in taxable value based on MCL 211.154. In the Michigan Tax Tribunal, the parties agreed to a stipulated set of facts, and submitted the matter to the Michigan Tax Tribunal on a motion for summary disposition. The stipulated set of facts were as follows:

1. Superior Hotels is a limited liability company whose principal office is 439 Lakewood Lane, Marquette, Michigan 4855.
2. The Township levies and collects the property taxes on the subject property.
3. The property identification number is 16-012-V07-052-004-00 and the property is classified as commercial real property.
4. Superior Hotel’s property is presently used for a motel.
5. Superior Hotel’s property was designed to be used for a hotel/motel.
6. The property is located in Cheboygan County and the school district of Mackinaw and in the Cheboygan, Otsego, Presque Isle Intermediate School District.
7. Superior Hotels began construction of a motel known as a “Baymont Inn” on the property in 1997 and completed construction of the hotel in 1998.
8. The Township assessed the subject property as 50% complete on December 31, 1997 and calculated the 1998 assessed value and taxable value accordingly.
9. For the 1999 tax year (December 31, 1998 assessment date), the Township assessed the subject property as 100% complete, but calculated the 1999 taxable value by applying the applicable inflation rate to the 1998 taxable value which 1998 taxable value was based on a 50% completion calculation.
10. The Township assessed the subject property as 100% complete for the 1999 tax year and such assessment was reflected on the assessment roll.
11. No portion of the subject property was “omitted” from assessment by the Township.
12. This matter involves issues relating to taxable value for the years 2001, 2002 and 2003.

13. Superior Hotels contends that the taxable value of the subject property is \$841,604 for 2001, \$868,535 for 2002 and \$881,563 for 2003.
14. The Township contends that the taxable value of the subject property is \$1,622,420 for 2001; \$1,674,338 for 2002; and \$1,699,453 for 2003.
15. The Township filed Michigan Department of Treasury Form L-4154, Assessor or Equalization Director's Notice of Property Incorrectly Reported or Omitted from Assessment Roll (copy attached as Exhibit A) with the State Tax Commission alleging an error made by the Township in calculating the 2001, 2002 and 2003 taxable values for the subject property.
16. On March 7, 2005, Superior Hotels appeared before the State Tax Commission.
17. The State Tax Commission accepted the §154 petition filed by the Township and increased the 2001, 2002 and 2003 taxable values of the subject property as requested by the Township.
18. MCL 211.154 specifically provides that the State Tax Commission has jurisdiction over matters involving incorrectly reported or omitted property and may 'place the corrected assessment value for the appropriate years on the appropriate assessment roll.'
19. Petitioner contends that the Michigan Tax Tribunal has exclusive jurisdiction over taxable value calculation issues."

The Michigan Tax Tribunal, in an Opinion and Order dated February 23, 2007, granted summary disposition for Petitioner and reversed the decision of the Michigan State Tax Commission. Respondent then timely filed an appeal of right to the Michigan Court of Appeals. The Michigan Court of Appeals by opinion dated March 10, 2009, reversed the decision of the Michigan Tax Tribunal and reinstated the decision of the Michigan State Tax Commission.

STANDARD OF REVIEW

The review by a Court of a Michigan Tax Tribunal decision is limited. Michigan Milk Producers Ass'n v Dep't of Treasury, 242 Mich. App 486, 490; (2000) and Mt Pleasant v State Tax Comm, 477 Mich 50, 53; 729 NW2d 833 (2007). Absent a claim of fraud, the Court of Appeals may determine only whether the Michigan Tax Tribunal committed an error of law or adopted a wrong legal principle. *Id.*; Michigan Bell Telephone Co v Dep't of Treasury, 229 Mich. App. 200, 206; (1998). A Court is not to disturb the Michigan Tax Tribunal's factual findings if they are supported by competent, material, and substantial evidence on the whole record. Michigan Milk Producers Ass'n, supra at 490-491 and Meadowlanes Ltd Dividend Housing Ass'n v City of Holland, 437 Mich 473, 482; 473 NW2d 636 (1991).

However, statutory interpretation is to be reviewed de novo and the issue in this case presents a question of statutory interpretation, which this Honorable Court, would review de novo. Wexford Medical Group v City of Cadillac, 474 Mich 192, 202; 713 NW2d 734 (2006).

ARGUMENT

THE MICHIGAN STATE TAX COMMISSION DOES HAVE JURISDICTION TO INCREASE THE TAXABLE VALUE OF PETITIONER’S REAL PROPERTY UNDER MCL 211.154 (1) WHEN NO PORTION OF THE REAL 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 was misrepresented, such as when a taxpayer incorrectly claims that the property is tax exempt.

In making that ruling, the Michigan Tax Tribunal’s Opinion relied on the language of the General Property Taxation Act (GPTA), the cases of 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, WL 652105, Mich. App. (2002) and dicta in the case of Centre Management v City of Ferndale, WL 1779117 Mich. App. (2004). The Michigan Tax Tribunal also opined that Respondent could have sought relief under MCL 211.53b, as a clerical error.

B. The Court of Appeals’ Opinion.

In Superior Hotels LLC v Mackinaw Township, 282 Mich App. 621 (2009), the Court of Appeals held as follows:

“We conclude that in §154 the Legislature has conferred administrative jurisdiction on the STC (State Tax Commission) to correct erroneous

property tax assessments in specific limited circumstances. Specifically, the STC may correct an “assessment value” that results in an “assessment change.” MCL 211.154(1). An “assessment change” under §154 may result “in increased property taxes,” MCL 211.154(2), or might “result [] in a decreased tax liability,” MCL 211.154(6). That the STC’s administrative jurisdiction under §154 to correct erroneous property tax assessments is not precluded by the appellate jurisdiction of the Tax Tribunal is manifested by the Legislature’s extension of jurisdiction to correct assessment values “for any previous year, but not to exceed the current assessment year and 2 years immediately preceding the date the incorrect reporting or omission was discovered and disclosed to the state tax commission,” MCL 211.154(1). This time frame is well *631 beyond the limited time to appeal an assessment dispute to the Tax Tribunal, which, in general, must also be contemporaneously protested before the Board of Review. See MCL 205.735 and MCL 205.735a. Moreover, subsection 7 of §154 clearly provides that after a final decision by the STC in a §154 proceeding, the appellate jurisdiction of the Tax Tribunal may be invoked, as in this case: “A person to whom property is assessed pursuant to this section may appeal the state tax commission order to the Michigan tax tribunal.” MCL 211.154(7).” (Appendix 1b at 6b).

C. The Legislature did intend to provide the State Tax Commission with jurisdiction under MCL 211.154 (1) to correct errors related to the calculation of taxable value when the subject property valuation was incorrectly reported or omitted.

Both the Petitioner and Respondent agree with the standards set forth in the Court of Appeals opinion dealing with the construction of statutory language found at page 629 of Superior Hotels LLC v Mackinaw Township, *supra*.

MCL 211.154 provides that:

“§ 154. (1) 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, but not to exceed the current assessment year and 2 years immediately preceding the date of the incorrect reporting or omission was discovered and disclosed to the state tax commission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll. . . .” (emphasis added) [See MCL 211.154(1)] (Appendix 19b).

It can be seen that the term used in the statute is “assessment” value, not “assessed” value. It is submitted that the argument of Petitioner that the Legislature has not conferred on the State Tax Commission the right to correct the taxable value of a piece of property is misplaced. When the Legislature amended portions of the GPTA pursuant to 1994 PA 415, there was no need to amend the term “assessment” value to differentiate between “assessed” value and “taxable” value based on the new statutory scheme. The fact that the Michigan Legislature did not amend MCL 211.154 in 1994 suggests that there was no need to engage in such an amendment and that the language set forth in the statute at that time properly dealt with both the concepts of “taxable value” and “assessed value”. It was clear before 1994 PA 415 that the State Tax Commission had jurisdiction to correct “assessment” value of property in certain circumstances as enumerated in MCL 211.154.

Respondent does agree with Petitioner that “taxable” value and “assessed” value are two separate concepts. Assessed value of property is defined as fifty (50) percent of the property’s true cash value and taxable value is, in fact, a calculation based upon the limitations mandated by Proposal A of 1994. It is submitted that the error in this argument is that MCL 211.154 never referred to “assessed” value meaning fifty (50) percent of the property’s true cash value. Rather, it refers to “assessment value”, which is a broader term and which, Respondent contends, the Court of Appeals has interpreted correctly as meaning “either taxable value or fifty (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 v Mackinaw Township, *supra*.

Since the Michigan Legislature had given the State Tax Commission jurisdiction

to correct “assessment” value, the crux of this appeal should not be the determination by the Michigan Court of Appeals that “assessment” value can mean either taxable value or fifty (50) percent of the true cash value of the property, but whether the property was omitted from taxation and/or whether the property valuation was incorrectly reported.

Lastly, Petitioner appears to contend that the remedies found in MCL 211.154 and MCL 211.53b are mutually exclusive. In reviewing these statutes, neither state that the remedies set forth therein are exclusive. In requesting relief pursuant to §211.53b, one would proceed to a Board of Review and ultimately the Michigan Tax Tribunal would hear any appeal from a decision made by the Board of Review. Under MCL 211.154, the correction is made by the State Tax Commission and the look back period for the correction of assessment value is increased over that allowed under MCL 211.53b. (Appendix 17b). The Michigan Tax Tribunal provides appellate review for decisions made by the State Tax Commission as in this case. Respondent submits that these remedies are not mutually exclusive, that the remedies in either statute can be pursued, and that failure to pursue a remedy under one statute does not preclude relief under the other statute.

D. MCL 211.154 (1) allows for the correction of assessment value when the subject property was incorrectly reported.

In this case, the former tax assessor of Respondent township incorrectly reported the status of Petitioner’s motel as being only 50% complete in 1998, when, in fact, it was 100% complete. As a result of the incorrect report of the status of the percentage of completion, the taxable valuation of Petitioner’s motel was incorrectly

reported. MCL 211.154 provides, in pertinent part, that:

“§ 154. (1) 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, but not to exceed the current assessment year and 2 years immediately preceding the date of the incorrect reporting or omission was discovered and disclosed to the state tax commission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll. . . .” [See MCL 211.154(1)]

Thus the statute allows for correction by the state tax commission, and confers jurisdiction to it, in two (2) circumstances. The first is if the taxes have been “incorrectly reported” and the second is if the property has been “omitted”. The term “incorrectly reported” is not defined in the statute. In the unpublished opinion of Eagle Glen Golf Course v Surrey Township, WL 652105, Mich. App. (2002), the Court of Appeals found that the “incorrectly reported” portion of MCL 211.154 was, in fact, ambiguous and subject to judicial interpretation. The Court stated:

“The primary goal of statutory interpretation is to ascertain and give effect to the Legislature’s intent as gleaned from the statute’s language. Michigan Milk Producers, *supra* at 491; Michigan Bell, *supra* at 207. “If reasonable minds can differ with respect to the meaning of a statute, judicial construction is appropriate.” Alma Piston Co v. Dep’t of Treasury, 236 Mich. App 365, 368; 600 NW2d 144 (1999).

The statutory language on its face is susceptible to more than one interpretation. Indeed, one could interpret the phrase “property liable to taxation [that] has been incorrectly reported” as conferring jurisdiction only if the status of the property has been mischaracterized, e.g., if the property is reported as tax-exempt rather than taxable. Alternatively, one could interpret this language as including situations in which the taxing authority incorrectly reports the property’s assessed or taxable value, perhaps because of incorrect assessment methods.” Eagle Glen Golf Course v Surrey Township, *supra*. (Appendix 100a and 101a).

The Court interpreted the statute based on one prior appellate case, stating as follows:

“Because the language is ambiguous, judicial interpretation is appropriate. *Id.* This Court has interpreted M.C.L. § 211.154 to allow assessments to be corrected 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*.

The prior appellate case relied on by the panel in Eagle Glen Golf Course, *supra*, was City of Detroit v. Norman Allan & Co., 107 Mich. App. 186 (1981). The issue in Norman Allan, *supra*, was whether it was proper for a municipality to proceed under MCL 211.154 to increase personal property tax valuations or whether it had to proceed under MCL 211.22 when it was claimed that the property owner had misrepresented the value of the same. The Court concluded that the municipality was required to proceed under MCL 211.22. The Court stated:

“We conclude that the Tax Tribunal incorrectly determined that the City properly proceeded in this matter under M.C.L. § 211.154; M.S.A. § 7.211. We believe that M.C.L. § 211.22; M.S.A. § 7.22 applies when the assessor petitions the Tribunal to increase the value on the tax roll of personal property inadequately and improperly reported by a taxpayer but which is conceded to be taxable. M.C.L. § 211.154; M.S.A. § 7.211, on the other hand, applies when property has been incorrectly reported as exempt property but is thought to be (i.e., is “made to appear to be”) taxable property. The issue in such cases is the proper status of the property, whether it is amenable to taxation in the first place.”
City of Detroit v. Norman Allan & Co., *supra* at 192-193.

The Court went on to state:

“Thus, M.C.L. § 211.154; M.S.A. § 7.211 provides that if property had been incorrectly reported as exempt (during the current year or one year immediately preceding the date of discovery and disclosure of the omission) and it is “made to appear” to the Tax Tribunal that the property was incorrectly reported because it is in fact “property liable to taxation” (i. e., not exempt), then the taxpayer shall have an opportunity for a hearing, and if it appears that no reason justifies an exemption from taxation the Tribunal shall place the aggregate assessment value for the omitted years on the current assessment roll. Under our interpretation of § 154, this statute does not apply to the petitions at bar since they allege only that the

personal property of respondents was undervalued.”
City of Detroit v. Norman Allan & Co., *supra* at 193-194.

The language in that opinion stating that: “the issue in such cases is the proper status of the property, whether it is amenable to taxation in the first place” appears to mean that if there is an issue as to whether the property was exempt or not, then the “incorrectly reported” portion of MCL 211.154 would apply, but if the property was simply undervalued then it would not. This language was based upon the wording of the statute at the time the case was decided. City of Detroit v. Norman Allan & Co., *supra* has been the basis for later cases dealing with the “incorrectly reported” provision and these cases have generally followed the exempt vs taxable test. See U-Wash Incorporated v Township of Royal Oak, WL 549181 Mich. App. (2007); Broadcasting Partners, Inc. v City of Oak Park, WL 33350575 Mich. App. (1997); Centre Management v City of Ferndale, WL 1779117 Mich. App. (2004) and Eagle Glen Golf Course, *supra*. However, all these cases are unpublished.

Upon careful review though, it is clear that the holding in City of Detroit v. Norman Allan & Co., *supra* is not as broad as the subsequent cases have implied. First, the case, by its facts, applied to valuation of personal property. Second, the interpretation of the statute by the Norman Allan Court clearly limited its applicability to situations when property has been incorrectly reported as exempt (emphasis added) but is thought to be taxable property. In coming to that conclusion, the Norman Allan Court relied on language in the second sentence of MCL 211.154, stating:

“This conclusion is reinforced by language stated in the second sentence of § 154 that: “If it appears to the commission that no reason in fact or in law exists which would justify an exemption of such property from taxation for those 2

years, it shall immediately place the total aggregate assessment value for the omitted years on the then current assessment roll . . .” City of Detroit v. Norman Allan & Co., *supra* at 192.

Thus the second sentence of MCL 211.154 is where the word “exemption” comes from. This sentence linked the issue of exemption to the term “incorrectly reported.” If property is exempt it means it is non-taxable. If it is not exempt, it means that it is taxable. Because of that sentence, and the example given therein, City of Detroit v. Norman Allan & Co., *supra*, narrowly construed the term “incorrectly reported.” However, the sentence dealing with exemptions was removed by the 1983 amendments (1982 PA 539) to MCL 211.154 and the word “exemption” is no longer found in that section. Since the word “exemption” was removed from the statute, it stands to reason that the legislature intended the term “incorrectly reported” to apply to circumstances other than where property is claimed to be exempt. The 1996 amendments to MCL 211.154 then removed the words “if it shall be made to appear to the commission” and substituted the words “if the state tax commission determines” in the first sentence. Later amendments to MCL 211.154, effective before Petitioner’s appeal to the Michigan Tax Tribunal removed the words “property liable to taxation” from the first sentence. The City of Detroit v. Norman Allan & Co. Court had relied on the words “property liable to taxation” in rendering its opinion in 1981.

The only case found by Respondent which addressed any of the statutory amendments after Norman Allan was Eagle Glen Golf Course, *supra* which opined, in an unpublished opinion, that the Norman Allan Court did not reach its decision solely on the basis of the language in line two (the exemption language) so the original opinion is still precedential. However, a claim of exemption, as specifically stated in the prior

statute, was the very essence of the ruling of the Court in Norman Allan, *supra*. A claim of exemption gives rise to the necessary determination of whether property is taxable or non-taxable. After the 1983 amendments to the statute, a wrongfully claimed exemption was no longer the predicate to establish an “incorrectly reported” tax valuation and the “incorrectly reported” provision was not limited and applicable only to cases of taxable or non-taxable status of property.

Since the term “incorrectly reported” is not defined in MCL 211.154, the common meaning of these words should be used to interpret the same. “Incorrectly” is from the word, incorrect, meaning 1) “not in accordance with fact”, 2) “improper, faulty.” Oxford American Dictionary (1980). “Reported” is from the word report meaning 1) “to give an account of”, 2) “to state what has been done so far.” Oxford American Dictionary (1980). Clearly, if an assessor prepares an assessment roll setting forth the completion percentage of a building, this is a report because it “gives an account of” that completion percentage. If he or she puts the wrong completion percentage on the assessment roll, it is “incorrectly reported” because it is “not in accordance with fact” and the tax roll is “improper and faulty.”

“Statutes should be construed so as to prevent absurd results, injustice, or prejudice to the public interest.” McAuley v General Motors Corp, 457 Mich 513 (1998).

The Respondent has argued, and the Michigan Court of Appeals agreed, that the “incorrectly reported” provision of MCL 211.154 conferred on the State Tax Commission jurisdiction in the case at bar to correct and increase the taxable valuation of Petitioner’s real property. The Court of Appeals also correctly pointed out that Norman Allan is not binding precedent pursuant to MCR 7.215(J)(1), since it was

decided prior to November 1, 1990.

- E. **MCL 211.154 (1) allows for the correction of omitted valuation even though no portion of the subject property was omitted from assessment, thus allowing the taxable valuation of Petitioner's real property to be corrected and increased by the Michigan State Tax Commission.**

The second part of the analysis entered into by the Michigan Court of Appeals was whether the property in the case at bar was “omitted property” within the meaning of MCL 211.154. As to this issue, Petitioner relied solely on paragraph 11 of the stipulated facts of the parties to argue that the portions of MCL 211.154 and MCL 211.34d(b) dealing with omitted property didn't apply to the case at bar and thus, the Michigan State Tax Commission lacked jurisdiction to increase the assessment of Petitioner's real property.

Paragraph 11 of the stipulation reads:

“No portion of the subject property was “omitted” from assessment by the Township.” (Emphasis added)

In entering into the stipulation, Respondent intended and meant that the whole parcel of property was included on the assessment card and no subpart thereof was left off the assessment roll. Respondent did not stipulate that the “omitted property” provision of MCL 211.154 was inapplicable in deciding the jurisdictional issue in this case. Rather, to Respondent, the stipulation language was intended to draw a contrast between “a portion” of the property being omitted as opposed to the “whole property” being omitted. In a case referenced in an attorney general opinion cited as Op. Atty Gen. 1941-42, No. 23195, p. 558 a property was listed on the assessment role as “state owned” when, in

fact it was not, thus omitting the whole property from assessment. However, in contrast, in the case of Wenona Ltd. v Bangor Charter Tp., WL1424438 Mich. App. (2002) the township omitted 32 mobile home sites from its assessment roll, that being a portion of the whole. It was the intent and stipulation of Respondent that the case at bar was not a Wenona, *supra* type of omitted property case, where a portion of the parcel is omitted from assessment.

There is another line of omitted property cases where valuation located on a property is omitted from assessment, although the “whole” property is included on the assessment roll. These cases deal with omissions of new valuation caused by such things as additions, new construction or remodeling. Such additions and new construction have been held to be omitted property and subject to correction. The case of Cohn v Township of West Bloomfield, WL 31938397 Mich. App. (2002) dealt with a basketball enclosure which was built by Petitioner and not immediately noticed by the assessor and placed on the assessment roll of Respondent. The case of Rockind v Township of West Bloomfield, WL 721349 Mich. App. (2001) dealt with an addition built onto Petitioner’s house and not immediately noticed by the assessor and placed on the assessment roll of Respondent. The case of Eyde Const. Co. v City of Lansing, WL 22798948 Mich. App. (2003) dealt with renovations to a commercial shopping center which were allowed to be placed on the assessment roll as omitted property. While it is conceded that these cases are unpublished, they do establish a body of case law which support the ability of a municipality to add valuation to a property which was already assessed.

Unlike “incorrectly reported” property, “omitted property” is defined by statute.

MCL 211.34d. It means “previously existing tangible real property not included in the assessment.” The assessing jurisdiction has the burden of proving the property was not previously included. There is no requirement in MCL 211.34d(1)(b)(i) that the omitted property be a separate structure. Eyde Const. Co. v City of Lansing, *supra*.

In this case, valuation, in the form of previously existing property completed in 1997 was omitted from the assessment roll due to the fact that Respondent’s previous assessor continued to calculate taxable value, after 1998, based on the previous taxable value from 1997 which had been based on only a fifty (50%) percent completion factor. The items that were added to the motel from 1997 to 1998, and were in 1998 located on the subject property and should have led to an increase in taxable value, were missing or omitted from the assessment.

In the Rockind, *supra*, case the Court of appeals stated:

“Property value that is determined without the benefit of considering omitted property does not lead to this sort of full and accurate assessment. To permit some property owners to benefit from an incomplete property assessment until the property is transferred would lead to unequal and unfair real property taxation.”

In the case at bar, even though the whole parcel was on the assessment roll, it was not fully and completely assessed. Respondent contends, and the Michigan Court of Appeals agreed, that the “omitted property” provision of MCL 211.154 did confer on the Michigan State Tax Commission jurisdiction to correct and increase the taxable valuation of Petitioner’s real property, when valuation was omitted, even though the no portion of the whole property was omitted from assessment.

REQUEST FOR RELIEF

The Respondent-Appellee, Township of Mackinaw, respectfully requests that this Honorable Court affirm the Court of Appeals Opinion dated March 10, 2009.

Respectfully Submitted,

Date: September 29, 2009

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Attorney for Respondent/Appellee