

STATE OF MICHIGAN

MICHIGAN SUPREME COURT

On Appeal from the Court of Appeals, the Hon. Donald S. Owens,  
Michael J. Talbot and Patrick M. Meter

Cherryland Electric Cooperative,  
Petitioner/Appellee.

Supreme Court Case No.  
COA Docket No. 296829  
MTT Docket No. 296021

Blair Township,  
Respondent/Appellant.

Cherryland Electric Cooperative,  
Petitioner/Appellee.

Supreme Court Case No.  
COA Docket No. 296830  
MTT Docket No. 296028

East Bay Township,  
Respondent/Appellant.

Cherryland Electric Cooperative,  
Petitioner/Appellee.

Supreme Court Case No.  
COA Docket No. 296856  
MTT Docket No. 296026

145340-1-2  
Garfield Township,  
Respondent/Appellant.

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MICHIGAN SUPREME COURT

PETITIONER'S/APPELLEE'S RESPONSE TO RESPONDENT/APPELLANT

JUNE 21, 2012 APPLICATION FOR LEAVE TO APPEAL FROM

THE MAY 15, 2012 OPINION OF THE MICHIGAN COURT OF APPEALS

WITH PROOF OF SERVICE

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**Exhibits**

The Petitioner's/Appellee adopts the Respondent/Appellant's Appendix

**JURISDICTIONAL STATEMENT**

The Respondent/Appellant Application for Leave to Appeal the Michigan Court of Appeals consolidated Opinion, dated May 15, 2012, is pursuant to MCR 7.302 et. Esq.

**STANDARD OF REVIEW**

The Court of Appeals stated in *Briggs*, 75:

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. The Court deems the Tribunal's factual findings conclusive if they are supported by "competent, material, and substantial evidence on the whole record." But when statutory interpretation is involved, this Court reviews the Tax Tribunal's decision de novo. We also review de novo the grant or denial of a motion for summary disposition.

The Michigan Supreme Court should affirm the decisions by the Michigan Tax Tribunal and the Michigan Court of Appeals as this is clearly a correct application of MCL 211.53a, as both parties relied on the assessment of an erroneous taxable value to the Petitioners'/Appellees' property.

**INTRODUCTION**

Now comes Cherryland Electric Cooperative, Petitioner-Appellee, through its Attorney Norman D. Shinkle, requests the right to oppose and respond to the Respondent-Appellants' claims and arguments.

**RESPONSE TO STATEMENT OF QUESTION INVOLVED**

“Did the Michigan Court of Appeals and the Michigan Tax Tribunal err by not characterizing the Petitioner’s/Appellee’s claim for a property tax refund under MCL 211.53a as a claim about the invalidity, irregularity, or unauthorized nature of a tax, which is a Mistake of Law, as recently restated by the Michigan Supreme Court in *Briggs Tax Service LLC v Detroit Public Schools*, 485 Mich 69; 772 NW2d 753 (2010)?”

Petitioner/Appellee answered	<b>NO</b>
The Michigan Court of Appeals	<b>NO</b>
The Michigan Tax Tribunal	<b>NO</b>
Respondent/Appellant answered	Yes

Respondent/Appellant misconstrues the Michigan Supreme Court decision in *Briggs Tax Service LLC v Detroit Public Schools*, 485 Mich 69; 772 NW2d 753 (2010). The court decision in this case was based on the fact that the assessor applied an unauthorized school millage to the taxable value of property; **not** that the assessor assessed an erroneous taxable value to property.

## **RESPONSE TO RESPONDENT/APPELLANT'S ARGUMENT**

The Respondent/Appellant argument that this is a case of a mistake of law is untrue and without merit. Their entire case is reliant on *Briggs*, a case in which an unauthorized school millage tax was applied to the taxable value of all property in the district; and in which there was no dispute as to the taxable value of the property being taxed. There was no dispute of taxable value of personal property in *Briggs*, the Courts' only ruling was whether a school millage tax was refundable for past years under MCL 211.53a. The Court correctly ruled that a school millage (even if unauthorized) is a mistake of law and therefore the overpayment of property taxes was not recoverable under MCL 211.53a.

The fact pattern of *Briggs* is not in any way similar to the fact pattern of the case at hand, as this matter is about an erroneous assessment/taxable value being assessed on the Petitioner/Appellee's personal property; and the reliance of the parties on guidelines from the Michigan State Tax Commission (STC) which were incorrect.

## **PETITIONER/APPELLEE ARGUMENT**

There is no dispute that a mistake caused the Petitioner/Appellee to be over-assessed on their property taxes for the years in question. The only question is why the over-assessment occurred.

The Respondent/Appellant contention that the Assessor did not make an error in assessing a value for Contributions In Aid of Construction (CIAC) and the Respondent/Appellant contention that the mistake, if any occurred, was by the STC is incorrect. It is the assessor who determines the true cash value of all property in their jurisdiction, MCL 211.2(2). MCL 211.27(a) (1), requires the property shall then be assessed at 50% of its true cash value. The

Assessors' in the subject consolidated cases assessed an erroneous taxable value to the Petitioner's/Appellee's property, with both parties believing the assessment/taxable value was correct.

The Respondent/Appellant argument that MCL 211.10e required them to assess the erroneous taxable value is also false as it clearly states that it is a **guide** for the assessor; the assessor is still required to determine and assess the **TRUE CASH** (market value) of property. Whether or not, there was a place for CIAC on the tax forms is irrelevant, if the assessors' had done their duty and performed their due diligence in ascertaining the true cash value (market value) they would have determined that the correct value of CIAC "0" (zero).

CIAC does not add value and should not be assessed.

The *Wayne County* court stated:

"If CIAC can never be added to rate base and generates only its operating expense, any value it has to plaintiff's operations must be already reflected in plaintiff's net operating income. It is inappropriate to impute additional income since the property cannot produce any additional income. A reasonable buyer would not pay more for the property than the actual income justifies." page 24

CIAC adds no additional value to the market value, "true cash value", of the property of the Petitioner/Appellee and the CIAC that was added to the assessment/taxable value was a clear case of Mutual Mistake of Fact, mutually relied on by both parties. The inclusion of CIAC in the assessment/taxable value is what MCL 211.53a is intended to correct.

The Assessors' in the subject consolidated cases failed to correctly determine market value resulting in an erroneous assessment/taxable value of Petitioner/Appellee's personal property.

The *Ford* case is controlling in this matter, as it was a clear case where errors were made in determining the assessment of personal property, which is substantially similar to the erroneous addition of CIAC to the Petitioner/Appellee's personal property in the subject case.

The *Briggs* case has a completely different fact pattern as it related to an unauthorized school millage tax levied against the taxable value of all real and personal property in the district. There was no dispute as to the assessment/taxable value of the property being taxed.

### **CONCLUSION**

Petitioner/Appellee has stated valid claims under MCL 211.53a based on a mutual mistake of fact. Petitioner/Appellee and the Respondent/Appellee both relied on the erroneous STC guideline, for valuation of personal property, resulting in an incorrect assessment. Their reliance on the form was mutual as required by MCL 211.53a and all subsequent case law. Petitioner/Appellee realized the assessment is incorrect due to the fact that CIAC was determined to have no value. This was recognized by the STC in 2003 by removing CIAC from their guidelines. The mutual mistake caused an over-assessment of personal property that resulted in the Petitioner/Appellee overpaying its property taxes for the years at issue.

### **RELIEF REQUESTED**

Wherefore, based upon the forgoing reasons, the arguments contained within, and the fact that the Respondent-Appellants' does not dispute the erroneous assessment/taxable value the local assessor applied to Cherryland Electric Cooperative, the Petitioner-Appellee respectfully requests this Honorable Michigan Supreme Court issue an order to deny the Respondent-

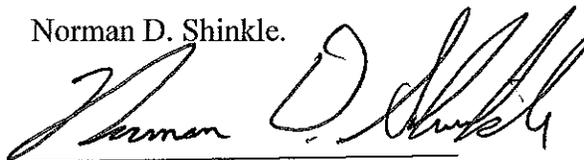
Appellants' Application to Appeal and Motion for Preemptory Reversal; and affirm the decisions of:

1. The Michigan Court of Appeals May 15, 2012 consolidated Opinion in Dockets Nos. 296829, 296830, and 296856.
2. Michigan Tax Tribunals' Final Opinions and Judgments, dated February 16, 2010 for Docket Nos. 296021, 296028, and 296026.

The Petitioner/Appellee further requests that the Michigan Supreme Court issue an order that the Petitioner/Appellee attorney fees and costs to be reimbursed by Respondent-Appellant and any other sanctions the Court deems appropriate for this blatantly frivolous appeal of a clear mutual mistake of fact decision by the MTT and affirmed by the Court of Appeals.

Respectfully submitted,

Norman D. Shinkle.



Dated July 23rd, 2012

Norman D. Shinkle (P30349)  
Attorney for Petitioner/Appellee  
2683 Donna Drive  
Williamston MI 48895  
(517) 655-5992

#### PROOF OF SERVICE

Norman D. Shinkle, deposes and says that on July 23rd, 2012, he did serve a copy of this Petitioner's/Appellee's Opposition and Response in the above captioned matter on Parties of Record, by enclosing the same in a sealed envelope addressed to said parties of record at the addresses stated above, and depositing the same at the United States Post Office, for posting, the postage thereon being fully paid.

Dated: July 23rd, 2012

By   
Norman D. Shinkle (P30349)

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**MICHIGAN SUPREME COURT**

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**PETITIONER'S/APPELLEE'S OPPOSITION AND RESPONSE TO  
RESPONDENT-APPELLANTS' MOTION FOR PREEMPTORY REVERSAL  
WITH PROOF OF SERVICE**

Now comes Cherryland Electric Cooperative, Petitioner-Appellee, through its Attorney Norman D. Shinkle, requests the right to OPPOSE and respond to the Respondent-Appellants' Motion for Preemptory Reversal of the Michigan Tax Tribunal Final Opinion and Judgments, dated February 16, 2010, affirmed by the Court of Appeals dated May 15, 2012; and responds to Respondent-Appellants' assertions as follows:

Assessors are not mandated to follow STC Bulletins or forms to determine assessments but only use them as a 'guide' by Statute MCL 211.10e:

**211.10e Use of official assessor's manual or any manual approved by state tax commission; records.**

Sec. 10e.

All assessing officials, whose duty it is to assess real or personal property on which real or personal property taxes are levied by any taxing unit of the state, shall use only the official assessor's manual or any manual approved by the state tax commission, consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the state tax commission **as a guide** in preparing assessments. [Emphasis added]

1. In *Briggs Tax Service LLC v Detroit Public Schools*, 485 Mich 69; 780 NW 2d 753 (2010) the Michigan Supreme Court did address the distinction between mutual mistakes of fact and mistakes of law when construing MCL 211.53a.
2. Petitioner-Appellee agrees.
3. Petitioner-Appellee agrees *Briggs* addressed the collection of an **invalid School Millage tax** applied to the school district; however, the parties in *Briggs* did not dispute the taxable value of property.
4. Petitioner-Appellee leaves Respondent-Appellants' to their proofs.
5. Petitioner-Appellee leaves Respondent-Appellants' to their proofs.
6. Petitioner-Appellee leaves Respondent-Appellants' to their proofs.
7. Petitioner-Appellee leaves Respondent-Appellants' to their proofs.

8. Petitioner-Appellee leaves Respondent-Appellants' to their proofs.
9. Petitioner-Appellee leaves Respondent-Appellants' to their proofs.
10. In the *Cherryland* consolidated cases the facts showed that the claim for refund was due to an **erroneous value** placed on CIAC that resulted in an erroneous taxable value for Petitioner-Appellee.
11. Petitioner-Appellee established that CIAC has no taxable value, at the MTT and affirmed by Court of Appeals; and that the local assessor assessed an erroneous value by including CIAC in taxable value, and that both the local assessor and Petitioner-Appellee relied upon this "mutual mistake of fact".
12. Petitioner-Appellee claimed, and established at the MTT and affirmed by Court of Appeals, under MCL 211.53a that a "mutual mistake of fact" occurred resulting in an erroneous taxable value being assessed by the local assessor.
13. The Court of Appeals duly considered and rejected the Respondent-Appellants' argument that the fact pattern of *Briggs*, a Millage tax case, closely mirrored this case, correctly concluding that the fact pattern of *Cherryland* was **substantially similar** to the case of *Ford Motor Company v City of Woodhaven*, 475 Mich 425; 716 NW 2d 247 (2006), a case where the "mutual mistake" resulted in an erroneous taxable value.
14. Petitioner-Appellee leaves Respondent-Appellants' to their proofs.
15. The Michigan Supreme Courts' ruling in *Briggs*, for an invalid school millage improperly applied to all the property owners of that district, is not relevant to this case; as the fact pattern of the subject case is substantially the same as *Ford*, with the "mutual mistake" causing the erroneous taxable value on the subject property.

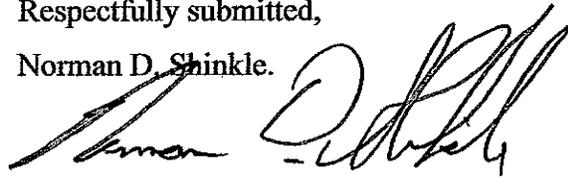
## RELIEF REQUESTED

Wherefore, based upon the forgoing reasons, the arguments contained within, and the fact that the Respondent-Appellants' does not dispute the erroneous taxable value the local assessor applied to Cherryland Electric Cooperative, the Petitioner-Appellee respectfully requests this Honorable Michigan Supreme Court issue an order to deny the Respondent-Appellants' motions for preemptory reversal; and affirm the decisions of:

1. The Michigan Court of Appeals May 15, 2012 consolidated Opinion in Dockets Nos. 296829, 296830, and 296856.
2. Michigan Tax Tribunals' Final Opinions and Judgments, dated February 16, 2010 for Docket Nos. 296021, 296028, and 296026.

Respectfully submitted,

Norman D. Shinkle.



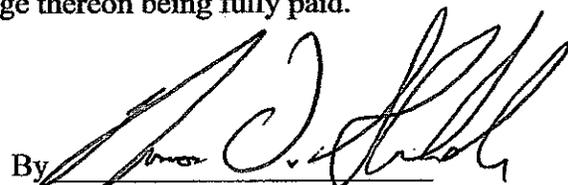
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Dated: July 23rd, 2012



By Norman D. Shinkle (P30349)