

**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. 145340
COA Docket No. 296829
MTT Docket No. 296021

Blair Township,
Respondent/Appellant.

Cherryland Electric Cooperative,
Petitioner/Appellee.

Supreme Court Case No. 145341
COA Docket No. 296830
MTT Docket No. 296028

East Bay Township,
Respondent/Appellant.

Cherryland Electric Cooperative,
Petitioner/Appellee.

Supreme Court Case No. 145342
COA Docket No. 296856
MTT Docket No. 296026

Garfield Township,
Respondent/Appellant.

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CLERK
MICHIGAN SUPREME COURT

**PETITIONER'S/APPELLEE'S RESPONSE TO AMICUS CURIAE BRIEF OF
MICHIGAN TOWNSHIPS' ASSOCIATION IN SUPPORT OF APPELLANT
TOWNSHIPS' APPLICATION FOR LEAVE TO APPEAL
DATED SEPTEMBER, 14 2012
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 Amicus Curiae Brief of Michigan Townships Association in support of Appellant Townships' Application for Leave to Appeal and Motion for Preemptory Reversal..

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	NO
The Michigan Court of Appeals	NO
The Michigan Tax Tribunal	NO
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 Michigan Statute that places any value on CIAC.
- The STC does not enact "Statutes of Law".
- No Administrative rule or Guideline allowed by an administrative rule can supersede or contradict a Michigan Statute enacted by the Michigan Legislature.
- The STC adoption of the form containing CIAC is a guide for assessors.
- The Assessor placing any value other than ZERO (0) for CIAC is in direct violation of MCL 211.2(2) and MCL 211.27(a) (1).

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

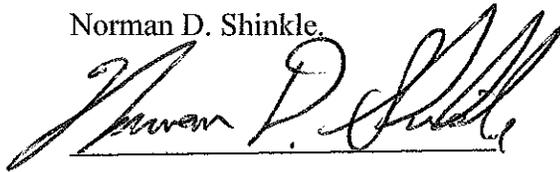
Wherefore, based upon the forgoing reasons, the arguments contained within, and the fact that the Respondent-Appellants' does not dispute the erroneous assessment/taxable value the local assessor applied to Cherryland Electric Cooperative, the Petitioner-Appellee respectfully requests this Honorable 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 September 24, 2012

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PROOF OF SERVICE

Norman D. Shinkle, deposes and says that on September 24, 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: September 24, 2012

By 
Norman D. Shinkle (P30349)