

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Cherryland Electric Cooperative,  
Petitioner,

v

MTT Docket No. 267955

Bear Lake Township,  
Respondent.

Tribunal Judge Presiding  
Kimbal R. Smith III

**FINAL OPINION AND JUDGMENT**

The underlying issue in this case relates to the improper inclusion of contributions in aid of construction (CIAC) in the assessing of Petitioner's utility personal property for the tax years at issue. The Tribunal, having given due consideration to the findings of fact, indicated herein, and the applicable statutory and case law, concludes that the inclusion of contributions in aid of construction (CIAC) in the determination of the true cash and taxable values for the subject personal property for the tax years at issue was the result of a mutual mistake of fact pursuant to MCL 211.53a. See *Ford Motor Company v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247, 256 (2006). See also *Eltel Associates, LLC v City of Pontiac*, 278 Mich App 588; 752 NW2d 492 (2008), and *Briggs Tax Service, LLC v Detroit Public Schools, et al*, 282 Mich App 29; 761 NW2d 816 (2008). The mutual mistake of fact was the parties' shared erroneous belief that CIAC was required to be reported and included pursuant to the Michigan State Tax Commission's personal property statements and directives. As a result, Petitioner is entitled to a refund of any excess taxes paid, without interest, as provided by MCL 211.53(a).

### FINAL VALUES

Given the above, the property's final true cash, state equalized and taxable values for the tax years at issue are as follows:

**Parcel Number:** 51-02-900-016-00

Year	TCV	SEV	TV
1999	\$ 164,968	\$ 82,484	\$ 82,484
2000	\$ 177,290	\$ 88,645	\$ 88,645
2001	\$ 184,670	\$ 92,335	\$ 92,335

### PROCEDURAL HISTORY

On September 17, 2007, Respondent Townships in Leelanau County and in Manistee County filed their Request for Adjournment of the scheduled September 25, 2007, status conference. The Townships' request was granted. The Tribunal conducted a status conference in October of 2007 to address certain concerns relating to a subset of "Cherryland" cases involving just the 1999 tax year. During the October 2007 status conference, the parties indicated that they would be willing to "dispense with a full hearing." As a result, another status conference was held on July 6, 2008, to discuss information necessary for the resolution of the case. Pursuant to the July 6, 2008, status conference, an Order was entered on July 30, 2008, requiring the parties to submit "written information" informing the Tribunal as to the specifics of the STC's purported "CIAC" agreement and the STC's legal basis, if known, for including CIAC as giving "co-ops" a "break with an economic condition factor" and briefs addressing whether the establishment of the assessments at issue pursuant to such an agreement would constitute a mistake of fact or law.

The parties timely submitted the requested information and briefs. Moreover, Respondent submitted, although improperly, a reply to Petitioner's written information and brief on December 19, 2008, that provides, in pertinent part, "both the Petitioner, Cherryland, and the

Respondent Townships, submitted responsive briefs on the [questions] supported by extensive documents and affidavits.”

The information requested and submitted to the Tribunal in the Grand Traverse County cases is equally relevant and applicable to the Leelanau County and Manistee County cases, as all the cases involved parallel factual and legal issues and a common Petitioner.

As a result of the filing of the information and briefs and the parties’ “willingness” to dispense with a full hearing, the Tribunal informed the parties during a final status conference on December 2, 2008, that the case would be decided based on the briefs previously filed. On December 30, 2008, the Tribunal issued a Final Opinion and Judgment in *Cherryland Electric Cooperative v Township of Green Lake*, MTT Docket No. 296025.<sup>1</sup> The Tribunal found that the inclusion of CIAC on the STC forms for rural electric cooperatives was error both in the valuation of personal property and in uniformly assessing all utilities. As such, the Tribunal found that the parties’ assumption that the personal property statement requiring the inclusion of CIAC for purposes of valuation as correct was a mutual mistake of fact. Therefore, the Tribunal found that Petitioner was entitled to a refund pursuant to MCL 211.53(a). Consequently, on January 8, 2009, Respondent filed its Motion requesting that the Tribunal (i) reconsider the Final Opinion and Judgment entered in *Cherryland Electric Cooperative v Township of Green Lake* on December 30, 2008 and (ii) amend its findings. The Tribunal denied Respondent’s Motion, finding that Respondent failed to demonstrate a palpable error that misled the Tribunal and the parties and that would have resulted in a different disposition if the error was corrected.

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<sup>1</sup> *Cherryland Electric Cooperative v Township of Green Lake* is one of twenty-four cases from Grand Traverse County, Michigan that share common parties, facts, and legal issues.

## BACKGROUND

The subject property is located in the Township of Bear Lake, Manistee County, State of Michigan. The property is classified for taxation purposes as 551 Utility Personal Property and the average level of assessment in effect for the property's classification for the tax years at issue is 50%.

## SUMMARY OF PETITIONER'S CASE

Petitioner was represented by Norman D. Shinkle, attorney. On January 8, 2003 Petitioner submitted a petition alleging that the properties' true cash, state equalized, and taxable values for the tax years at issue are as follows:

**Parcel Number:** 51-02-900-016-00

Year	TCV	SEV	TV
1999	\$ 164,968	\$ 82,484	\$ 82,484
2000	\$ 177,290	\$ 88,645	\$ 88,645
2001	\$ 184,670	\$ 92,335	\$ 92,335

The Petition also alleged that the State Tax Commission was incorrect in denying Petitioner's application and request for reconsideration for adjustment of its properties' values due to incorrectly reported property pursuant to MCL 211.154.

Moreover, Petitioner is appealing the decision of the STC claiming applicability of MCL 211.154, incorrect reporting and, in the alternative, applicability of MCL 211.53a, mutual mistake of fact. Petitioner believes "that the assessment was improperly reported in that it includes non-property. The assessment includes contributions in aid of construction, (CIAC)." <sup>2</sup>

Petition Item Number 8 states:

In the alternative, MCL 211.53a also is applicable and gives the Tribunal jurisdiction in this matter. The State Tax Commission Bulletin #1 of 1984 issued on January 11, 1984 specifically deals with the assessability of the personal property of cooperatives as compared to investor owned utilities. The Bulletin

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<sup>2</sup> Petitioner's item number 6.

specifically requires that “Rural electric cooperatives will prepare their personal property statements using the same procedures as investor owned utilities in Michigan.” Then after the same procedures are used to determine the cooperative’s assessment, a System Economic Factor is applied to lower the assessment to achieve uniformity because the cooperative’s personal property does not have as high a value as the investor owned utility. This disparity has been recognized over the years by the application of a System Economic Fact. Both Petitioner and the State Tax Commission believed that CIAC was being assessed to both the cooperatives and the investor owned utilities. But in fact, the investor owned utilities were not assessed for CIAC. The mistake was mutual.

A conference was held in this matter on July 6, 2007.<sup>3</sup> Resulting from the July 6, 2007 conference was the Tribunal’s July 30, 2007 Order Requiring Parties to Submit Information. In compliance with the July 30, 2007, Order, Petitioner submitted a brief and the following exhibits on August 24, 2007:

1. State Tax Commission (STC) Bulletin No. 1 dated January 11, 1984, to Assessing Officers and County Equalization Directors regarding Reporting and Valuation Procedure for Rural Electric Cooperative.
2. State Tax Commission Bulletin 13 dated October 28, 2003, to Assessors and Equalization Directors regarding Procedural Changes to be Implemented Starting in the 2004 Assessment Year.
3. *County of Wayne, et al v Michigan State Tax Commission et al*, MTT Docket No. 273674.
4. *Alger-Delta Co-Operative Electric Association v Bay de Noc Township*, 13 Mich App 41.
5. Study of System Economic Factors for the Michigan Electric Cooperative Association (MECA) as of January 1, 2001 by American Appraisal Property Tax Services, Inc.
6. Department of Treasury Memo dated October 5, 1983, to Ed Johnson from Les Anderson regarding Meeting with Property Tax Committee, Michigan Electric Coops.
7. Department of Treasury letter dated November 21, 1983 from Leslie V. Anderson, Manager of the Utilities Valuation Section, to Thomas G. Hanna, General Manager of Top O’Michigan Rural Electric Company.
8. Draft of a letter to the State Tax Commission from Thomas G. Hanna, Chairman of the MECA Tax Committee, date stamped December 8, 1983, proposing the calculation of a System Economic Factor (SEF).
9. Letter to the State Tax Commission dated December 12, 1983, from Thomas G. Hanna, Chairman of the MECA Tax Committee, representing the finalized letter and attachments described in Exhibit 8.

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<sup>3</sup> On July 21, 2003 this case was placed in abeyance pending the outcome of *County of Wayne, et al v Michigan State Tax Commission, et al*, MTT Docket No. 273674, which was then pending before the Michigan Court of Appeals. It was removed from abeyance on April 30, 2004. The case was once again placed in abeyance on October 12, 2004, pending the resolution of MTT Docket Nos. 296073 and 296098. It was removed from abeyance on June 6, 2007.

10. Department of Treasury Memo dated December 15, 1983, to Emil Tahvonen from Edward G. Johnson regarding Item No. 8, November 29, 1983 STC Meeting.
11. Copy of exhibit number nine with handwritten changes.
12. Top O'Michigan Rural Electric Company Memorandum dated January 6, 1984 from Tom Hanna to All Distribution Managers regarding 1984 Personal Property Statements.
13. Handwritten memo dated January 15, 1985 with Fruitbelt Coop in parenthesis signed by someone with name beginning with "L" addressing CIAC.
14. Affidavit of Thomas G. Hanna dated October 22, 2002, stating that it was his understanding that cooperative-owned utilities were to be assessed the same as investor-owned utilities except for the SEF.
15. Affidavit of Donald R. Pahl dated October 31, 2002, stating that he participated in the 1983 process of changing the way the personal property of the Michigan Rural Electric Cooperatives were assessed. He indicates that at that time CIAC was added to the costs reported because it was believed that all utilities did so.
16. *Ford Motor Company v City of Woodhaven, supra.*

On page two of Petitioner's brief of August 24, 2007, Petitioner states:

The form given to the electric cooperatives, in 1984 and thereafter, mistakenly contained CIAC as part of the assessment calculation even though the IOUs [Investor Owned Utilities] were not assessed on CIAC. This mistake was discovered and the process to correct the problem began. The STC recognized the problem and corrected it going forward in Bulletin #13 of 2003, Exhibit # Two by eliminating CIAC from electric cooperatives' assessments, thereby conforming to Bulletin #1 of 1984. But prior to the STC correcting the mistake, both parties mutually relied on the form containing the mistake resulting in incorrect assessments. The problem can be corrected under MCL 211.53a. The addition of CIAC was a factual mistake, relied on by both the taxpayer and assessor.

In response to Respondent's contention that the electric cooperatives had agreed to be assessed on CIAC in exchange for the use of the System Economic Factor, Petitioner's brief states on page 7 that "None of the many communications indicate any 'agreement' that electric cooperatives pay CIAC in exchange for the ECF."

### **SUMMARY OF RESPONDENT'S CASE**

Respondent was represented by Thomas A. Grier, attorney; and Dave Meister, Assessor.

On February 4, 2004, Respondent filed its "Answer to Petition" requesting the Tribunal to uphold the following values:

**Parcel Number:** 51-02-900-016-00

Year	TCV	SEV	TV
1999	\$ 289,200	\$ 144,600	\$ 144,600
2000	\$ 253,800	\$ 126,900	\$ 126,900
2001	\$ 268,400	\$ 134,200	\$ 134,200

In compliance with the July 30, 2007 Order, Respondent Townships in Grand Traverse County submitted a brief and the following exhibits on August 13, 2007:

1. First Affidavit of Leslie V. Anderson dated August 21, 2007.
  - a. Notes, dated January 4, 1983, citing reference to the discussion of CIAC at Paragraph VIII as part of the Committee work.
  - b. STC Bulletin No. 1 of 1984.
  - c. Department of Treasury letter dated May 16, 1984 from Les Anderson to Tom Hanna.
  - d. STC Minutes dated June 16, 1984.
  - e. Department of Treasury letter from Les Anderson with STC-approved forms.
2. Thomas Hanna, Chairman, MECA Tax Committee, letter dated December 8, 1983.
3. *County of Wayne v Michigan State Tax Commission*, 261 Mich App 174 (2004).
4. *County of Wayne v Michigan State Tax Commission*, Michigan Tax Tribunal Docket No. 273674.
5. STC Bulletin No. 13, dated October 28, 2003.
6. Second Affidavit of Leslie V. Anderson, dated August 22, 2007.
7. Sample petitions of the Ontonagon County Rural Electrification (OCRE) and Cherryland Electric Cooperative.
8. Affidavit of Thomas G. Hanna dated October 22, 2002.
9. Department of Treasury Form No. 633, revised October 2006.
10. *Ford Motor Company v City of Woodhaven*, 475 Mich 425 (2006).
11. *Wolverine Steel Company v City of Detroit*, 45 Mich App 671 (1973).

In its response, Respondent Townships in Grand Traverse County contends that “Detailed Affidavits authored by Mr. Anderson<sup>4</sup> and other documentary evidence show clearly that STC guidelines required REAs [Rural Electric Associations] to report CIAC beginning in 1984 and that both the STC and the REAs understood the requirement at the time...”<sup>5</sup> Respondent

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<sup>4</sup> Mr. Leslie V. Anderson was the former Manager of the STC’s Utilities Valuation Section during the time period that led to STC Bulletin No.1 of 1984.

<sup>5</sup> Respondent’s Response to Order Requiring Parties to Submit Information, p 2

Townships in Grand Traverse County also contends that due to this knowledge, Petitioner “cannot claim a mutual mistake of fact pursuant to MCL 211.53[a].”

Respondent contends that “the SEF formula...sought to obtain uniformity between REAs and IOUs in the valuation process.” Respondent contends that this purpose was in addition to addressing “discrepancies between the earning power of transmission lines owned by REAs located in different areas” [e.g., different concentrations of customers]. Respondent contends that the personal property of Petitioner was properly reported and assessed in the tax years at issue.

### **FINDINGS OF FACT**

The Tribunal’s factual findings must be supported by competent, material and substantial evidence. See *Antisdale v Galesburg*, 420 Mich 265 (1984). In that regard, the Tribunal, having given due consideration to the testimony and evidence properly submitted and the case file, finds that Petitioner submitted a petition on January 8, 2003, contesting the valuation of the personal property identified by parcel number 51-02-900-016-00 based on MCL 211.53a, a mutual mistake of fact.

The Tribunal finds that a survey was conducted for the years 1980 through 1982 that showed that the TCV calculated for distribution plants of electric cooperatives using the State Tax Commission schedules exceeded book values of the cooperatives by 29.5% in 1980, 35% in 1981 and 42.6% in 1982. The Tribunal finds that in July of 1983 the Michigan Electric Cooperative Association formed a committee to study this situation, working with STC staff, to develop an alternative to provide a more accurate determination of true cash value. This committee was referred to as the “Property Tax Committee” of MECA.<sup>6</sup>

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<sup>6</sup> State Tax Commission Bulletin One, 1984

The Tribunal finds that the handwritten note of Mr. Leslie V. Anderson, Manager of the STC Utilities Valuation Section, from a January 4, 1983 “Pers. Prop. Workshop” makes one mention of CIAC. The meaning of the reference, particularly “Do Not Consider Contribs.” has not been made clear to the Tribunal. These notes preceded the formation of the Michigan Electric Cooperative Association (MECA) committee by six months.<sup>7</sup>

The Tribunal finds that on January 11, 1984, the STC issued a bulletin regarding “Reporting and Valuation Procedure for Rural Electric Cooperatives” stating that the true cash value of distribution plant assets will be determined by using actual cost and that “Rural electric cooperatives will prepare their personal property statements using the same procedures as the investor owned utilities in Michigan.” Additionally, the Tribunal finds that the STC indicated that “A system economic factor will be based upon the cooperative’s kilowatt hour sales per mile of line.” The Tribunal finds no mention whatsoever in this memo of CIAC.<sup>8</sup>

The Tribunal finds that the forms issued by the STC included a column titled “Nonrefundable Contributions.”<sup>9</sup> The instructions for that form include no reference to CIAC. According to Mr. Anderson, the REAs listed their CIAC-funded assets in this column.<sup>10</sup>

The Tribunal finds no evidence that the issue of CIAC or its uniform application to all utilities was discussed once the MECA committee was formed. The Tribunal finds no mention of CIAC in the following six items of correspondence that were submitted into evidence:

1. An October 5, 1983, State of Michigan, Department of Treasury, Inter-Office Memorandum from Leslie V. Anderson, Manager of the Utilities Valuation Section, to Ed Johnson, affiliation unidentified, regarding a meeting of the Property Tax Committee where a discussion of the use of actual cost of personal property adjusted with a Factor for Adjustment to Actual Cost (FAAC) took place.<sup>11</sup>

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<sup>7</sup> State Tax Commission Bulletin One, 1984

<sup>8</sup> State Tax Commission Bulletin One, 1984

<sup>9</sup> Respondent Exhibit 1E

<sup>10</sup> Affidavit of Leslie V. Anderson, p 4

<sup>11</sup> Petitioner Exhibit 6

2. A letter dated November 21, 1983, from Leslie V. Anderson to Thomas G. Hanna, General Manager of Top O' Michigan Rural Electric Company and Chairperson of the Property Tax Committee, in which a proposed System Economic Factor (SEF) based on Kilowatts per Hour (KWH) sales per mile is proposed.<sup>12</sup>
3. A draft of a letter, sent to Leslie V. Anderson, addressed to Robert O. Vandermark, Chairperson of the State Tax Commission, from Thomas G. Hanna regarding the recommendations of the Property Tax Committee for a new system of establishing the TCV of the distribution plants of REAs based on the use of actual costs and an SEF.<sup>13</sup> Attached to this draft were "Instructions for Filing Distribution System Personal Property Statements" and the following forms:
  - a. Schedule 1 – Calculation of Net Plant Value,
  - b. Schedule 1a – Calculation of Average Cost of Units,
  - c. Schedule 2 – Statement of Personal Property, and
  - d. System Economic Factor (SEF) Calculator and graph thereof.
4. The actual letter, per above, addressed to Robert O. Vandermark and dated December 12, 1983, which included the following; "Note: Parts 1 and 2 would have the cooperatives prepare their personal property tax statements the same as the investor owned utilities in Michigan do."<sup>14</sup>
5. A December 15, 1983, State of Michigan, Department of Treasury, Inter-Office Memorandum from Edward G. Johnson, affiliation unidentified, to Emil Tahvonen, affiliation unidentified, regarding Item No. 8 of the November 29, 1983 STC Meeting. The memo indicates that the STC gave tentative approval of the new reporting system for REA personal property. Attached to this letter is a copy of the December 12, 1983 letter above.<sup>15</sup>
6. A January 6, 1984, Top O' Michigan Rural Electric Company Memorandum from Tom Hanna to All Distribution Managers which supplies a "corrected personal property statement (Schedule 2)" and provides a 7 point attached memorandum of the same date on the details of the completion of the form.<sup>16</sup>

The Tribunal finds that there is a lack of consistent direction on CIAC. Petitioner Exhibit 13 displays notes of a January 15, 1985, conversation between Don Woodhouse of the Fruitbelt Cooperative and Les Anderson. In the conversation notes it appears that Fruitbelt Coop included

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<sup>12</sup> Petitioner Exhibit 7

<sup>13</sup> Petitioner Exhibit 8 and Respondent Exhibit 2

<sup>14</sup> Petitioner Exhibit 9

<sup>15</sup> Petitioner Exhibit 10

<sup>16</sup> Petitioner Exhibit 12

CIAC-funded costs in its reported assets until 1972. Les Anderson indicated in his notes the impact this would have on the calculation of the value of retired property. After the adoption of the revised forms in 1984 there was uniformity among REAs but none between REAs and IOUs.

Petitioner Exhibit 14 is the October 22, 2002, Affidavit of Thomas G. Hanna in which he indicates he believed that REAs were being assessed on CIAC but he thought IOUs were assessed in the same manner. He states:

It was my understanding at that time that, except for the SEF, the process to determine the personal property assessment for cooperatives was to be the same as that of the investor owned utilities. Had I been aware that investor owned utilities were not assessed for Contributions in Aid of Construction (CIAC), as the cooperatives were, I would have recommended to MECA not to endorse any new assessment system unless this disparity be removed.

The Tribunal finds that in an October 31, 2002, Affidavit, Petitioner Exhibit 15, Donald R. Pahl, a 30-year employee of Cherryland Electric and a member of the MECA Property Tax Committee, stated “It was my understanding that the assessment procedures of all electric utilities would be the same, except the system economic factor that would be applied to Michigan Rural Electric Cooperatives to reach uniformity with investor-owned utilities.”

The Tribunal placed this case in abeyance on July 21, 2003, pending the outcome of *County of Wayne, et al v Michigan State Tax Commission, et al*, MTT Docket No. 273674, which was then pending before the Michigan Court of Appeals. It was removed from abeyance on April 30, 2004.

The Tribunal once again placed this case in abeyance on October 12, 2004 pending the resolution of MTT Docket Nos. 296073 and 296098. On June 6, 2007, these cases were dismissed for lack of jurisdiction.

The Tribunal also finds that in an August 22, 2007, Affidavit, Respondent Exhibit 6, Leslie V. Anderson, Manager of the Utilities Valuation Section, stated that he couldn't remember

if IOUs were reporting CIAC prior to 1984 or if the matter was discussed by the MECA Property Tax Committee. He also indicated that if IOUs were not reporting CIAC-funded property as part of their base, they should have been doing so.

The Tribunal also finds that the minutes of the STC meeting of June 14, 1984, Respondent Exhibit 1D, reflects that Item 8, “Proposed Form L-4175 D for Cooperative Electric Distribution companies” was reviewed and approved. This item was one of 19 items on the agenda of a meeting that began at 4:00 PM. The Tribunal finds that the time allotted to this item was probably not sufficient for the STC to discuss or determine the uniformity in assessing procedures applied to REAs and IOUs.

The Tribunal finds that both parties agreed to be heard on the file during a status conference held telephonically on October 6, 2008.

The Tribunal finds that the value of the subject property reported on the tax roll includes CIAC- financed assets. The Tribunal also finds that if CIAC-financed assets were not included on the roll, the value of the subject property would be that reflected in the Final Values section of this decision.

### **CONCLUSIONS OF LAW**

The assessment of real property in Michigan must not exceed 50% of its true cash value. Const 1963, art IX, § 3. The Michigan Legislature defines “true cash value” to mean “the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price which could be obtained for the property at private sale, and not at forced or auction sale.” See MCL 211.27(1). “[T]rue cash value” is synonymous with “fair market value.” *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 211 NW2d 588 (1974).

The Tribunal must find a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). Initially, Petitioner must prove, by the greater weight of the evidence, "that one or more of the assessments in question were too high . . ." *Id.* at 768. The Tribunal may then continue on to determine a lawful assessment. In turn, the determination of a lawful assessment facilitates the calculation of the property's taxable value as provided by MCL 211.27a.

MCL 211.27(1) does not mandate any single valuation method in order to determine fair market value. *Huron Ridge LP v Ypsilanti Tp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). There are various methods that the parties and the Tribunal may apply. Any method recognized as accurate and reasonably related to fair market valuation may be accepted as an appropriate indicator of true cash value, and thus fair market value, for tax purposes. *Id.* The most common methods used to determine fair market value are (1) cost less depreciation, (2) sales comparison, and (3) capitalization of income. See *Samonek v Norvell Twp*, 208 Mich App 80, 84; 527 NW2d 24 (1994); see also *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484-85; 473 NW2d 626 (1991). *County of Wayne v Michigan State Tax Commission*, 261 Mich App 174, states:

Because MCL 211.27 mandates that we consider what a willing buyer would pay for the property, and because of the nature of regulation and its effect on earnings, it is not unreasonable to conclude that a willing buyer is not going to pay any more for CIAC-financed property because one is not allowed a rate of return on the asset.

The court continued with a conclusion that CIAC-financed property shouldn't be included in the assessed assets, even in a cost approach, which is just an alternative way of getting to TCV to which the CIAC-financed property adds nothing.

In *Eltel Associates, LLC v City of Pontiac*, 278 Mich App 588 (2008), the court addresses the issue of mutual mistake of fact. The court indicated that "...it does not serve any legitimate purpose to probe every passing thought of a ... taxpayer to explore whether any point of misplaced confidence in a ... [form's] factual accuracy carries with it some underlying motion of legal rights and obligations." The mutual mistake of fact in the case before the Tribunal today is the assumption of both parties that the form used to collect the distribution plant assets of cooperative utilities requested the appropriate information. This conforms with the findings in *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442 (2006), that a mutual mistake of fact is "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." See also *Briggs Tax Service, LLC, supra*.

Based upon the above findings of fact and the applicable statutory and case law, the Tribunal concludes that the inclusion of CIAC-funded assets on the STC forms was in error in both arriving at a valuation and in uniformly applying the law to all utilities. The mutual mistake of fact committed by both parties is the assumption that the form was correct. Therefore, Petitioner is entitled to a refund, without interest, of the over assessed taxes per MCL 211.53(a).

### **JUDGMENT**

IT IS ORDERED that the subject property's true cash value, state equalized value, and taxable value for the 1999, 2000 and 2001 tax years are those shown in the "Final Values" section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's assessed and taxable values as finally shown in the *Final Values* section of this Proposed Opinion and Judgment unless modified by the Tribunal in the Final Opinion and

Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (v) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

This Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: February 16, 2010  
Pmk/sd

By: Kimbal R. Smith III