

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

SUPERIOR HOTELS, LLC,

Petitioner-Appellant,

V

TOWNSHIP OF MACKINAW,

Respondent-Appellee.

SUPREME COURT NO. 138696

COA No. 276836

MTT Docket No. 00313228

AMICUS CURIAE BRIEF OF MICHIGAN TOWNSHIPS ASSOCIATION

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Dated: October 23, 2009

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JURISDICTIONAL STATEMENT

On March 10, 2009, the Michigan Court of Appeals issued for publication Superior Hotels, LLC v Mackinaw Township, 282 Mich App 621; 765 NW2d 31 (2009). On July 9, 2009, this Honorable Court issued an Order granting leave to appeal and invited the Michigan Townships Association to file a brief amicus curiae. In its Order this Honorable Court directed that the parties include among the issues to be briefed whether the State Tax Commission has jurisdiction, pursuant to MCL 211.154(1), to correct the taxable value of real property erroneously recorded on the local assessment roll. This Honorable Court has jurisdiction to review this case by appeal pursuant to MCR 7.301(A)(2) and MCR 7.302.

STATEMENT OF QUESTION PRESENTED

1. Does the State Tax Commission have jurisdiction pursuant to MCL 211.154(1), to correct the taxable value of real property incorrectly reported or omitted including that which is erroneously recorded on the local assessment roll?

Petitioner-Appellant answers “**No**”.

Respondent-Appellee answers “**Yes**”.

The Michigan Tax Tribunal answered “**No**”.

The Court of Appeals answered “**Yes**”.

Amicus Curiae Michigan Townships Association answers “**Yes**”.

STATEMENT OF FACTS

The Michigan Townships Association supports the Respondent-Appellee's position and concurs in the Statement of Facts set forth in its Brief on Appeal.

ARGUMENT

I. THE STATE TAX COMMISSION HAS JURISDICTION PURSUANT TO MCL 211.154(1), TO CORRECT THE TAXABLE VALUE OF REAL PROPERTY INCORRECTLY REPORTED OR OMITTED INCLUDING THAT WHICH IS ERRONEOUSLY RECORDED ON THE LOCAL ASSESSMENT ROLL.

A. INTRODUCTION

The Michigan Court of Appeals published opinion in Superior Hotels, LLC v Mackinaw Township, 282 Mich App 621; 765 NW2d 31 (2009) is the subject of this Honorable Court's review by appeal. In Superior Hotels, the underlying issue before the Court of Appeals was whether the State Tax Commission had jurisdiction pursuant to MCL 211.154(1), to correct the taxable value of real property incorrectly reported or omitted including that which is erroneously recorded on the local tax assessment roll. The Court of Appeals in Superior Hotels cogently determined that the State Tax Commission does have such jurisdiction as MCL 211.154(1) "confers jurisdiction on the STC whenever taxable property has been 'incorrectly reported or omitted' for whatever reason and an incorrect 'assessment value' results." Superior Hotels, supra at 644. The Court of Appeals reversed the erroneous judgment of the Michigan Tax Tribunal¹ which held that the State Tax Commission lacked such jurisdiction. The Michigan Tax Tribunal relied primarily on the outdated case of Detroit v Norman Allan Co., 107 Mich App 186; 309 NW2d 198 (1981) and its progeny of Michigan Tax Tribunal and unpublished Court of Appeals decisions that were led down this mistaken path. The Court of Appeals decision correctly reviewed the basis of the opinion in Norman Allen and the subsequent changes in law which superseded its interpretation of

¹ Superior Hotels, LLC v Mackinaw Township MTT Docket No. 313228 (February 23, 2007)

MCL 211.154. Superior Hotels, supra at 644. The Court of Appeals decision correctly indicated that:

We agree with respondent and the STC that the legislature's adoption of 1982 PA 539 patently undermines this court's reasoning in Norman Allen. Norman Allen was also decided more than a decade before the adoption of proposal A, which dramatically altered Michigan's property tax system." Superior Hotels, supra, at 641.

The Michigan Townships Association fully agrees with the legal analysis by the Court of Appeals in Superior Hotels and believes that this case should be affirmed. It has always been a concern that misinterpretation of MCL 211.154 could improperly create a back door for what would essentially amount to real property valuation appeals coming before the State Tax Commission rather than the procedure set forth for hearing of such appeals before the Michigan Tax Tribunal. The Michigan Townships Association does, however, believe that the Court of Appeals opinion in Superior Hotels properly interprets MCL 211.154 in such a way that does not leave open this improper back door. Neither does this interpretation open the door to unconstitutional revisions of taxable value. Under MCL 211.154(1) the State Tax Commission does have limited administrative jurisdiction to correct the taxable value of real property incorrectly reported or omitted including that which is erroneously recorded on the local assessment roll. This interpretation is consistent with the administrative jurisdiction of the State Tax Commission to oversee the proper administration of the property tax laws by local assessors and to provide an avenue for correction when it is discovered that omitted property or incorrectly reported property creates an erroneous tax roll. The following argument supports this proposition and the Court of Appeals interpretation in Superior Hotels. Additionally, in order to avoid repetition of arguments to the extent

possible, we note our concurrence with those arguments set forth in the Brief on Appeal of the Respondent-Appellee and the amicus curiae brief of the Michigan State Tax Commission.

B. THE STANDARD OF REVIEW

This Honorable Court described the standard of review for Michigan Tax Tribunal decisions in Wexford Med Group v City of Cadillac, 474 Mich 192, 201; 713 NW2d 734 (2006) and reiterated said standard in Liberty Hill Housing Corp., v City of Livonia, 480 Mich 44, 49; 746 NW2d 282 (2008) as follows:

“The standard of review for Tax Tribunal cases is multifaceted. Where fraud is not claimed, this Court reviews the tribunal’s decision for misapplication of the law or adoption of a wrong principle. Michigan Bell Tel Co. v Dep’t of Treasury, 445 Mich 470, 476; 518 NW2d 808 (1994). We deem the tribunal’s factual findings conclusive if they are supported by ‘competent, material, and substantial evidence on the whole record.’ Id., citing Const 1963, art 6, § 28 and Continental Cablevision v Roseville, 430 Mich 727, 735; 425 NW2d 53 (1988). But when statutory interpretation is involved, this Court reviews the tribunal’s decision de novo. Danse Corp v Madison Hts, 466 Mich 175; 644 NW2d 721 (2002).”

In this case the issue of whether the State Tax Commission has jurisdiction pursuant to MCL 211.154(1), to correct the taxable value of real property incorrectly reported or omitted including that which is erroneously recorded on the local assessment roll is a question of statutory interpretation which this Honorable Court reviews de novo.

C. HISTORICAL JURISDICTION OF THE STATE TAX COMMISSION

A historical prospective is important in order to properly review the jurisdiction of the State Tax Commission with regard to the question at bar. The General Property Tax Act (GPTA), MCL 211.1 et seq provides a comprehensive system for the

assessment of real and personal property for ad valorem tax purposes, for the collection of such taxes, and for administration of such laws. Prior to 1974², the State Tax Commission was the state agency primarily involved in the administration of GPTA. MCL 211.150 addresses the duties of the State Tax Commission.³ MCL 211.150 provides that:

“It shall be the duty of the commission:

(1) To have and exercise general supervision over the supervisors and other assessing officers of the state, and to take such measures as will secure the enforcement of the provisions of this act, to the end that all the properties of this state liable to assessment for taxation shall be placed upon the assessment rolls and assessed at that proportion of true cash value which the legislature from time to time shall provide pursuant to the provisions of article 9, section 3 of the constitution.

(2) To confer with and advise assessing officers as to their duties under this act, and to institute property proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with the provisions of this act; to prefer charges to the governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the commission may call upon the attorney general or any prosecuting attorney in the state to assist it.

(3) To receive all complaints as to property liable to taxation that has not been assessed or that has been fraudulently or improperly assessed, and to investigate the same, and to take such proceedings as will correct the irregularity complained of, if any is found to exist.

(4) To require from any officer in this state, on forms prescribed by the commission such annual or other reports as shall enable it to ascertain the assessed value and equalized values of all property listed for taxation throughout the state under this act, the amount of taxes assessed, collected and returned and such other matter as it may require, including a separate listing of the valuations of all personal and real property classifications within the assessing unit, to the end that it may have

² On July 1, 1974 the Tax Tribunal was established pursuant to the Tax Tribunal Act, 1973 PA 186; MCL 205.701 et seq.

³ MCL 211.150 last amended 1964 PA 275.

complete statistical information as to the practical operation of this act, and to approve the forms used by assessing officers in taking the assessment of property.

(5) To furnish the state board of equalization at each session thereof an estimate of the actual cash value of the taxable property of each county in the state, and to meet with the state board of equalization when requested by said board to do so.”

From the above duties it can be generally understood that State Tax Commission had broad administrative authority with regard to the property tax laws and that it had authority to hear appeals regarding assessment irregularities.

Prior to 1974, under the GPTA the taxpayer could appeal a property tax assessment to the State Tax Commission and/or bring a lawsuit in Circuit Court.⁴ With the enactment of the Tax Tribunal Act, effective July 1, 1974, this appellate jurisdiction of the State Tax Commission and Circuit Court was transferred to the Tax Tribunal. MCL 205.721 establishes the Tax Tribunal and states that it is a “quasi-judicial agency”.

Further, MCL 205.731 provided that:

“The tribunal’s original and exclusive jurisdiction shall be:

- (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to an assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws;
- (b) A proceeding for refund or redetermination of a tax under the property tax laws.⁵ (Emphasis added)

Consistent with this new exclusive and original jurisdiction granted to the Tax Tribunal, the Tax Tribunal Act pursuant to MCL 205.741 provides that:

“A person or legal entity which, immediately before the effective date of this act, was entitled to proceed before the state tax commission or circuit

⁴ Xerox Corp v City of Kalamazoo, 76 Mich App 150, 152 – 153; 255 NW2d 797 (1977).

⁵ This provision was amended by 2008 PA 125, however such amendment does not impact the analysis herein.

court of this state for determination of a matter subject to the tribunal's jurisdiction, as provided in s31, shall proceed only before the tribunal.

In considering the affect of these statutes the court in Emmett Co. v State Tax Comm.,

397 Mich 550, 555; 244 NW2d 909 (1976) stated that:

“In s41 of the Tax Tribunal Act, the Legislature made it clear that it was vesting jurisdiction in the Tax Tribunal over matters previously heard by the State Tax Commission as an Appellate body. Formerly, the State Tax Commission was the appellate body over individual assessments, allocation disputes and intracounty equalization matters. . .Section 31 places jurisdiction in the Tax Tribunal over those matters arising under the property tax laws and, consistent therewith, s41, eliminates the Tax Commission and the circuit court as forums in which those very matters were formerly litigated.”

The general concept applied was that the State Tax Commission retained its administrative jurisdiction regarding the tax laws but seceded its appellate jurisdiction to the Tax Tribunal. This transfer of jurisdiction was not always easy to discern since the legislature chose not to specifically amend the text of the laws intended to be modified.

MCL 211.154, which is the subject matter of the case at bar, was originally one of these unamended statutes creating a question of whether the powers granted therein were administrative or appellate in nature. With regard to MCL 211.154, prior to its 1982 amendment, the Court addressed this issue in the City of Detroit v Jones and Laughlin Steel Corporation, 77 Mich App 465; 258 NW2d 521 (1977). In the City of Detroit, the city filed a petition under MCL 211.154 with the Tax Tribunal. Jones and Laughlin Steel Corporation then filed a motion to dismiss on the basis that the Tax Tribunal had no jurisdiction to consider the petition which was an administrative matter that remained vested in the State Tax Commission and was not transferred to the Tax Tribunal. In City of Detroit, the court held that the Tax Tribunal had jurisdiction,

pursuant to MCL 205.731, to review a petition pursuant to MCL 211.154 and such jurisdiction was exclusive under MCL 205.741. City of Detroit, supra at 476-477.

The Court of Appeals in City of Detroit v Norman Allan & Co, 107 Mich App 186; 309 NW2d 198 (1981) supported the ruling that petitioners under MCL 211.154 must proceed before the Tax Tribunal. However, Norman Allan, determined that the subject matter of the petitioners was not within the scope of the language contained within MCL 211.154 as such jurisdiction was limited to where property had been incorrectly reported as an exempt property but later appears to be taxable property.

After City of Detroit, and immediately following Norman Allan, the legislature in 1982 amended MCL 211.154 to return jurisdiction regarding its administration to the State Tax Commission with a right of appeal to the Michigan Tax Tribunal. This amendment to MCL 211.154 further made substantial revisions to the language that increased the subject matter over which the State Tax Commission could exercise its jurisdiction therein⁶.

In considering the jurisdiction of State Tax Commission under MCL 211.150(3) and MCL 211.154, after the 1982 amendment to MCL 211.154, the Court of Appeals in Jefferson Schools v Detroit Edison Co, 154 Mich App 390, 398-399; 397 NW2d 320 (1986) noted that:

“Prior to the effective date of the Tax Tribunal Act, complaints as to property liable to taxation that had not been assessed or had been fraudulently or improperly assessed were initially heard and investigated by the State Tax Commission. No appellate jurisdiction was involved. Indeed, even under present law, such complaints are first heard and investigated by the State Tax Commission, and ‘any person to whom

⁶ See detailed analysis contained in amicus curiae State Tax Commission brief addressing the implications with regard to the 1982 revision to the language contained in MCL 211.154 and also Superior Hotels, supra.

property is assessed' as a result of such an investigation may appeal to the Tax Tribunal from the State Tax Commission determination. (MCL 211.154; MSA 7.211 and MCL 211.150(3); MSA 7.208(3)."

The Court in Jefferson Schools highlighted the State Tax Commission's significant administrative authority separate from the Tax Tribunal's exclusive appellate authority. Independent procedures can clearly exist to administratively correct discovered errors without running afoul of the Tax Tribunal's exclusive jurisdiction. MCL 211.154 now provides this procedure.

With jurisdiction restored to the State Tax Commission to administer MCL 211.154 and the expansion of authority therein, the question at hand is whether such language as it presently exists, allows for the correction of taxable value of real property incorrectly reported or omitted including that which is erroneously recorded on the local assessment roll.

D. AUTHORITY UNDER MCL 211.154(1) TO CORRECT THE TAXABLE VALUE OF REAL PROPERTY INCORRECTLY REPORTED OR OMITTED INCLUDING THAT WHICH IS ERRONEOUSLY REPORTED ON THE LOCAL ASSESSMENT ROLL.

In light of the preceding jurisdictional analysis we next turn our attention to the relevant language contained in MCL 211.154(1) to determine what this jurisdiction confers. The primary goal of construing the statute is to determine and give effect to the intent of the legislature. Mt. Pleasant v State Tax Comm., 477 Mich 50, 53; 729 NW2d 833 (2007). MCL 211.154 provides, in pertinent part, that:

"(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 year and two 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 on the

appropriate years on the appropriate assessment roll. . . .” (Emphasis added)

The language in this statute should be construed in a manner consistent with the comprehensive approach set out in the GPTA providing the State Tax Commission with broad administrative powers in the exercise of its duties expressed in MCL 211.150. In order to help carry forward the State Tax Commission’s duty to assure that all properties liable for taxation be properly placed on the assessment roll and with consideration of the Tax Tribunal’s exclusive appellate jurisdiction, the legislature has specifically amended MCL 211.154 to allow this administrative function. Specifically, the State Tax Commission’s administrative authority with regard to MCL 211.154(1) confers jurisdiction to make corrections to the tax assessment roll under two circumstances. The first is if the taxes have been “incorrectly reported” and the second is if the property has been “omitted”.

Amicus curiae Michigan Townships Association agrees with the arguments set forth by the Respondent-Appellee in its brief with regard to the proper meaning of the terms “incorrectly reported”, “omitted”, and “assessment value” as used in MCL 211.154(1). As defined therein these terms allow the State Tax Commission under MCL 211.154(1) to correct the “assessment value” which may include the assessed value and/or taxable value on the assessment roll. It allows these corrections to occur for property erroneously “omitted”, in whole or in part, from the assessed value and/or taxable value and for “incorrect reports” creating an improper or faulty tax roll. An “incorrect report” can consist of an error in assessed and/or taxable value on the tax roll. Rather than restating Respondent-Appellee’s arguments in these regards, the following is intended to add to them.

In further attempting to discern the meaning of these key phrases it is helpful to review Michigan Administrative Rule 209.71⁷ regarding administration of MCL 211.154. This administrative rule was adopted shortly after the 1982 amendment to MCL 211.154 and had an effective date of December 18, 1984.

Michigan Administrative Rule 209.71 provides:

“(1) Any person may notify the commission, as provided in section 154 of the act that property liable to taxation has been omitted from the assessment roll or that property has been erroneously reported for the current year or for one or both of the two immediately preceding years.

(2) If the notice is from a property owner that an erroneous property statement was filed timely with the assessing officer for the tax year, the property owner shall file the notification on form L-4155 prescribed by the commission.

(3) If the notice is from an assessor or county equalization director that property liable to taxation has been incorrectly reported or omitted from an assessment roll, he or she shall file the notification on form L-4154 as prescribed by the commission.

(4) If the notification is from a person other than a person listed in subrules (2) and (3) of this rule, the commission shall investigate the allegation.

(5) The commission shall prescribe the forms which are to be filed. “

This State Tax Commission’s administrative rule is entitled to the most respectful consideration and should not be overruled without cogent reasons.⁸ From this administrative rule it is clear that MCL 211.154 is intended to assist the State Tax Commission in making sure that property liable for taxation is not omitted from the tax roll or erroneously reported. Additionally, of significance is the different language used

⁷ Michigan Administrative Rule 209.71 was in place at the time of the petition in the case at bar. It was rescinded February 20, 2009, and can now be found in almost identical form in Michigan Administrative Rule 209.32, effective February 20, 2009.

⁸ In re Complaint of Rovas against SBC Michigan, 482 Mich 90, 103; 754 NW2d 259 (2008).

in subsection (2) and subsection (3) above. Subsection (2) refers to a notice from the property owner to correct an “erroneous property statement” filed with the assessor. Subsection (3) refers to a notice from an assessor or equalization director requesting a correction for property liable for taxation that has been “incorrectly reported or omitted from an assessment roll”. These different terms support the fact that MCL 211.154 allows for administrative corrections regarding multiple types of errors discovered in a tax assessment roll. Corrections in assessed and/or taxable value can occur due to erroneous property statements, in addition to assessor errors or omissions in preparation of the assessment roll.

Proposal A⁹ and its implementing legislation should be addressed in order to determine its interaction with the interpretation that MCL 211.154(1) allows the correction of taxable value of real property erroneously recorded on the local tax roll. In a special election held on March 15, 1994, the Michigan electors voted in support of Proposal A. Proposal A was a constitutional amendment to Article IX, Section 3 of the Michigan Constitution of 1963. The amendment provided that the taxable value of property may not be increased in 1995 and annually thereafter by an amount more than the lesser of 5% or the consumer price index until the property is transferred, except that the taxable value of the property may be adjusted for “additions” without regard to the cap on taxable value. As stated in Toll Northville, quoting WPW Acquisition Co. v City of Troy, 466 Mich 117, 121-122; 643 NW2d 564:

“The purpose of Proposal A was to generally limit increases in property taxes on a parcel of property, as long as it remains owned by the same party, by capping the amount that the ‘taxable value’ of the property may increase each year, even if the ‘true cash value,’ that is, the actual market

⁹ See Toll Northville Ltd., v Township of Northville, 480 Mich 6, 11; 743 NW2d 902 (2008).

value, of the property rises at a greater rate. However, a qualification is made to allow adjustments for ‘additions.’” Toll Northville at 12.

From this clearly expressed purpose, it is apparent that the intent of Proposal A was not to prevent the State Tax Commission from correcting the taxable value of real property erroneously recorded on the local assessment roll but rather to cap increases in taxable value which would otherwise occur due to a rise in actual market value. Correction of an error in taxable value on the tax assessment roll does not equate to an impermissible increase above the correct cap computation. Correction of the error just assures that the property is properly taxed using the correct figures on the tax assessment roll. It would be absurd to construe Proposal A as locking in an erroneously recorded taxable value on the tax roll (i.e., if in the case at bar the assessors error listed the taxable value at \$20.00). The preference is not to construe a constitutional provision in a way that results in absurdity.¹⁰

In adopting enabling legislation for implementation of Proposal A, the Legislature amended MCL 211.34d with regard to the definition of additions. Under Proposal A, additions can increase taxable value without regard to the cap. In its definition of additions, MCL 211.34d(1)(b)(i) includes “omitted real property” and defines it as “previously existing tangible real property not included in the assessment”. It further provides that “Omitted real property for the current year and the 2 immediately preceding years, discovered after the roll has been completed, shall be added to the tax roll pursuant to the procedures established in Section 154”. This definition covers existing real property not included in the “assessment”. The assessment is in the context of establishing taxable value and specifically invokes MCL 211.154. Obviously,

¹⁰ Carmen v Secretary of State, 384 Mich 443, 451, n3; 185 NW2d 1 (1971).

this provision is ultimately intended to increase the taxable value where existing real property was previously not included in the taxable value assessment. Allowing this type of taxable value revision is consistent with the correction of an error in the tax roll in a manner that does not violate the above-stated purpose of Proposal A.

MCL 211.34d(1)(b)(i) clearly supports the argument that the State Tax Commission has jurisdiction pursuant to MCL 211.154(1), to correct the taxable value of real property erroneously recorded on the local assessment roll. This interpretation allows for the correction of the error in the case at bar as the hotel addition was erroneously omitted from the taxable value.

CONCLUSION

Based upon the preceding arguments contained and otherwise referenced herein, amicus curiae Michigan Townships Association respectfully requests that this Honorable Court affirm the Court of Appeals decision in Superior Hotels, supra.

Respectfully submitted.

Dated: October 23, 2009

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