

STATE OF MICHIGAN  
IN THE SUPREME COURT  
APPEAL FROM COURT OF APPEALS  
P.J. Markey, Whitbeck and Gleicher

SUPERIOR HOTELS LLC,

Petitioner-Appellant,

v

TOWNSHIP OF MACKINAW,

Respondent- Appellee.

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Supreme Court No. 138696

Court of Appeals No. 276836

Michigan Tax Tribunal No. 00-313228

**BRIEF OF AMICUS CURIAE MICHIGAN STATE TAX COMMISSION**

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**Statement Regarding Basis of Jurisdiction of the Supreme Court**

This Court has jurisdiction to hear this matter under MCR 7.301(A)(2) and 7.302.

Counter-Statement of Questions Involved

- I. When the Tribunal issued its Order in the present case, MCL 211.154 stated that the Michigan State Tax Commission(STC) had jurisdiction to correct assessment values for incorrectly reported or omitted property subject to collection of taxes. The Tribunal ruled that the STC lacked jurisdiction under MCL 211.154 to correct the taxable value of the Petitioner/Appellant's property. The Court of Appeals in this matter reversed the Tribunal and concluded that the term "assessment value" as used in MCL 211.154 means either "taxable value" or 50 percent of the true cash value of the property at issue. MCL 211.154(2) and (6) provide that property taxes can be increased or decreased, which can only happen if the taxable value of the subject property changes. If this Court determines that the STC does not have the jurisdiction to correct taxable value under MCL 211.154, significant parts of that statute will be rendered meaningless contrary to the statutory rules of interpretation. Was the Court of Appeals correct in reversing the Tribunal's ruling?**

Appellant's answer: No.

Appellee's answer: Yes.

Amicus Curiae's answer: Yes.

**II. When the Tribunal issued its Order in the present case, MCL 211.154 stated that the Michigan State Tax Commission had jurisdiction to place corrected assessment values for incorrectly reported or omitted property subject to collection of taxes. In *City of Detroit v Norman Allen & Co.*, the Court of Appeals held that the Michigan State Tax Commission did not have jurisdiction to correct an assessor's error in mistakenly undervaluing property because MCL 211.154 did not apply to property conceded to be taxable but alleged to be assessed improperly. Shortly after the Norman Allen decision, the Legislature amended MCL 211.154 expanding the State Tax Commission's jurisdiction rendering the Norman Allen decision no longer applicable. Relying on Norman Allen and its progeny, the Tax Tribunal held that MCL 211.154 does not confer jurisdiction on the State Tax Commission to correct an assessor's error in mistakenly undervaluing the property because the property at issue was conceded to be taxable, but alleged to be assessed improperly. The Court of Appeals reversed the Tribunal holding that the Norman Allen decision is not reliable precedent given the significant amendments to relevant statutes reviewed in Norman Allen.**

**Did the Michigan Court of Appeals correctly determine that the amendments made to MCL 211.154 and MCL 211.22, after the *Norman Allen* decision, render that decision and its progeny inapplicable to a correct interpretation of MCL 211.154 as currently written?**

Appellant's answer: No.

Appellee's answer: Yes.

Amicus Curiae's answer: Yes.

## STATEMENT OF INTEREST/INTRODUCTION

The Amicus Curiae Michigan State Tax Commission (STC) is a statutory 3-member body appointed by the Governor with the Chairperson designated by the Governor.<sup>1</sup> Under § 150 of the General Property Tax Act (GPTA), MCL 211.150, the STC has general supervision over the assessing offices and is charged with correcting irregularities in the property tax system. Under § 154 of the GPTA, MCL 211.154, the STC has the authority to add to assessment rolls property previously omitted from assessment rolls and to correct incorrect reporting of property. Under other provisions of law, the STC is also responsible for valuing state-assessed utilities, phone companies, and railroads/carlines and for the approval of tax exemptions concerning air pollution control, water pollution control, industrial facilities, neighborhood enterprise zones, obsolete property, and personal property.

The GPTA also gives the STC authority to review the tax rolls of Michigan to ensure they contain accurate and reliable information concerning the property values within each local taxing authority. Finally, the STC provides tax guidance to taxpayers and assessors under the GPTA by issuing bulletins and letters.

The STC is interested in this case because the Tax Tribunal granted summary disposition to the Petitioner-Appellant by relying on the now-inapplicable case, *City of Detroit v Norman Allen & Co.*<sup>2</sup> In relying on *Norman Allen* and its progeny, the Tribunal incorrectly determined that the STC lacked jurisdiction under MCL 211.154 to correct an assessor's error because the property was conceded to be taxable. The Michigan Court of Appeals reversed the Tribunal and correctly noted that the *Norman Allen* decision and the cases relying on that decision are no

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<sup>1</sup> MCL 209.102.

<sup>2</sup> *City of Detroit v Norman Allen & Co.*, 107 Mich App 186; 309 NW2d 198 (1981).

longer reliable precedent because the Legislature has eliminated virtually all of the statutory language reviewed in the *Norman Allen* decision.<sup>3</sup>

In granting the Application for Leave to Appeal, this Court asked the parties to "include among the issues to be briefed whether the State Tax Commission has jurisdiction, pursuant to MCL 211.154, to correct the taxable value of real property erroneously recorded on the local assessment roll." In this amicus curiae brief the STC explains why the STC has the authority to change taxable valuation in proceedings brought under MCL 211.154. In addition the STC explains why the *Norman Allen* case, and those decisions that rely on it are no longer applicable to MCL 211.154, as amended.

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<sup>3</sup> *Superior Hotels v Mackinaw Township*, 282 Mich App 621, 640-45; 765 NW2d 31 (2009).

## ARGUMENT

I. **When the Tribunal issued its Order in the present case, MCL 211.154 stated that the Michigan State Tax Commission(STC) had jurisdiction to correct assessment values for incorrectly reported or omitted property subject to collection of taxes. The Tribunal ruled that the STC lacked jurisdiction under MCL 211.154 to correct the taxable value of the Petitioner/Appellant's property. The Court of Appeals in this matter reversed the Tribunal and correctly concluded that the term "assessment value" as used in MCL 211.154 means either "taxable value" or 50 percent of the true cash value of the property at issue. MCL 211.154(2) and (6) provide that property taxes can be increased or decreased, which can only happen if the taxable value of the subject property changes. If this Court determines that the STC does not jurisdiction to correct taxable value under MCL 211.154, significant parts of that statute will be rendered meaningless contrary to the statutory rules of interpretation.**

A. **Standard of Review**

The Parties have correctly stated the Standard of Review for this Court's review of the issues raised on appeal.

The Petitioner/Appellant Superior Hotels, LLC (Superior) states that a Court will "generally defer to the Tax Tribunal's interpretation of a statute that it is charged with administering and enforcing."<sup>4</sup> Contrary to Superior's assertion, it is the State Tax Commission that is the entity charged with the general supervision and administration of the General Property Tax Act, not the Michigan Tax Tribunal.<sup>5</sup> The Tax Tribunal hears appeals of property tax disputes – it does not administer or enforce the General Property Tax Act.

B. **MCL 211.154 gives the State Tax Commission(STC) the jurisdiction to change taxable values of omitted or incorrectly reported property because the statute acknowledges that increases or decreases in property taxes may occur when the subject property is either added to or excluded from the assessment roll.**

In its Order granting Superior's Application for Leave to Appeal, this Court directed the parties to brief the issue of "whether the State Tax Commission has jurisdiction, pursuant to

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<sup>4</sup> Petitioner/Appellant's Brief on Appeal, p 4, quoting *Michigan Milk Producers Ass'n v Department of Treasury*, 242 Mich App 486, 491; 618 NW2d 917 (2000).

<sup>5</sup> MCL 209.104; MCL 211.150; 211.10f.

MCL 211.154(1), to correct the taxable value of real property erroneously recorded on the local assessment roll." The answer to the Court's question is "yes" – the Michigan State Tax Commission does have the jurisdiction and authority to change taxable values under MCL 211.154.

In 2007, when the Tribunal decided this case, MCL 211.154(1), provided 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. [Emphasis added.]

The Court of Appeals concluded that the term "assessment value" as used in MCL 211.154 means either "taxable value" or 50 percent of the true cash value of the property at issue.<sup>6</sup> A careful review of the chronological history of this statute, as well as the cases interpreting it, shows that the Court of Appeals correctly interpreted MCL 211.154.

Superior contends that MCL 211.154 allows the STC to change the assessment value of the subject property, but not the taxable value, arguing that "assessment value" and "taxable value" are two separate concepts that cannot be interchanged. (Superior's Brief on Appeal, pp 7-8, 9.) Since MCL 211.154 does not specifically reference "taxable value", Superior argues the STC cannot change the taxable value of an assessment.

In the case before the Court, the taxable value of Superior's property was incorrectly reported or omitted as being too low. Superior's argument ignores the practical ramifications of what would result if the taxable value in this case was incorrectly reported as being too high. Under Superior's argument, a taxpayer would be without a remedy to ask for a reduction in taxable value incorrectly reported as too high on the assessment roll. Most certainly, Superior

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<sup>6</sup> *Superior Hotels v Mackinaw Township*, 282 Mich App 621, 633; 765 NW2d 31 (2009).

would not advocate its current argument if the taxable value of its property on the assessment roll was incorrectly reported as being too high, which would result in an inflated property tax bill. If Superior prevails in this case, property taxes would routinely be too high or too low because no mechanism would exist to correct taxable value that has either been incorrectly reported or omitted from the assessment roll.

The primary task in construing a statute is to discern and give effect to the intent of the Legislature as expressed in the statutory language.<sup>7</sup> Once a reviewing court discovers the legislative intent for a statute it must take precedence over any rule of statutory construction that conflicts with that intent.<sup>8</sup> A reviewing court can infer Legislative intent from the words expressed in the statute under review.<sup>9</sup> A reviewing court should construe every word or phrase in a statute using their common use because they all have some meaning and a court should not interpret a statute in a way that would make a portion of a statute inconsequential.<sup>10</sup>

For tax years 1995 and after, "taxable value" is defined in MCL 211.27a as the lesser of:

- 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.<sup>11</sup>

The taxable value of a particular piece of property is important. This is because it is taxable value that is used to compute the correct amount of property taxes that are owed on that property. Thus, the amount of property taxes owed on a particular piece of property can change

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<sup>7</sup> *Gladych v New Family Homes, Inc.*, 468 Mich 594, 597; 664 NW2d 705 (2003).

<sup>8</sup> *Terzano v Wayne County*, 216 Mich App 522, 527; 549 NW2d 606 (1996) (quoting *Michigan Central R Co v Michigan*, 148 Mich 151, 156 (1907)).

<sup>9</sup> *Wessels v Garden Way, Inc.*, 263 Mich App 642, 646-47; 689 NW2d 526 (2004).

<sup>10</sup> *Inter Cooperative Council v Dept of Treasury*, 257 Mich App 219, 223-24; 668 NW2d 181 (2003).

<sup>11</sup> MCL 211.27a.

only if the taxable value of the property changes. Changes in the true cash, assessed and state-equalized values of a piece of property do not automatically change the taxable value and the amount of property taxes owed on that property.

MCL 211.154 plainly contemplates that property taxes can change because of a STC Order issued under MCL 211.154. The text of MCL 211.154(1), (2) and (3), which was in effect for two of the three tax years at issue in this matter, outlines the procedures for instances where property taxes increase or decrease.<sup>12</sup> Under MCL 211.154(1), if the STC determines that taxable property has been incorrectly reported or omitted from the assessment roll, the STC "shall place the corrected assessment value for the appropriate years on the appropriate assessment roll."<sup>13</sup> Further, the STC "shall issue an order certifying to the treasurer of the local tax collecting unit . . . or the county treasurer if the county has possession of a tax roll for a year for which an assessment change is made the amount of taxes due as computed by the correct annual rate of taxation for each year except the current year."<sup>14</sup>

The following quote of MCL 211.154 fully illustrates that it specifically provides for situations where the Legislature recognized property taxes could increase or decrease under MCL 211.154. The relevant portion of MCL 211.154, as it existed during two of the three relevant tax years, states:

(2) If an assessment change made under this section results in increased property taxes, the additional taxes shall be collected by the treasurer of the local tax collecting unit if the local tax collection unit has possession of a tax roll for a year for which an assessment change is made or by the county treasurer if the county has possession of a tax roll for a year for which an assessment change is made. Not later than 20 days after receiving the order certifying the amount of

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<sup>12</sup> See, Public Act 476 of 1996; Public Act 281 of 2000, MCL 211.154(2), (3); See also, Public Act 247 of 2003, MCL 211.154(2), (6). The Legislature amended MCL 211.154 during the relevant tax years at issue, however, the general premise that the statute contemplated property tax increases or decreases remains in all version of the statute.

<sup>13</sup> Public Act 281 of 2000; MCL 211.154(1).

<sup>14</sup> *Id.*

taxes due under subsection (1), the treasurer of the local tax collecting unit if the local tax collecting unit has possession of a tax roll for a year for which an assessment change is made or the county treasurer if the county has possession of a tax roll for a year for which an assessment change is made shall submit a corrected tax bill, . . . to the owner of the property on which the additional taxes are assessed, . . . . [I]f the additional taxes remain unpaid on the March 1 in the year immediately succeeding the year in which the state tax commission issued the order certifying the additional taxes under subsection (1), the real property on which the additional taxes are due shall be returned as delinquent to the county treasurer. Real property returned for delinquent taxes under this section, and upon which taxes, interest, penalties, and fees remain unpaid after the property is returned as delinquent to the county treasurer, is subject to forfeiture, foreclosure, and sale for the enforcement and collection of the delinquent taxes as provided in sections 78 to 79a.

(3) If an assessment change made under this section results in a decreased tax liability, a refund of excess tax payments shall be made by the county treasurer and shall include interest at the rate of 1% per month or fraction of a month for taxes levied . . . from the date of the tax to the date of the payment of the refund. The county treasurer shall charge a refund of excess tax payments under this subsection to the various taxing jurisdiction to the various taxing jurisdictions in the same proportion as the taxes levied.<sup>15</sup>

This quoted language clearly indicates that the property tax amount can increase or decrease depending on how the STC's Order issued under MCL 211.154 changed the taxable value of the subject property. Because MCL 211.154 specifically addresses what must happen when property tax amounts can increase or decrease, the Court of Appeals correctly concluded that assessment value included taxable value and that the STC had the jurisdiction and authority to change taxable value under MCL 211.154.<sup>16</sup>

The only way the property taxes can increase or decrease, as contemplated by MCL 211.154, is for the taxable value to increase or decrease. If this Court accepts the Petitioner/Appellant's argument that the STC can only change the "assessed value" of property under MCL 211.154, then there would never be a situation where MCL 211.154(1), (2) and (3), as written during the tax years at issue, would apply because property taxes would never increase

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<sup>15</sup> *Id.*

<sup>16</sup> *Superior Hotels*, 282 Mich App at 633.

or decrease because of the STC's action under MCL 211.154. Under the long-established rules of statutory construction set forth above, this Court cannot interpret a statute in a way that would make a portion of a statute inconsequential.<sup>17</sup> Thus, the STC has the jurisdiction and authority under MCL 211.154 to change the taxable value of property that has been incorrectly reported or omitted from the assessment roll.

**II. When the Tribunal issued its Order in the present case, MCL 211.154 stated that the Michigan State Tax Commission had jurisdiction to correct assessment values for incorrectly reported or omitted property subject to collection of taxes. In *City of Detroit v Norman Allen & Co.* the Court of Appeals held that the Michigan State Tax Commission did not have jurisdiction to correct an assessor's error in mistakenly undervaluing property because MCL 211.154 did not apply to property conceded to be taxable but alleged to be assessed improperly. Shortly after the Norman Allen decision, the Legislature amended MCL 211.154 expanding the State Tax Commission's jurisdiction and rendering the Norman Allen rationale inapplicable to a correct analysis of the STC's current jurisdiction. The Court of Appeals correctly reversed the Tax Tribunal in this case because the Tribunal erroneously relied on Norman Allen and its progeny and held that MCL 211.154 does not confer jurisdiction on the State Tax Commission to correct an assessor's error in mistakenly undervaluing the property because the property at issue was conceded to be taxable, but alleged to be assessed improperly.**

**A. Standard of Review**

The Parties have correctly stated the Standard of Review for this Court's review of the issues raised on appeal.

Superior states that a Court will "generally refer to the Tax Tribunal's interpretation of a statute that it is charged with administering and enforcing."<sup>18</sup> The STC is the entity charged with general supervision and administration of the General Property Tax Act, not the Michigan Tax

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<sup>17</sup> *Inter Cooperative Council v Dept of Treasury*, 257 Mich App 219, 223-24; 668 NW2d 181 (2003).

<sup>18</sup> Petitioner/Appellant's Brief on Appeal, p 4, quoting *Michigan Milk Producers Ass'n v Department of Treasury*, 242 Mich App 486, 491; 618 NW2d 917 (2000).

Tribunal.<sup>19</sup> The Tax Tribunal hears appeals of property tax disputes – it does not administer or enforce the General Property Tax Act.

- B. **MCL 211.154, as it existed when the Tribunal issued its Order and Opinion in the present case, stated that the Michigan State Tax Commission had jurisdiction to place corrected assessment values for incorrectly reported or omitted property subject to collection of taxes without regard to the property's taxable status.**

### 1. Introduction

In this matter, the Michigan Tax Tribunal determined that under MCL 211.154, the STC did not have jurisdiction to correct assessments when the property at issue was conceded to be taxable, but alleged to be improperly assessed. (Superior's Appendix, pp 12a-14a). In reaching its determination, the Tribunal relied on the 1981 decision of the Court of Appeals in *City of Detroit v Norman Allen & Co.* and its progeny. (Superior's Appendix, pp 12a-14a). The Tribunal also relied on one of its earlier decisions on the jurisdiction issue, but that decision simply cites back to the *Norman Allen* line of cases.

The Court of Appeals below held that the Tribunal erred as a matter of law by concluding the STC lacked jurisdiction to correct the taxable values of the subject property.<sup>20</sup> Central to the Court of Appeals' analysis and holding was its conclusion that *Norman Allen* was not reliable precedent. This was largely due to the fact that the Legislature subsequently made significant amendments to the statutes, including MCL 211.154, that were under review in that case.<sup>21</sup>

In *Norman Allen*, the Court reviewed the text of MCL 211.154 and another statute that was relevant at the time, MCL 211.22.<sup>22</sup> The *Norman Allen* Court emphasized that the text of MCL 211.154, in effect at that time, indicated that the statute applied only when the taxable

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<sup>19</sup> MCL 209.104; MCL 211.150; MCL 211.10f.

<sup>20</sup> *Superior Hotels v Mackinaw Township*, 282 Mich App 621, 640-45; 765 NW2d 31 (2009).

<sup>21</sup> *Id.*

<sup>22</sup> *Norman Allen*, 107 Mich App at 189-90.

status of incorrectly reported property was involved because the statute's language specifically referred to the justification of whether a property was entitled to be exempt from tax.<sup>23</sup> Because of this specific language, the Court in *Norman Allen* held that the STC did not have the jurisdiction to correct an assessor's error in mistakenly undervaluing property because MCL 211.154 did not apply to property conceded to be taxable but alleged to be assessed improperly.<sup>24</sup> In other words, if the taxable status of property was not at issue, then MCL 211.154 did not apply and the tax rolls would have to be corrected under another statutory scheme. But that interpretation is no longer valid due to the changed language of the statute.

**2. The Court of Appeals correctly determined that the Tribunal incorrectly relied on *Norman Allen* and its progeny when it reviewed MCL 211.154 because the principles of statutory interpretation require a reviewing entity to determine the legislative intent of a statute and to give effect to that intent.**

The Tribunal improperly relied on the *Norman Allen* decision and its progeny to determine that MCL 211.154 does not apply to property conceded to be taxable but alleged to be improperly assessed. The Tribunal's continued reliance on these cases fails to acknowledge the Legislature's intent in passing the significant amendments made to MCL 211.154 shortly after *Norman Allen*. In effect, the Tribunal ignored the Legislature's intent in amending MCL 211.154 after the *Norman Allen* decision.

As previously noted the primary task in construing a statute is to discern and give effect to the intent of the Legislature as expressed in the statutory language.<sup>25</sup> In this regard, a reviewing court can infer legislative intent based on changes the Legislature makes in response to judicial construction of a statute, as occurred here. "[E]xamples of 'the highest quality of legislative history that relates to an action of the Legislature from which a court may draw

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<sup>23</sup> *Norman Allen*, 107 Mich App at 191-92.

<sup>24</sup> *Norman Allen*, 107 Mich App at 191-92.

<sup>25</sup> *Gladych*, 468 Mich at 597.

reasonable inferences about the Legislature's intent with respect to an ambiguous statutory provision' are 'actions of the Legislature intended to repudiate the judicial construction of a statute.'"<sup>26</sup>

Here, the Tribunal did not properly apply the rules of statutory interpretation by following the *Norman Allen* decision. When the Tribunal decided this case, MCL 211.154(1)<sup>27</sup>, provided 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.

Before 1982, however, the statute's language was quite different. In 1981, when *Norman Allen*, was decided, the pertinent part of MCL 211.154 provided:

If it shall be made to appear to the commission at any time that as a matter of fact any property liable to taxation has been incorrectly reported for any previous year, but not to exceed the current assessment year and 1 year immediately preceding the date of discovery and disclosure of the omission, but not prior to the effective date of the 1969 amendment to this section, the commission shall notify by registered mail the person to whom such property is assessable and give such person an opportunity to appear at a hearing before the commission, which hearing shall be held not later than 30 days from the date of notification by mail. 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 in the column provided.

Another statute in play before the 1982 amendments, MCL 211.22, provided an appellate avenue for specific individuals who wanted to adjust the tax rolls. The pertinent part of MCL 211.22 stated:

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<sup>26</sup> *Mayor of Lansing v Mich PSC*, 470 Mich 154; 680 NW2d 840 (Mich 2004), quoting *In re Certified Question (Kenneth Hennes v Continental Biomass Ind, Inc.)*, 468 Mich 109, 115 n 5; 659 NW2d 597 (2003).

<sup>27</sup> Under this statute, the STC routinely reviews assessor and taxpayer requests to correct assessment values when the property has been incorrectly reported or omitted from the tax rolls, regardless of whether the taxable status of the property is at issue.

If the supervisor or assessing officer, a member of the state tax commission, or the director or deputy director of the county tax or equalization department as mandatorily established under section 34 of this act shall be satisfied that any statement so made is incorrect \* \* \* [he] is hereby authorized to set down and assess to such person, firm or corporation so entitled to be assessed, such amount of real and personal property as he may deem reasonable and just.

Whenever examination and investigation reveal that the written statement of personal property is incorrectly made, that any data submitted is false, or that certain personal property has been omitted from the statement, the supervisor or assessing officer may petition the state tax commission to revise the personal property assessment of the person submitting such erroneous statement, if the petition is filed on or before June 30 of each year.

Based on these statutes, as they existed before the 1982 amendments, there were two avenues available to change a tax roll and each avenue had a different deadline. An assessor would petition the STC under MCL 211.22 before June 30 of the tax year at issue when he/she wanted to increase the value of personal property inadequately and improperly reported by a taxpayer, but conceded to be taxable. Under MCL 211.154, the STC could correct the tax rolls when property was reported as tax-exempt, but was thought to be taxable. The STC could make the correction only after giving a taxpayer the opportunity for a hearing to dispute the correction.

In 1982, however, the Legislature significantly amended MCL 211.22 and MCL 211.154, in direct response to the *Norman Allen* decision. The legislative history surrounding 1982 Michigan Public Act 539 reflects two motivating factor for amending the statutes. The Senate Committee records contain a note from the City of Flint, Department of Finance, referencing a "Court of Appeals decision" limiting the use of MCL 211.154 and resulting in a lower State Equalized Value for the City. Attachment One. While *Norman Allen* is not specifically mentioned in the note, the Committee records also contain a copy of the *Norman Allen* decision. Attachment Two.

The Committee records also include a Summary of House Substitute to S.B. 979 that states MCL 211.22 should be amended to clarify that omission and incorrect statements are to be

treated in the same manner for both real and personal property. Attachment Three, ¶ 4. More importantly, however, the Summary states that MCL 211.154 should be amended to clarify that the State Tax Commission's power to correct assessment rolls extends to incorrect reporting and omissions. Attachment Three, ¶ 17. Additionally another document states that the House of Representatives added to Senate Bill 979 by amending MCL 211.22 and MCL 211.154 to clarify the provisions for taxing property that has been incorrectly reported or omitted from the tax roll. Attachment Four, ¶ 4. This clarification was necessary because of the *Norman Allen* decision and the resulting language in MCL 211.22 and MCL 211.154 clearly shows the Legislature amended the statutes to correct the *Norman Allen* decision and more accurately reflect the Legislature's intent.

The Legislature removed the avenue for assessment correction mention above in MCL 211.22 and placed it in MCL 211.154 by modifying § 154's language:

If it shall be made to appear to the commission at any time that as a matter of fact any property liable to taxation has been incorrectly reported for any previous year, but not to exceed the current assessment year and 1 year immediately preceding the date of discovery and disclosure of the omission . . . the commission shall notify by registered mail the person to whom such property is assessable and give such person an opportunity to appear at a hearing before the commission . . . . 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 in the column provided.

to read:

If it shall be made to appear to the state tax commission at any time that as a matter of fact any property liable to taxation 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 discovery and disclosure of the incorrect reporting or omission . . .

Attachment Five.

Before the amendments, the statutes treated the phrase "incorrectly reported" as synonymous with the word "omission" and implied that such an omission would be considered in the context of whether an exemption applied. The amended version removed the language related to incorrect reporting from MCL 211.22 and put it in MCL 211.154, thus treating "incorrectly reported" property and "omitted" property as separate and distinct concepts. The amendments increased the statute of limitations for both "incorrectly reported" and "omitted" property to provide the State Tax Commission with jurisdiction to correct errors until the end of the second successive assessment year. By changing this language, the Legislature took the avenue for assessment correction once available in MCL 211.22, which the *Norman Allen* court addressed and distinguish from the avenue for assessment correction in MCL 211.154, and moved it to MCL 211.154.

Once the Legislature put the appellate avenue that was formerly available in MCL 211.22 into MCL 211.154, the *Norman Allen* Court's reasoning that the statutory language created separate avenues for assessment correction could no longer apply because both avenues were combined in MCL 211.154. In short, they were no longer separate as they were when the *Norman Allen* was issued.

Another notable change in the statutes that underscores the inapplicability of *Norman Allen* is the removal from MCL 211.154 of any reference to "exemption." This is also significant in emphasizing why the *Norman Allen* interpretation of the MCL 211.154 no longer applies. As noted *Norman Allen* relied on the language in MCL 211.154 that referred to the justification of an exemption. Based on this language, the *Norman Allen* court believed MCL 211.154 limited the STC's jurisdiction to address only property that was previously incorrectly reported as tax-exempt but, in reality, was not exempt. With the "exemption" language removed from the amended MCL 211.154, it follows that the *Norman Allen* decision holding MCL 211.154 applies

only when the taxable status of a property is at issue can no longer apply to the new language in MCL 211.154. Unfortunately, the Court of Appeals and Tax Tribunal decisions that relied on *Norman Allen* failed to account for these significant amendments and the Legislature's intent in passing those amendments.

**3. The principles of statutory interpretation require this Court to reverse the Tribunal's decision in this matter and to distinguish the Norman Allen decision and its progeny in light of the amended language now found in MCL 211.154.**

The Court of Appeals and Tax Tribunal decisions that have addressed MCL 211.154 after the *Norman Allen* routinely followed it without any analysis.<sup>28</sup> Tellingly, these decisions do not address the conclusion the *Norman Allen* Court reached regarding MCL 211.154. Nor do they give an adequate justification why that conclusion should remain valid in light of the Legislature's significant amendments to MCL 211.154, which were enacted immediately after *Norman Allen*. Only one decision, *Eagle Glen Golf Course v Surrey Township*,<sup>29</sup> even mentions the fact that MCL 211.154 and MCL 211.22 were amended after the *Norman Allen* decision.

The *Eagle Glen* Court begins its analysis by quoting MCL 211.154 as it existed in 2002; i.e. after the post-*Norman Allen* amendments:

(1) If the state tax commission determines that property liable to taxation . . . 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 discovery and disclosure to that state tax commission of the incorrect reporting or omission,

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<sup>28</sup> *Centre Management v City of Ferndale*, unpublished opinion per curiam of the Court of Appeals, decided August 10, 2004 (Docket No. 248266) (Petitioner/Appellant's Appendix, pp 107a-108a); *Broadcasting Partners, Inc. v City of Oak Park*, unpublished opinion per curiam of the Court of Appeals, decided April 18, 1997 (Docket No. 181517) (Petitioner/Appellant's Appendix, pp 103a-104a); *General Motors Corp. v State Tax Commission*, 200 Mich App 117; 504 NW2d 10 (1993); *Michigan Basic Property Insurance v Michigan State Tax Commission*, 2006 Mich Tax LEXIS 3, decided March 13, 2006 (MTT Docket No. 296251) (Petitioner/Appellant's Appendix, pp 88a-99a).

<sup>29</sup> *Eagle Glen Golf Course v Surrey Township*, unpublished opinion per curiam of the Court of Appeals, decided April 19, 2002 (Docket No. 224810) (Petitioner/Appellant's Appendix, pp 100a-102a.)

the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll. . . . [MCL 211.154(1) (emphasis added).]<sup>30</sup>

As noted above, this language is completely different from the language that existed when *Norman Allen* was decided. The *Eagle Glen* Court determined that under MCL 211.154, the STC had jurisdiction to decide the petitions filed if the property was either incorrectly reported or omitted.<sup>31</sup> The Court stated that judicial interpretation is appropriate because MCL 211.154 was ambiguous.<sup>32</sup> Unfortunately, the *Eagle Glen* Court referred to the *Norman Allen* decision and quoted the conclusion reached by *Norman Allen* where it states that the avenue for assessment correction in MCL 211.22 applies to improperly reported value of property while the avenue for assessment correction in MCL 211.154 applies to determining the proper taxable status of incorrectly reported property.<sup>33</sup> In light of the amendments to these statutes, this is not a proper statutory interpretation.

Clearly, MCL 211.154 no longer contains any reference to the word exemption and the Legislature broadly expanded the reach of MCL 211.154 to cover more than just determining the taxable status of incorrectly reported property. Furthermore, MCL 211.22 no longer contains any reference to appeals of improperly reported value of property.

As explained above, the Legislature moved that language to MCL 211.154 when it amended the statutes shortly after the *Norman Allen* decision. This was done to consolidate the separate avenues of assessment correction as they existed in MCL 211.22 and MCL 211.154 into one statute, that being MCL 211.154. These amendments render the *Norman Allen* decision inapplicable to a modern-day review of MCL 211.154.

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<sup>30</sup> *Eagle Glen* at slip op, pp 1-2. (Petitioner/Appellant's Appendix, pp 100a-101a.)

<sup>31</sup> *Eagle Glen* at slip op, p 2. (Petitioner/Appellant's Appendix, pp 100a-101a.)

<sup>32</sup> *Id.*

<sup>33</sup> *Eagle Glen* at slip op, pp 2-3. (Petitioner/Appellant's Appendix, pp 101a-102a.)

Unfortunately, the *Eagle Glen* Court does not acknowledge how the *Norman Allen* Court reached its conclusion, but instead simply acknowledges that MCL 211.154 was amended since *Norman Allen*. The *Eagle Glen* Court stated the amendments to MCL 211.154 were not significant because the *Norman Allen* Court "did not rely *solely* on this excerpted language in reaching its decision. Indeed it stated that its conclusion was merely 'reinforced' by the language."<sup>34</sup> Nevertheless, the *Eagle Glen* Court fails to point to what source other than the statutory language that the *Norman Allen* Court relied on to reach its conclusion about the appellate avenues as they existed in MCL 211.22 and 211.154. The STC contends the *Eagle Glenn* Court cannot point to any other source because the *Norman Allen* court did in fact rely solely on the language of MCL 211.22 and MCL 211.154 to reach its conclusion.

Finally, the STC wishes to point out one last defect in the *Eagle Glen* decision. The *Eagle Glen* Court acknowledged that amendments were made to MCL 211.22 and MCL 211.154.<sup>35</sup> That Court failed to recognize, however, that the relevant language of MCL 211.22 no longer existed after the 1982 amendments to provide the remedy that the *Norman Allen* Court believed was appropriate for correcting value errors of incorrectly reported property. The language relied upon by the *Norman Allen* court no longer exists in MCL 211.22 because the Legislature deleted the avenue of assessment correction formerly in MCL 211.22 and placed it in MCL 211.154. Under the *Eagle Glen* court's reading of the statute, taxpayers are now deprived of their right to petition the STC to correct over-valued assessments due to incorrect reporting.

Until the Court of Appeals' decision below every other decision that cites to *Norman Allen* simply quoted the holding of that case without any substantive analysis. Moreover, all such Court of Appeals decisions are unpublished and none of them provide an analysis of how

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<sup>34</sup> *Eagle Glen* at slip op, p 3. (Petitioner/Appellant's Appendix, pp 102a.)

<sup>35</sup> *Eagle Glen* at slip op, p 3, Appendix D.

*Norman Allen* can be a reliable interpretation of MCL 211.22 and MCL 211.154 when significant amendments were subsequently made to those statutes.

**CONCLUSION AND RELIEF SOUGHT**

Under MCL 211.154, the STC has the jurisdiction and authority to adjust the taxable value of property. The statute specifically addresses what must happen when property tax amounts increase or decrease when changes are made pursuant to MCL 211.154. Property taxes cannot increase or decrease unless the taxable value of the property increases or decreases. As such, the Court of Appeals in this matter correctly concluded that the STC had the jurisdiction and authority to change taxable value under MCL 211.154.

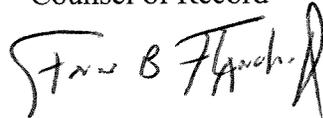
The Court of Appeals below correctly determined that the *Norman Allen* decision and its progeny are not reliable precedent. The *Norman Allen* Court issued its decision in 1981 and the Legislature then significantly amended the statutes at issue in *Norman Allen*. The statutory language specifically relied upon in *Norman Allen* no longer exists.

The STC respectfully requests that this Honorable Court affirm the Court of Appeals' decision.

Respectfully submitted,

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Date: October 23, 2009

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STATE OF MICHIGAN  
IN THE SUPREME COURT  
APPEAL FROM COURT OF APPEALS  
P.J. Markey, Whitbeck and Gleicher

SUPERIOR HOTELS LLC,

Petitioner-Appellant,

v

TOWNSHIP OF MACKINAW,

Respondent- Appellee.

Supreme Court No. 138696

Court of Appeals No. 276836

Michigan Tax Tribunal No. 00-313228

**PROOF OF SERVICE**

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF INGHAM     )

Mary A. Pasch, being duly sworn, deposes and says that on October 23, 2009, she served a copy of Brief of Amicus Curiae Michigan State Tax Commission, Motion for Oral Argument by Attorney General Michael A. Cox on Behalf of the Michigan State Tax Commission, and Notice for Hearing with Proof of Service upon the following by depositing the same in a receptacle of the United States Post Office in the City of Lansing, Michigan, enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

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\_\_\_\_\_  
Mary A. Pasch

Subscribed and sworn to before  
me this 23rd day of October, 2009.

  
\_\_\_\_\_  
Phyllis I. Ried, Notary Public  
Ingham County, Michigan  
My commission expires: 10/24/14