

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GENERAL PRODUCTS DELAWARE  
CORPORATION,

UNPUBLISHED  
May 8, 2003

Petitioner-Appellant, Cross-  
Appellee,

v

No. 233432  
Tax Tribunal  
LC No. 00-249550

LEONI TOWNSHIP,

Respondent

and

JACKSON COUNTY,

Intervening-Respondent-Appellee,  
Cross-Appellant.

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Before: Murphy, P.J., and Owens and Schuette, JJ.

PER CURIAM.

In this Tax Tribunal case, petitioner, General Products, appeals the Tax Tribunal's grant of partial summary disposition based on MCR 2.116(C)(4) and intervening-respondent, appellee Jackson Township appeals the Tax Tribunal's denial of its motion for summary disposition based on MCR 2.116(C)(10). We affirm.

**I. FACTS**

This case arises from the September 15, 1997 petition filed by petitioner with the Michigan Tax Tribunal regarding the 1994-1997 tax years. Petitioner is a Delaware Corporation that manufactures various automobile parts.

Petitioner filed the petition seeking to recover a portion of the personal property taxes paid to Leoni Township believing that it had made an overpayment. The petition alleged that when petitioner prepared its personal property statements, and then filed them with Leoni Township, it overpaid due to seven "mutual mistakes of fact" involving distinct categories of property. Specifically, petitioner alleged the following were "mutual mistakes of fact:" (1)

various types of personal property were misidentified as to their year of acquisition; (2) assets that had been disposed of were reported and taxed as if still owned or possessed by General Products; (3) exempt special tools were taxed; (4) various types of personal property were reported and/or taxed in the wrong property classification; (5) computer software was misclassified as taxable personal property; (6) exempt industrial facilities personal property was misclassified and taxed; and (7) certain real property consisting of raw materials and building improvements were misclassified and taxed as personal property.

Leoni Township utilized the information provided by petitioner on its personal property statements, resulting in the alleged incorrect assessments. After petitioner filed its petition with the Tax Tribunal, intervening-respondent-appellee Jackson County filed a motion to intervene in the proceeding.<sup>1</sup> The Tax Tribunal granted the motion to intervene.

On September 25, 1998, respondent and Leoni Township filed motions for partial summary disposition for claims involving the special tools exemption (one of the seven categories alleged by petitioner to involve mutual mistakes of fact). On March 8, 2001, the Tax Tribunal issued its orders.

First, the Tax Tribunal denied respondent's motion for summary disposition pursuant to MCR 2.116 (C)(4) and (C)(10) based on respondent's allegations that no genuine issue of material fact existed regarding the useful life of special tools. This decision is the basis for respondent's cross appeal.

Second, the Tax Tribunal granted respondent's motion for summary disposition relating to the issue of mutual mistake of fact alleged to have occurred in the special tooling exemption. The Tribunal determined that a taxable status exemption issue under a MCL 211.53a claim is an issue of law, and not an issue of fact. As a result, the Tax Tribunal reasoned it lacked jurisdiction in this matter.

Third, the Tribunal determined that petitioner did not satisfy the criteria for mutuality of mistake of fact. The Tribunal determined that in the present case, the mistake was unilateral because it occurred at a point in time before petitioner filled out its personal property statements and there was never a common mistaken belief. Thus, the Tribunal stated that it lacked jurisdiction pursuant to MCL 211.53a, which requires a mutual mistake of fact.

Finally, the Tax Tribunal sua sponte dismissed petitioner's remaining six claims regarding the other categories of property that it alleged were subject to mutual mistakes of fact. The Tribunal found that the remainder of the claims possessed identical issues regarding "mutual mistake of fact" and that the Tribunal lacked jurisdiction pursuant to MCL 211.53a.

## II. STANDARD OF REVIEW

Although we generally review the grant or denial of summary disposition de novo, *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998), "review of a decision by

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<sup>1</sup> Intervening respondent Jackson County is the appellee in this matter and will be referred to as either respondent or appellee throughout. Leoni Township is not an appellee and although is the original respondent, will be referred to as Leoni Township throughout.

the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994). While provisions that exempt a taxpayer from a taxing statute must be construed in favor of the taxing body, "imposition provisions of a taxing statute should be construed in favor of the taxpayer." *Evanston YMCA Camp v State Tax Comm*, 369 Mich 1, 7; 118 NW2d 818 (1962).

"When reviewing a motion for summary disposition under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that respondent was entitled to judgment as a matter of law, or whether the affidavits and the proofs show that there was no genuine issue of material fact." *Sun Communities v Leroy Twp*, 241 Mich App 665, 668; 617 NW2d 42 (2000).

### III. ANALYSIS

#### A. Mutual Mistake of Fact under MCL 211.53a

Petitioner argues that the Tax Tribunal erred in granting respondent's motion for summary disposition based on the Tribunal's finding that it lacked jurisdiction pursuant to MCL 211.53a because of the absence of a mutual mistake of fact. We disagree.<sup>2</sup>

MCL 211.53a provides for recovery of excess payments not made under protest. It states:

Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

The Restatement (First) of Restitution, § 6 Mistake (1937) defines a mistake as a "state of mind not in accord with the facts." It goes on to state, "There may be ignorance of a fact without mistake as to it, since mistake imports advertence to facts and one is ignorant of many facts as to which he does not advert." Here, the assessor based the assessment on the personal property statement, thus he was ignorant of the real facts and did not have a state of mind that allowed for a mutual mistake of fact.

"Mutuality" is defined in Black's Law Dictionary (7<sup>th</sup> ed) as:

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<sup>2</sup> We decline to address petitioner's first issue on appeal. Petitioner argues that the Tax Tribunal erred when it granted respondent's motion for summary disposition pursuant to MCR 2.116(C)(4) stating that the Tribunal lacks jurisdiction because an exemption or taxable status claim is a mistake of *law* and does not fall within the purview of MCL 211.53a, which requires a mutual mistake of *fact*. Our determination that summary disposition was properly granted based on the absence of a mutual mistake of fact is dispositive and makes review of petitioner's first issue unnecessary.

The state of sharing or exchanging something; a reciprocation; an interchange.

Here there was no mutuality because petitioner's mistake was based on its incorrect inventory and analysis of its property. The assessor's mistake was based on petitioner's representations on its personal property statement. Thus, there was a different basis for each of the two mistakes made. The nature of the taxation system and the sheer number of businesses that pay taxes do not allow each assessor to individually check each of petitioner's representations on its personal property statement. Petitioner argues that by accepting this statement, the assessor is adopting it as his belief and should be deemed to have made the same mistake as the petitioner. However, this is contrary to the plain meaning of the term "mutual mistake" of fact. In essence, petitioner is asking that its unilateral mistake be imputed to the assessor and reclassified as a mutual mistake of fact.

Statutory language should be construed reasonably, keeping in mind the purpose of the act. *Draprop Corp v Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001). Nothing will be read into a clear statute which is not within the manifest intention of the Legislature as derived from the language of the statute itself. *Roberts v Mecosta County General Hospital*, 466 Mich 57, 63; 642 NW2d 663 (2002). The fair and natural import of the terms employed, in view of the subject matter of the law, should govern. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, considering the context in which the words are used; technical terms are to be accorded their peculiar meanings. *Robertson v Daimler Chrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). The manner in which petitioner wishes to construe the language of this statute is unreasonable, particularly in light of case law as will be discussed *infra*. The plain meaning of the term "mutual mistake" is not satisfied where the mistaken belief of one party must be imputed to the other and is not an actually held belief.

### 1. Property Taxation Law Cases

Michigan case law provides very little assistance in the form of prior decisions addressing the definition of "mutual mistake of fact" under MCL 211.53a.

In *Wolverine Steel Co v City of Detroit* 45 Mich App 671, 674; 207 NW2d 194 (1973), although the Court ultimately determined that the case involved an issue of law, and not fact, the Court did make a brief "mutual mistake" analysis. The Court determined that mutual mistake had indeed been made, where the parties had access to, focused upon and contemplated the same fact and then each arrived at the same mistaken belief concerning that fact. Much later, the erroneous belief resulted in the incorrect assessment and payment of taxes. However, in this case the error was not based on an earlier, primary mistake made by *both* parties based on the same facts, instead, it was based on a mistake made by petitioner alone in its preparation of its personal property statement.

We note that petitioner asserts that the following statement of the *Wolverine Steel* Court should be interpreted so as to support its position that a the circumstances of this case satisfy the mutual mistake of fact criteria, "[w]e believe § 53a alludes to questions of whether or not the taxpayer had listed all of its property, or listed property that it had already sold or not yet received, etc." *Id.* at 674. However, this comment is dicta where the ultimate decision in the case turned on whether the mistake was one of fact or law. Although the determination that

mutual mistake occurred in the case was also dicta, the particular statement that petitioner urges this Court to follow is inconsistent with other case law involving mutual mistakes of fact and is somewhat vague in that it suggests that MCL 211.53a is available to both taxpayers and assessors (when it is only available to taxpayers). Thus, this statement does not provide instruction on the interpretation of “mutual mistake of fact” under MCL 211.53a.

## 2. Contract Law Cases

We believe that the Tribunal properly cautions against the use of contract-based case law and the definitions of “mutual mistake” contained within because there is an element of equity in contract law that is not present in property tax law. Our Supreme Court noted in *Spoon-Shacket Co, Inc v Oakland County*, 356 Mich 151, 171; 97 NW2d 25 (1959), that “governmental powers of taxation are controlled by constitutional and statutory provisions. . . it is not possible to adjudicate issues arising under taxation laws by the general application of equitable principles.”

However, some of the general principles and terminologies regarding what constitutes a “mutual mistake” of fact are helpful in resolving this issue. The Tribunal presented three contract cases which provide some instruction on the types of situations that support a finding of mutual mistake of fact.

In *Harris v Axline*, 323 Mich 585, 588; 36 NW2d 154 (1949), a buyer and seller entered into a land contract sale. Before the purchase, the agent of the seller and the buyer paced off the 40-foot frontage and confirmed the land description described in the title. After the purchase, a survey revealed that a 6-foot portion of the frontage was owned by the City of Lansing. Our Supreme Court found that this was a mutual mistake of fact because both parties were mistaken as to the actual lot size. Both parties had access to the same facts when they concluded that the frontage was 40 feet. In contrast, both parties in this case did not have the same information. Petitioner had the property in its possession and it made its determination based on that information. Respondent had only the report of petitioner on which to base its assessment. Thus, unlike in *Harris*, the facts of this case do not indicate that there was mutuality of both fact and belief because the cause and effect were not contemporaneous.

In *Gordon v City of Warren Planning and Urban Renewal Commission*, 388 Mich 82, 89; 199 NW2d 465 (1972), a planning consultant incorrectly drafted a site plan and indicated that a road was narrower than it actually was. Later, the plaintiffs sought approval for a multiple dwelling project and entered into a site plan approval agreement with the city pursuant to litigation on the matter. The judgment incorporated the error in the site plan by reference. Once building of the project commenced, the error was discovered. On appeal, our Supreme Court found that both plaintiffs and defendant honestly and in good faith believed that the site plan was proper and that the agreement worked out by the parties could be fulfilled and held that there was a mutual mistake of fact which occurred in the original judgment entered by the trial court. *Id.* at 89. Mutuality occurred because both parties relied at the same point in time on the erroneous site plan. The mutual mistake of fact did not occur when the planning consultant made the error and provided the site plan to the parties (similar to the facts of this case), it occurred when both parties believed the plan to be accurate and allowed it to be incorporated into the judgment.

In *Lenawee County Bd of Health v Messerly* 417 Mich 17, 30-31; 331 NW2d 203 (1982), an apartment complex was sold on a land contract. It was later determined that the septic system was inadequate and incurable. Neither party knew of the problem before the sale because the system had been installed by a previous owner. The purchaser examined the property. The court stated:

All of the parties to this contract erroneously assumed that the property transferred by the vendors to the vendees was suitable for human habitation and could be utilized to generate rental income. The fundamental nature of these assumptions is indicated by the fact that their invalidity changed the character of the property transferred. *Id.* at 22.

In the *Lenawee County Bd of Health* decision the mutual mistake of fact was in the basic assumption that the land was suitable for use as an apartment complex and for habitation by humans. The *Lenawee County Bd of Health* decision did not involve one party making a mistake and then providing erroneous information to the other party, who relied on that incorrect information. It was a case where both parties made an identical assumption based on identical information.

These three contract cases provide guidance as to the meaning of the doctrine of mutual mistake. The parties must have a shared mistaken belief regarding a fact which constitutes a basic assumption underlying the contract. The nature of the mistakes that qualified as mutual mistakes of fact in the above mentioned contract law cases (unlike the present case) was that they all involved mutuality and in all three cases the parties made their mistakes based on the same information.

### 3. Statutory Interpretation

Petitioner argues that the Tribunal erred when it applied the doctrine of *in pari materia* to its analysis of MCL 211.53a when it incorporated the limiting language found in MCL 211.53b into its interpretation of MCL 211.53a.

If two or more statutes arguably relate to the same subject or have the same purpose, they are considered in *pari materia* and must be read together to determine legislative intent. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998); *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998), quoting *Detroit v Michigan Bell Telephone Co*, 374 Mich 543, 558; 132 NW2d 660 (1965). The purpose of the *in pari materia* rule is simply to assist this Court in interpreting the Legislature's intent. *Webb, supra*. Statutes relate to the same subject if they relate to the same person or thing or the same class of persons or things. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 427; 565 NW2d 844 (1997), quoting *Detroit, supra* at 558. Statutes need not be enacted at the same time or even refer to each other to be read in *pari materia*. *State Treasurer, supra*; *Travelers Ins v U-Haul of Michigan, Inc*, 235 Mich App 273, 279; 597 NW2d 235 (1999).

211.53b provides in pertinent part:

If there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating

to the assessing of taxes, the error or mutual mistake shall be verified by the local assessing officer, and approved by the board of review. . . . If the error or mutual mistake results in an overpayment or underpayment, the rebate shall be made to the taxpayer or the taxpayer shall be notified and payment made within 30 days of the notice. A correction under this subsection may be made in the year in which the error was made or in the following year only. MCL § 211.53b(1)

In *International Place Apartments IV v Ypsilanti Township*, 216 Mich App 104, 108, 548 NW2d 668 (1996), this Court applied MCL 211.53b and determined that it did not apply to allow correction of an assessment which did not include some newly added assessable property because of a filing error in the assessor's office. The Court stated:

The mistake in the case at bar was not limited to merely recording a number incorrectly on the assessment rolls or performing a mathematical error in arriving at the final assessment figure. Rather, the figure recorded on the assessment rolls was accurate in the sense that it was the number intended by the assessor, albeit that the assessor may well have erred in the determination of what that number should be by failing to consider all relevant facts. In short, we agree with the Tax Tribunal that § 53b allows for corrections of clerical errors of a typographical or transpositional nature, but does not permit a reappraisal or reevaluation through the use of new or existing data of any type. That is, § 53b simply does not include cases where the assessor fails to consider all relevant data, even if the root of the assessor's error may have been a ministerial mistake such as the misfiling of a document.

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The facts not being in dispute with regard to how the mistake arose, it is simply a matter of statutory interpretation whether that mistake is correctable under the statute. We have concluded that it is not.

Here, the Tribunal noted the reasoning and decision in *International Place*, *supra* and applied this same reasoning to its interpretation of the events of this case (it also noted that the Court in *Wolverine Steel*, *supra*, indicated that relief under MCL 211.53a was intended to be narrow and specifically limited. *Id.* at 636). The Tribunal stated:

. . . the mutuality of the fact and the mutuality of the mistaken belief must be so blatantly simple and obvious that, in review of events, both are clearly discernible on their face by a trier of fact.

In the Tribunal's view, that level of obviousness – the mutual mistake being equal in simplicity as were the clerical errors defined in *International Place* – is met only by dual mutuality, as the only form of mutuality that lends itself equally to ready discernment and simplicity. That is, the fact is mutual as to the material data reviewed and contemplated, and the mistaken belief is mutual in all respects . . . The mutuality occurs at an intersection of the parties' respective specific focus on a singular fact or set of facts of material import, from which is drawn a common mistaken belief. By the same means, simplicity is distinguished by the

mutuality criteria, both parties being aware of and having contemplated the same fact, and arriving at the same mistaken belief, both the fact and the mistaken belief being the primary cause of the erroneous assessment/tax.

#### 4. Available Remedies

We note that petitioner did have other remedies that could have been used in an attempt to recover an overpayment of personal property taxes. MCL 211.30 requires taxpayers who believe that they were incorrectly assessed to file petitions before the local board of review in March. MCL 211.30 allows taxpayers to raise any type of claimed error including factual, legal, valuation, uniformity, exemption, description and ownership. Assessments are made in January and February so taxpayers have an opportunity to discover a mistake before March and have the mistake resolved at the board of review hearing.

Relief is also available to a petitioner who is incorrectly assessed under MCL 211.154, which states in relevant portion:

(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 the state tax commission of the incorrect reporting or omission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll. The commission shall issue an order certifying to 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 the amount of taxes due as computed by the correct annual rate of taxation for each year except the current year. Taxes computed under this section shall not be spread against the property for a period before the last change of ownership of the property.

The appropriate avenues of relief for petitioner's claims were under MCL 211.30 and MCL 211.154 and not MCL 211.53a.

When taken as a whole, the plain meaning of the statute, case law, statutory interpretation, and the availability of another remedy indicate that the Tribunal was correct in its determination that this situation did not present a "mutual mistake of fact" and was not properly brought under MCL 211.53a. There were two separate, but related events in this case. The first was a unilateral mistake made by petitioner in its preparation of its personal property statement. The second event was respondent's reliance on petitioner's assertions in making its assessment. There was no "mutual mistake" because each party had different information on which to base their ultimate conclusions.

#### B. Sua Sponte Dismissal of Remaining Claims

Following its determination that relief was not available to petitioner pursuant to MCL 211.53a, the Tribunal reviewed petitioner's six additional claims and discovered that all seven claims involve erroneous reporting by petitioner and all seven are based on the same assertion

that the mutual mistakes were in the filing and acceptance of the erroneous personal property statements. The Tribunal sua sponte determined that this series of events does not constitute mutual mistake for the purposes of MCL 211.53a in any of the remaining six claims and dismissed those claims for lack of jurisdiction.

Petitioner asserts that the Tribunal erred in ruling sua sponte. However, our Supreme Court, in *Fox v University of Michigan Board of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965), stated that a court (here the Tribunal):

At all times is required to question sua sponte its own jurisdiction (whether over a person, the subject matter of an action, or the limits on the relief it may afford).

Here, the Tribunal properly questioned its ability to provide relief on the additional counts and its decision to dismiss those counts sua sponte was not in error.

Petitioner also argues that this sua sponte dismissal denied petitioner the opportunity to be heard on this matter. However, although petitioner asserts that it was entitled to an oral argument, the Tax Tribunal Rules do not require that oral arguments be provided on motions. *Federal Mogul Corp v Department of Treasury*, 161 Mich App 346, 356-357; 411 NW2d 169 (1987). Respondent correctly notes that petitioner was given the opportunity to express its position in its brief in opposition to partial summary disposition.

In short, the tribunal correctly determined that there was no mutual mistake of fact with regard to the special tools exemption claim. For the other claims to result in a different resolution, the alleged “mutual mistake of fact” would need to have occurred in a different manner. Here, the six other claims all resulted from the unilateral mistakes of petitioner. Additional facts are unnecessary for the resolution of these issues and hearings on each additional count would be a waste of the Tribunal’s resources. Therefore, the Tribunal’s decision to dismiss these claims sua sponte was correct.

### C. Cross Appeal

Respondent argues on cross appeal that the Tax Tribunal erred when it failed to grant summary disposition under MCR 2.116(C)(10) based on respondent’s assertion that petitioner’s property did not qualified for an exemption as “special tools.” Our decision that summary disposition was properly granted under MCR 2.116(C)(4) where there was an absence of a mutual mistake of fact, obviates review of this issue.

Affirmed.

/s/ William B. Murphy  
/s/ Donald S. Owens  
/s/ Bill Schuette