STATE OF MICHIGAN

IN THE SUPREME COURT

NEW COVERT GENERATING CO, LLC,	Supreme Court No. 152489
Petitioner/Appellee,	Court of Appeals No. 320877
v	Michigan Tax Tribunal No. 399578
COVERT TOWNSHIP,	
Respondent/Appellant.	

AMICI CURIAE BRIEF OF MICHIGAN TOWNSHIPS ASSOCIATION, MICHIGAN MUNICIPAL LEAGUE, MICHIGAN ASSOCIATION OF COUNTIES, THE COUNTY ROAD ASSOCIATION OF MICHIGAN, VAN BUREN INTERMEDIATE SCHOOL DISTRICT, COVERT PUBLIC SCHOOLS, VAN BUREN COUNTY ROAD COMMISSION, MICHIGAN LIBRARY ASSOCIATION AND SCHOOL EQUITY CAUCUS IN SUPPORT OF COVERT TOWNSHIP'S APPLICATION FOR LEAVE TO APPEAL

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Dated: February 18, 2016

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STATEMENT OF JURISDICTION

Amici Curiae concur with the Statement of Jurisdiction of this Court set forth in Covert Township's Application for Leave to Appeal and incorporate it by reference herein. Covert Township seeks Leave to Appeal the Court of Appeals August 4, 2015 Opinion and September 10, 2015 Order Denying its motion for reconsideration.[1] The Court of Appeals Opinion affirmed the Michigan Tax Tribunal's Final Opinion and Judgment, as modified on reconsideration.[2]

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[1] *New Covert Generating Co, LLC v Covert Township*, unpublished opinion per curiam of the Court of Appeals issued August 4, 2015, Docket No. 320877; Covert Township's Application for Leave Appx 1 (hereafter also referred to as Court of Appeals Opinion). Order Denying Motion for Reconsideration dated September 10, 2015; Covert Township's Application for Leave Appx 2.

[2] Covert Township's Application for Leave Appx 13 (hereafter also referred to as Tax Tribunal Opinion).

STATEMENT OF QUESTION PRESENTED

1. Whether MCL 205.735a(4)(b) requires the filing of a complete statement of assessable property as provided for under MCL 211.19 prior to commencement of the March Board of Review in order to invoke the jurisdiction of the Michigan Tax Tribunal to hear an appeal regarding the valuation of personal property classified under MCL 211.34c as commercial personal property, industrial personal property or utility personal property?

The Michigan Court of Appeals answered:	NO
The Michigan Tax Tribunal answered:	NO
Petitioner/Appellee answered:	NO
Respondent/Appellant Covert Township answered:	YES
Amici Curiae answer:	YES

STATEMENT OF FACTS AND MATERIAL PROCEEDINGS

Amici Curiae concur with the Statement of Facts and Material Proceedings set forth in Covert Township's Application for Leave to Appeal and incorporate it by reference herein.

STATEMENT OF INTEREST OF AMICI CURIAE

Out of all the questions previously raised in the case at bar there remains but one subject decided in the Court of Appeals Opinion that is so erroneous and damaging that it requires the attention of this Honorable Court. To wit, the question to be addressed is the erroneous interpretation and application of MCL 205.735a(4)(b) regarding the jurisdiction of the Tax Tribunal to hear certain personal property valuation appeals. The Court of Appeals Opinion failed to simply apply the plain language of MCL 205.735a(4)(b) which clearly requires that mandatory complete statements of assessable property be filed before commencement of the local March Board of Review in order to confer jurisdiction on the Tax Tribunal to hear commercial, industrial, and utility personal property valuation appeals following protest to the Board of Review or upon direct appeal to the Tax Tribunal. Instead of applying MCL 205.735a(4)(b) as grammatically written, the Court of Appeals improperly jumped to a finding of last resort that the language is ambiguous based upon the placement of a comma. The comma, however, does not in fact create an ambiguity but is rather just part of the intended sentence structure. The Court of Appeals erroneously found the comma nugatory. In doing so, the Court of Appeals misinterpreted MCL 205.735a(4)(b) by finding that statements of assessable property only had to be filed before commencement of the local March Board of Review in the case of direct appeal to the Tax Tribunal and statements of assessable property only referred to personal property statements (Form 4175). The Court of Appeals also neglected to require that a form be complete to constitute being filed.

The Court of Appeals misinterpretation creates a number of substantial problems in the personal property tax assessment process. It allows for protest of personal property assessments to the local March Board of Review without the filing of mandatory complete statements of

assessable property before commencement of the Board of Review and in doing so, allows subsequent appeal to the Tax Tribunal without ever filing the statements. In this scenario, the required mandatory statements of assessable property would never have to be filed. The clear language of MCL 205.735a(4)(b) does not support this dichotomy in jurisdiction between protest to the March Board of Review and direct appeal to the Tax Tribunal. As will be discussed herein, among other problems, this dichotomy allows an unscrupulous property owner the ability take advantage and attempt to cheat the personal property tax system. Other problems stem from the Court of Appeals limiting a statement of assessable property to only be the general personal property statement and indicating that other required statements of assessable property would not have to be filed. Even when filed, the Court of Appeals Opinion did not require the statement of assessable property to be complete. In this case, the statements were incomplete or knowingly false. These problems will understandably create increased litigation by allowing for improper assessment procedure where no statements of assessable property are filed or when filed, are false or incomplete. This will further lead to inaccurate non-uniform assessments and substantial losses to local tax bases. These losses will have a negative impact upon the citizens of this state and will directly impact the within Amici Curiae. In this case alone, New Covert Generating Co., LLC ("NCG") received a reduction of hundreds of millions of dollars in the true cash value regarding its real and personal power plant property in Covert Township, thereby financially crippling the local schools.

The Court of Appeals interpretation of MCL 205.735a(4)(b) is a matter of first impression and of major statewide importance to municipal property tax administration, property tax levying entities and jurisprudence in this state. This statutory provision specifically ties

together the General Property Tax Act (GPTA)[3] and the Michigan Tax Tribunal Act (MTTA)[4] as part of 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. Within this system, a municipal assessor is charged with annually establishing the assessment of all parcels of property in a local municipality[5] and in doing so must establish the true cash value[6] of all real and personal property. With personal property an assessor uses the statements of assessable property mandated on forms produced by the State Tax Commission (STC) to obtain essential information from the property owner regarding the cost of the property, year of acquisition, and class of property. STC valuation multipliers on the forms are then applied to reach the proper assessed value. With power plant property additional statements of assessable property are required beyond just the general personal property statement form 4175 so as to give the assessor and Board of Review the complete assessment picture. This information is necessary to preserve the integrity of this comprehensive tax system to ensure that taxpayers are assessed and taxed in a constitutionally uniform manner.[7] Furthermore, proper administration of this tax system and accurate valuation of property for ad valorem tax purposes is essential to maintain stability in the local tax base upon which tax levies are used to support such things as schools, libraries, roads, general municipal budgets and other local public services. Townships, cities, villages, road commissions, and school districts among other political subdivisions protect their citizens' interests in this comprehensive property tax system by ensuring that proper procedures are used.

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[3] MCL 211.1 et seq. (PA 206 of 1893).
[4] MCL 205.701 et seq. (PA 186 0f 1973).
[5] MCL 211.10(1).
[6] MCL 211.27(1) sets forth the definition of "true cash value". Article IX Section 3 of the Michigan Constitution of 1963 indicates in part that the legislature shall provide for the determination of true cash value.
[7] In part, Article IX Section 3 of the Michigan Constitution of 1963 requires uniformity in assessment and taxation. This is similar to equal protection.

In particular to this Application for Leave, NCG engaged in conduct intended to obfuscate its property values by failing to completely and timely file required forms constituting the statements of assessable property.[8] This failure should have denied NCG jurisdiction of the Tax Tribunal to hear the personal property tax appeal.[9] Notably form 4175 submitted for the 2010 tax year was critically incomplete and erroneous. Even when NCG submitted the proper forms in 2011 it did so under protest and falsely filled in zeros on forms 3991 and 4094 while still submitting an incomplete 4175.[10] Even with these potentially criminal actions on the part of NCG,[11] the Tax Tribunal and Court of Appeals erroneously determined that the Tax Tribunal still had jurisdiction to hear the NCG personal property valuation appeal.

It is extremely important for this Honorable Court to weigh in on these issues and correct this misguided course of jurisprudence set in motion by the erroneous statutory interpretation of MCl 205.735a(4)(b). The following are the statements of interest of the within Amici Curiae parties.

The Michigan Townships Association is a Michigan non-profit corporation whose membership consists of in excess of 1,235 townships within the State of Michigan joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws of the State of Michigan. Through its Legal Defense Fund, the Michigan Townships Association has participated on an amicus curiae basis in numerous state and federal cases presenting issues of statewide significance to Michigan

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[8] See MCL 211.19 *infra*. The State Tax Commission requires an electric generating facility such as the subject property to file three statements of assessable property being forms 4175, 3991 and 4094. These forms assist the local assessor in establishing a correct valuation.
[9] MCL 205.735a(4)(b).
[10] Covert Township's Application for Leave to Appeal, p 11, footnote 13.
[11] MCL 211.21(1) could find these filings to be criminal.

townships. The Michigan Townships Association, established in 1953, is widely recognized for its years of experience and knowledge with regard to municipal issues.

The Michigan Municipal League is a nonprofit organization which represents the interests of municipalities. Its members include 521 Municipalities. Municipalities have an interest in the proper construction and application of the property tax law, both procedural and substantive. All Cities and Townships are the assessing units which administer the property tax through the actions of assessors and the local boards of review and as the respondents in most property tax appeals. Issues concerning the jurisdictional prerequisites for appeal of assessments are important to all municipalities.

Michigan Association of Counties is a non-profit organization consisting of the 83 counties in Michigan. Each constituent County derives a substantial portion of its revenue, typically over 50% of its general fund, from general *ad valorem* property taxes, and special millages. The member Counties rely on revenues derived from an assessment administrative process that is fair to all taxpayers, equitable in determining tax burden proportionate to each property's true cash value, efficient in determining valuations, and generating revenues that are predictable and stable. The proper valuation of property is crucial to the stability of each County's public budget and the services provided thereby.

The County Road Association of Michigan is a nonprofit corporation that represents the interests and concerns of Michigan's 83 county road agencies. County road agencies are responsible for 75 percent of Michigan's road system and represent more than 90,000 miles of roads and 5,700 bridges. The Association has an interest in this case as its membership is substantially funded by property tax revenues and relies on revenues derived from an assessment and administrative process that is fair and equitable.

Van Buren Intermediate School District (VBISD) is an organization in Van Buren County that has 500 full time staff members and approximately 300 part-time staff members providing educational services to over 16,000 K-12 students within 12 local school systems. The many services offered to these school systems include special education, career and technical education, early childhood education, migrant and bilingual education, professional development opportunities, technology services and training, and many other services that impact students and businesses in each of the school districts. The majority of the VBISD funding comes from property tax. The abrupt loss of funding and the lingering fiscal impact because of the Opinions in *New Covert Generating Co., LLC* is significant. VBSID has made significant and difficult restrictions to work without the roughly $1.2 million that has been lost as a result of the Opinions. Further it is mindful that the cumulative loss to other educational partners – such as crushing losses to the Covert Public School District and the $998,760 annual loss of the State Education Tax – also impact education in the county.

Covert Public Schools is a rural PK-12 District located within Van Buren County approximately 40 miles west of Kalamazoo. The District serves vulnerable children. 96% of its students receive free and reduced lunch, indicating that it serves children deeply impacted by poverty. 91% of its students are racial minorities. Despite the many academic and social challenges associated with serving high poverty/high minority students, Covert Public Schools was recently ranked as the number one conventional public school in Michigan by the Mackinaw Center for Public Policy which takes into account the socioeconomic status of students within the study.

Covert Public Schools has been deeply impacted by the Opinions in the case. During the litigation, New Covert Generating Co., LLC abruptly stopped paying its billed winter property

taxes. The abrupt loss of revenue threatened to close the District. Facing revenue loss of roughly $2.8 million dollars annually, the District has since eliminated most elective and fine arts course offerings, eliminated teachers, and has increased class size. These cuts provide an existence that is continually threatened. The District's facilities have not been cared for properly as a result of the loss of funding and the District currently faces the need to make immediate facility improvements (roof and masonry work) at a cost exceeding $2 million. It is imperative that Covert Public Schools continue to exist at a sustainable level. Appropriate funding provides students with the high quality education they deserve in a safe facility.

The Van Buren County Road Commission ("VBCRC") is a political subdivision dedicated to providing a safe and efficient road, bridge, and non-motorized transportation network through sound financial decisions made in the best interest of the motoring public that will save lives, time and money. The VBCRC maintains and services eighteen (18) Townships within Van Buren County, and maintains a county road system of 1,330 miles (2,680 lane miles). The current county-wide road millage is 0.9769-mills. The last Proposal passed by the citizens of Van Buren County in 2012 was for four years and will generate approximately $2,868,209 in the first year of the levy. Sums generated by the millage are distributed by the County Treasurer directly to the Road Commission, as well as to the 11 cities and villages in the County. In addition, the Road Commission allocates a portion of its distribution to the 18 Townships in Van Buren County. The VBCRC has an interest in this case as it relies on property tax revenue and that such revenues are derived from a process set out by law that is fair and equitable.

Michigan Library Association (MLA) advocates on behalf of public libraries and library issues by educating members, trustees, friends and elected officials about library issues critical to libraries such as free access to information and library funding. The proper valuation of property

is crucial to the stability of the MLA's member public libraries budgets supported by tax revenues and their ability to provide services thereby.

The School Equity Caucus is a nonprofit voluntary organization, founded in 1987 by Michigan public school superintendents who disagreed with the inadequacy and inequity of school funding and educational opportunities for their students. The School Equity Caucus is made up of more than 200 Michigan public school districts, represented by their superintendents, and mostly below the Base Foundation funding level. Its purpose is to advocate with the governor's office, legislators and other organizations for equity in legislation and funding.

ARGUMENT

I. MCL 205.735a(4)(b) requires the filing of a complete statement of assessable property under MCL 211.19 prior to commencement of the Board of Review in order to invoke the jurisdiction of the Michigan Tax Tribunal to hear an appeal regarding the valuation of personal property classified under MCL 211.34c as commercial personal property, industrial personal property or utility personal property?

A. Introduction[12]

The issues to be addressed by the Amici Curiae in this brief involve the jurisdiction of the Tax Tribunal to hear ad valorem personal property tax valuation appeals under MCL 205.735a(4)(b) and the filings (statements of assessable property) necessary to invoke such jurisdiction. MCL 205.735a(4)(b) is a special provision regarding Tax Tribunal jurisdiction and provides for such jurisdiction under the following circumstances:

> (4) In the 2007 tax year and each tax year after 2007, all of the following apply:
> (b) For an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial personal property, industrial personal property, or utility personal property, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6), if a statement of assessable property is filed under section 19 of the general property tax act, 1893 PA 206, MCL 211.19, prior to the commencement of the board of review for the tax year involved.

In the case at bar, the Court of Appeals Opinion erroneously found on the basis of ambiguity that MCL 205.735a(4)(b) only required the filing of a personal property statement prior to commencement of the local March Board of Review[13] if the property owner was bypassing protest to the Board of Review and instead directly appealing to the Tax Tribunal.[14] In doing so, the Court of Appeals erroneously ruled that statements of assessable property were

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[12] See also introductory comments contained in the Statement of Interest of Amici Curiae, supra.
[13] The March Board of Review examines, reviews and approves the local assessors current year assessment roll. MCL 211.29.
[14] Court of Appeals Opinion, supra, pages 2-6.

not also required to be filed in order to protest a personal property assessment to the March Board of Review and preserve the right to appeal to the Tax Tribunal. This dichotomy set forth by the Court of Appeals with regard to different jurisdictional standards of the Tax Tribunal for direct appeals as opposed to appeals following protest to the Board of Review is not supported by the plain language of MCL 205.735a(4)(b) or by analysis of how this language fits within the comprehensive statutory property tax scheme.

As will be discussed herein, the plain language of MCL 205.735a(4)(b) requires that in order to invoke the jurisdiction of the Tax Tribunal a complete statement of assessable property must be filed prior to commencement of the March Board of Review in the case of both direct appeal to the Tax Tribunal and protest to the March Board of Review. This requirement is not surprising or earth shattering since statements of assessable property are required to be filed not later than February 20 of each year to enable the assessor to properly determine the assessment for the upcoming year.[15] In fact, MCL 205.735a(4)(b) provides a grace period, up until commencement of the March Board of Review, to file the statements of assessable property before being cut off from the jurisdiction of the Tax Tribunal to hear such personal property valuation appeals. This statutory provision enforces what is already mandatorily required and failure to comply results in the inability to appeal to the Tax Tribunal. It also provides further incentive for a property owner to do what is required and file the statements of assessable property.

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[15] See MCL 211.19, *infra*, as specifically referenced in MCL 205.735a(4)(b). These statements of assessable property give the local assessor the time and information needed to prepare the property tax roll for the March Board of Review. Without such statements, it is next to impossible for the assessor to accurately assess the personal property for tax purposes, especially for something as complex as a power plant.

Rather than applying MCL 205.735a(4)(b) as grammatically written, the Court of Appeals Opinion with very little analysis jumped straight to a last resort finding of ambiguity and determined that the statutory provision should be read without certain punctuation (i.e., the subject comma to be discussed further herein). Ambiguity does not exist in this statutory provision since the plain language as punctuated is not equally susceptible to more than one meaning and this meaning does not conflict with the statutory scheme.[16]

Additionally, the Court of Appeals Opinion does not properly consider how MCL 205.735a(4)(b) fits within the entire comprehensive property tax statutory system set forth in the GPTA and MTTA.[17] This system clearly requires the filing of these statements of assessable property with the assessor prior to the March board of review[18] and makes it a crime not to willfully do so.[19] The failure to properly file these statements prevents the Tax Tribunal from acquiring subject matter jurisdiction to hear the personal property appeal.[20] This interpretation provides harmony within this statutory system regarding the assessment and taxation of personal property.

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[16] The Court of Appeals sole reliance on *Spartan Stores, Inc. v City of Grand Rapids*, 307 Mich App 565; 861 NW2d 347 (2014) is misplaced. In *Spartan Store,* the Court of Appeals was considering the undefined term of "party in interest" in MCL 250.735a(6). No such ambiguity exists in this case and the statute in this case directly ties in statements of assessable property under MCL 211.19.

[17] While these two statutory frameworks are separate, they do have interplay with regard to the entire property tax scheme and with specific regard in MCL 205.735a(4)(b) to the filing of statements of assessable property. To this extent the provisions of the GPTA and MTTA should be construed together "in pari materia". See *People v Rahilly*, 247 Mich App 108, 112-113; 635 NW2d 227 (2001) regarding this principle.

[18] MCL 205.735a(4)(b), MCL 211.19; for electrical generating facilities, such as NCG's property, the STC has mandated annual assessable property filings on forms 4175, 3991 and 4094 (See forms attached as Exhibit 1).

[19] MCL 211.21(1).

[20] MCL 205.735a(4)(b)

Within this same vein the Court of Appeals incorrectly ruled that not all required statements needed to be filed and further, although germane and raised as an issue, did not even address that the statements needed to be completed to allow the Tax Tribunal to assert jurisdiction properly under MCL 205.735a(4)(b). The forms submitted by NCG, filled in with zeros in protest or intentionally incomplete, serve no purpose within the tax assessment process and can, in fact, be criminal. It is not hard to understand that willful neglect or refusal to complete these statements should not suffice to create jurisdiction to appeal and clearly is not intended by the relevant statutory language being analyzed herein. Nevertheless, the Tax Tribunal and the Court of Appeals both used legally contorted interpretations to find jurisdiction with regard to NCG's personal property valuation appeal.

As a matter of background it should be understood that industrial, commercial and utility personal property is valued annually using State Tax Commission multipliers to establish true cash value. These multipliers are applied to acquisition costs based on the type of property and year of acquisition. This system requires the assessor to obtain cost information from the taxpayer regarding the personal property so that the multipliers can be applied based upon the age and type of property. In the case at bar, NCG was required to supply the assessor with form 4175 generally and forms 3991 and 4094 specifically regarding its power plant property.[21] These forms contain different property multipliers so it is essential to accurately report property therein to ensure proper assessment and taxation.

It is not an over-reaction to foresee the grave consequences which will occur if the Court of Appeals is not reversed regarding these issues. The information contained in the statements of assessable property are essential for an assessor to begin the constitutional process of uniform

[21] MCL 211.19(2) and (3).

assessment and taxation. The Court of Appeals Opinion encourages noncompliance and litigation as the statements need not be accurate or complete. Additionally, by not requiring statements of assessable property to protest at the Board of Review, the taxpayer can subsequently appeal the Board of Review decision to the Tax Tribunal without ever filing a legally required statement. Assisting the assessor and Board of Review by providing correct statements to begin the assessment process helps avoid unnecessary time and expense in litigation. This will undoubtedly drive up litigation cost. Consider for example where an expensive and complex power plant intentionally fails to file the required statements of assessable property or files an incomplete statement in order to see if the assessor estimates the value:[22] If the assessor estimates too low, the power plant gets away with cheating the system. If the assessor estimates too high, the power plant would still be able to protest to the March Board of Review without ever filing a complete statement of assessable property. Without an accurate statement of assessable property, how is the March Board of Review supposed to accurately review such a complex protest? Even then, the power plant could appeal to the Tax Tribunal without ever filing a statement. This makes no sense and such interpretation by the Court of Appeals is unsupportable.

In analyzing these jurisdictional issues the following argument will address the general rules of statutory interpretation, provide an overview of the personal property tax assessment process, and review the relevant jurisdictional language and filings. Through such analysis, errors by the Tax Tribunal and the Court of Appeals regarding these issues will be evident.

[22] An assessor must estimate the true cash value of all personal property. MCL 211.24(f).

B. Standard of Review

The Michigan Supreme Court in *Briggs Tax Service, LLC v Detroit Public Schools, et al*, 485 Mich 69; 780 NW2d 753 (2010) expressed the standard of review in Tax Tribunal cases as follows:

> "The standard of review of Tax Tribunal cases is multifaceted. If fraud is not claimed, this Court reviews the Tax Tribunal's decision for misapplication of the law or adoption of a wrong principle. We deem the Tax 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." (Footnotes omitted).[23] (Emphasis added)

The issues herein involve statutory interpretation regarding the Tax Tribunal's jurisdiction over personal property valuation appeals pursuant to MCL 205.735a(4)(b). These issues are therefore reviewed de novo.

Additionally, commenting upon the limitations on the authority of administrative agencies, it has noted ". . . that the extent of the authority of public agencies is measured by the statute from which they derived their authority and not by their own acts and assumption of authority."[24] This Honorable Court is not bound to the Tax Tribunal's determinations regarding its jurisdiction and such determinations may not conflict with the plain meaning of the relevant statutes.[25]

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[23] *Briggs, supra*, at 75.

[24] *Ram Broadcasting of Michigan, Inc. v Michigan Public Service Commission*, 113 Mich App 79, 90; 317 NW2d 295 (1982). See also *Mason County Civic Research Council v Mason County*, 343 Mich 313; 72 NW2d 292 (1955).

[25] *In re Complaint of Rovas*, 482 Mich 90, 117-118; 754 NW2d 259 (2008).

C. General Rules of Statutory Interpretation

The issues before this Honorable Court turn on statutory review and interpretation. "The primary goal of statutory interpretation is to give effect to the intent of the Legislature."[26] "[A] reviewing court should focus first on the plain language of the statute in question . . ."[27] "If the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed and judicial construction is neither required nor permissible."[28] Courts "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory."[29] Courts "interpret th[e] words in [the statute in] light of their ordinary meaning and their context within the statute and read them harmoniously to give effect to the statute as a whole."[30] "[I]n seeking meaning, words and clauses will not be divorced from those which precede and those which follow."[31] "Statutory interpretation requires courts to consider the *placement* of the critical language in the statutory scheme."[32] Also, "[b]ecause the Legislature is presumed to know the rules of grammar (citation o mitted), statutory language must be read within its grammatical context unless something else was clearly intended . . ."[33]

"All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired

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[26] *In re: MCI Telecommunications*, 460 Mich 396, at 411; 596 NW2d 164 (1999).
[27] *Fisher Sand & Gravel Co. v Neal A. Sweebe, Inc.*, 494 Mich 543, 560; 837 NW 2d 244 (2013).
[28] *In re: MCI Telecommunications, supra*, 411.
[29] *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012) citing *State Farm Fire & Cas. Co. v. Old Republic Ins. Co.*, 466 Mich. 142, 146; 644 N.W.2d 715 (2002).
[30] *Johnson, supra*, 177 citing *People v. Peltola*, 489 Mich. 174, 181; 803 N.W.2d 140 (2011).
[31] *Sanchick v. State Bd. of Optometry*, 342 Mich. 555, 559; 70 N.W.2d 757 (1955).
[32] *Johnson, supra*, 177 citing *United States Fidelity & Guaranty Co. v. Mich. Catastrophic Claims Ass'n* (On Rehearing), 484 Mich. 1, 12; 795 N.W.2d 101 (2009).
[33] *Niles Tp v Berrien County Bd. of Com'rs*, 261 Mich App 308, 315; 683 NW2d 148 (2004).

a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning".[34]

In addressing the threshold question of ambiguity, this Honorable Court has held that:

> "A term is ambiguous 'when it is *equally* susceptible to more than a single meaning,' *Lansing Mayor v Pub. Service Comm.,* 470 Mich 154, 166, 680 NW40 (2004), not when reasonable minds can disagree regarding its meaning."[35]

Further, "ambiguity is a finding of last resort".[36]

Armed with the above rules of statutory interpretation, the following analysis of the relevant statutory language in the GPTA and MTTA shows quite clearly that the language is not ambiguous and, that it actually provides plain direction. Nothing beyond the plain language was clearly intended. Ambiguity should have been a finding of last resort rather than the first form of analysis by the Court of Appeals. If MCL 205.735a(4)(b) is read as written giving meaning to every word, phrase, and clause and in harmony with the referenced GPTA provisions, then this Honorable Court will clearly see that complete statements of assessable property must be filed prior to commencement of the March Board of Review otherwise the jurisdiction of the Tax Tribunal cannot be invoked for such personal property valuation appeals.

The following analysis will highlight the erroneous interpretations of the Court of Appeals in the case at bar.

D. Comprehensive Constitutional and Statutory Property Tax System

In order to properly understand the erroneous nature of the Court of Appeals Opinion regarding MCL 205.735a(4)(b), Amici Curiae believe it is of primary importance to first have a

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[34] *Briggs Tax Service, LLC v Detroit Public Schools, et al*, 485 Mich 69, 77, 780 NW2d 753 (2010), citing MCL 8.3a.
[35] *Toll Northville Ltd., v Township of Northville*, 480 Mich 6, 15 fn 2; 743 NW2d 902 (2008).
[36] *Lansing Mayor*, supra at 165, citing *Klapp v Limited Insurance*, 468 Mich 459, 474; 663 NW2d 447 (2003) (Emphasis added).

good background understanding of the property tax assessment process and the applicable constitutional and statutory provisions to be followed.

Article IX Section 3 of the Michigan Constitution of 1963 provides in relevant part that:

> "The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50%; and for a system of equalization of assessments . . .." (Emphasis added)

In carrying forward the constitutional standard of equal protection, this constitutional provision requires uniformity in taxation and assessment. This Honorable Court has previously addressed the issue of uniformity in taxation and assessment as highlighted by the following precepts:

> "What is meant by the words "taxing by uniform rule?" and to what is the rule applied by the constitution? No language in the constitution, perhaps, is more important that this; and to accomplish the beneficial purposes intended, it is essential that they should be truly interpreted, and correctly applied. "Taxing" is required to be "by a uniform rule;" that is, by one in the same unvarying standard. Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of the assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation; and this equality of burden cannot exist without uniformity in the mode of the assessment, as well as in the rate of taxation."[37]

Equality in the property tax burden requires that the manner/mode of assessment must produce uniform results between like property. This also applies to personal property. This Honorable Court has further indicated that:

> "Similarly, under the Uniformity of Taxation Clause of the Michigan Constitution, the controlling principle is one of equal treatment of similarly situated taxpayers. (citations omitted). As a practical matter, in cases involving

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[37] *School District of East Grand Rapids v Kent Co. Tax Allocation Bd.*, 415 Mich 381, 395-396; 330 NW2d 7 (1982), reh. den. 417 Mich 1104 citing *Huron-Clinton Metropolitan Authority v Boards of Supervisors of Five Counties*, 304 Mich 328, 8 NW2d 84 (1943).

taxing statutes, there is no discernible difference between the equal protection and uniformity of taxation clauses."[38] (Citations Omitted)

Contrary to the effect of the Court of Appeals Opinion, the tax system should not be interpreted in a manner where non-uniform assessments will occur from lack of required filings or from incomplete filings.

As we go through the assessment process, it will be apparent that the Court of Appeal's Opinion does not adhere to these constitutional precepts. It creates a situation where the personal property assessment/taxation system cannot assure uniformity and equal protection. It would allow taxpayers to avoid completing the statements of assessable property and instead just appeal to the March Board of Review. This would leave the personal property valuation to the pure estimation of the assessor and confirmation by the Board of Review. If the assessor and Board of Review estimate low, the taxpayer does not appeal to the Tribunal and basically cheats the system with a non-uniform unconstitutional assessment. If the assessor estimates high, they can still appeal to the Tax Tribunal without ever filing mandatory statements. Uniformity in assessment, however, requires that two power plants built exactly the same, at the same time, and both used similarly would have a similar assessment. As a constitutional issue, this concept crosses all spectrums and types of properties as whatever valuation technique is used, it must create a uniform assessment. This required uniformity with regard to personal property would not necessarily be the case if the statements of assessable property using STC multipliers are not required to be accurately submitted across the board.[39]

MCL 211.10(1) provides that:

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[38] *Armco Steel Corp v Dept. of Treasury*, 419 Mich 582, 592; 358 NW2d 839 (1984).

[39] Small municipalities could easily be taken advantage of because they lack the resources to timely audit and determine personal property values especially if no statements of assessable personal property are completed. There would be wide non-uniform variations in assessing like property.

"An assessment of all property in the state liable to taxation shall be made annually in all townships, villages and cities by the applicable assessing officer as provided in Section 3 of Article IX of the State Constitution of 1963 and Section 27a." (Emphasis added)

This requires annual assessment of all taxable property both real and personal by the local assessor.

As referenced, MCL 211.27a provides in relevant part that:

"(1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under Section 3 of Article IX of the State Constitution of 1963.

* * *" (Emphasis added)

The assessment of property requires a determination of true cash value by the assessor.

In order to assist the assessor in annually determining the assessment of property, MCL 211.19 currently provides in relevant part that:

"***

(2) Except as otherwise provided in section 9m, 9n, or 9o, the supervisor or other assessing officer shall require any person whom he or she believes has personal property in their possession to make a statement of all the personal property of that person whether owned by that person or held for the use of another to be completed and delivered to the supervisor or assessor on or before February 20 of each year. A notice the supervisor or other assessing officer provides regarding that statement shall also do all of the following:
(a) Notify the person to whom such notice is given of the exemptions available under sections 9m, 9n, and 9o.
(b) Explain where information about those exemptions, the forms and requirements for claiming those exemptions, and the forms for the statement otherwise required under this section are available.
(c) Be sent or delivered by not later than January 10 of each year.
(3) If a supervisor, an assessing officer, a county tax or equalization department provided for in section 34, or the state tax commission considers it necessary to require from any person a statement of real property assessable to that person, it shall notify the person, and that person shall submit the statement.
(4) A local tax collecting unit may provide for the electronic filing of the statement required under subsection (2) or (3).
(5) A statement under subsection (2) or (3) shall be in a form prescribed by the state tax commission. If a local tax collecting unit has provided for electronic filing of the statement under subsection (4), the filing format shall be prescribed

by the state tax commission. The state tax commission shall not prescribe more than 1 format for electronically filing a statement under subsection (2) or more than 1 format for electronically filing a statement under subsection (3).
(6) A statement under subsection (2) or (3) shall be signed manually, by facsimile, or electronically. A supervisor or assessor shall not require that a statement required under subsection (2) or (3) be filed before February 20 of each year.
(7) A supervisor or assessor shall not accept a statement under subsection (2) or (3) as final or sufficient if that statement is not in the proper form or does not contain a manual, facsimile, or electronic signature. A supervisor or assessor shall preserve a statement that is not in the proper form or is not signed as in other cases, and that statement may be used to make the assessment and as evidence in any proceeding regarding the assessment of the person furnishing that statement.

***"[40]

Assessors send out the required notice under subsection 2 above. Note that it requires the statement form to be "completed" and delivered to the assessor by February 20th. It does not just need to be filed. "Complete" is defined by Merriam-Webster online Dictionary as not lacking anything or entirely done. The general personal property statement is form 4175. Additionally, statements of assessable real property can be required by STC to be submitted under subsection 3 above. The STC has in fact mandated the use of statements of assessable property forms 3991 and 4094 for electric generating assets. These statements are also specifically required to be filed pursuant to the instructions to form 4175 (Exhibit 1 attached hereto). Additionally, the forms themselves provide that they are mandatory. Finally, it should be noted that subsection 7 above provides that the assessor "shall" not accept a statement under subsection 2 or 3 (forms 4175, 3991, and 4094) as final or sufficient if not in proper form. Administratively, if the form is not complete (i.e., not lacking anything or entirely done) it is not considered accepted.

[40] It should be noted that MCL211.19 as it existed during the 2010 and 2011 tax years was substantially the same with regard to the issues at hand and from the above quote only a subsection (2) was amended. This prior version of subsection (2) provided that: "The supervisor or other assessing officer shall require any person whom he or she believes has personal property in their possession to make a statement of all the personal property of that person whether owned by that person or held for the use of another. The statement shall be completed and delivered to the supervisor or assessor on or before February 20 of each year."

Notably, Michigan is not alone in its mandate that a taxpayer file a completed annual statement of assessable property to aid the assessor's determination of an annual property assessment. Since the 19th century various U.S. states have recognized the necessity of a completed and accurate property statement and its role as a prerequisite to an assessor's full and fair understanding of the nature and extent of property owned by a taxpayer. *Ingalls v Ratterman*, 48 Ohio St 468, 486-90; 28 NE 168, 171-72 (1891) (a return of personal property in which the person making the return fails, intentionally or through culpable negligence, to list all of his personal property which is taxable, makes a false return). *Assessors of Quincy v Boston Consol Gas Co*, 309 Mass 60, 70; 34 NE2d 623, 629 (1941) (the property list "must be itemized in such detail as will reasonably convey to the assessors a fair understanding of its nature and extent. The purpose of the list is to apprise the assessors of the character and the quantity of the taxable personal property owned by the taxpayer"). *Perry v Inhabitants of Town of Lincolnville*, 145 Me 362, 365; 75 A2d 851, 852 (1950) ("the purpose of this statute, which requires notice by the assessors and the furnishing of lists by the taxpayer, is to assist the assessor in making a correct and complete assessment").

Some of these states, and others, have recognized that the property owner and not the assessor, logically, is the individual in the best position to know the facts of the property owned to accurately and completely include in a property statement. *Dead River Co v Assessors of Houlton*, 149 Me 349, 355-56; 103 A2d 123, 127 (1953) ("the owner is in the best position to know the facts as to title and related matters, and surely he is in far better position to know the facts than are the assessors"). *Pitt v City of Stamford*, 117 Conn 388; 167 A 919, 921 (1933):

> "Assessors have to deal with a multitude of tax lists, involving many pieces of property, the details as to which, relevant and largely determinative of the valuation to be placed upon them, are familiar to the owner, who is therefore in a position to give accurate information regarding them."

In Michigan willful neglect or refusal to make out and deliver a statement as required above carries with it a misdemeanor penalty under MCL 211.21(1) as follows:

> "(1) If a person, member of a firm, or officer of a corporation willfully neglects or refuses to make out and deliver a statement required under section 19 or falsely answers or refuses to answer questions concerning his or her property or property under his or her control as required under this act, that person is guilty of a misdemeanor punishable by imprisonment in the county jail for not less than 30 days or more than 6 months or by a fine of not less than $100.00 or more than $1,000.00, or both. If a supervisor, assessing officer, or member of the state tax commission is satisfied that a person is liable under this subsection, he or she shall report the case to the prosecuting attorney of the county in which the property is located."

Not only is the statement due by February 20, but willful neglect or refusal to file, or false answers are a misdemeanor. The Court of Appeals interpretation cannot be correct since it actually encourages noncompliance and a criminal act if statements need not ever be filed or can be filled out falsely.

The assessor must then complete the assessment roll for the March Board of Review. MCL 211.24 provides in relevant part that:

> "On or before the first Monday in March in each year, the assessor shall make and complete an assessment roll, upon which he or she shall set down all of the following:
>
> ***
>
> (f) The assessor shall estimate the true cash value of all the personal property of each person, and set the assessed value and tentative taxable value down opposite the name of the person. In determining the property to be assessed and in estimating the value of that property, the assessor is not bound to follow the statements of any person, but shall exercise his or her best judgment. For taxes levied after December 31, 2003, the assessor shall separately state the assessed value and tentative taxable value of any leasehold improvements.
>
> ***"

Most of the time, the completed statements of assessable property provide the proper information for the assessor's estimate of personal property true cash value as stated above.

However, if no statement of assessable property is provided to the assessor, the assessor will do his or her best to estimate value.

Other states have recognized, too, that an assessor's exercise of his or her best judgment as to information in the assessor's possession is appropriate for property valuation in the absence or incompleteness of a taxpayer's property statement:

> "'It is the duty of each taxpayer, as a personal obligation, to file with the assessors a list of his taxable property and furnish the facts upon which valuations may be based. If he fails to do so, the assessors are only required to act upon the best information [they] can obtain...and the taxpayer cannot justly complain if the assessors, acting in good faith, make an error in judgment in listing and valuing his property.'" *Northeast Datacom, Inc v Wallingford,* 212 Conn 639, 649; 563 A2d 688 (1989), quoting *Cooley Chevrolet Co v West Haven,* 146 Conn 165, 169; 148 A2d 327 (1959).

"The law requires only that the assessor act 'based upon information in his possession.'" *Domenghini v Co of San Luis Obispo*, 40 Cal App 3d 689, 694-95; 115 Cal Rptr 608, 612-13 (1974).

The assessor is then required to send the following notice to the taxpayer 14 days before the March Board of Review, as provided in MCL 211.24c in relevant part:

> "(1) The assessor shall give to each owner or person or persons listed on the assessment roll of the property a notice by first-class mail of an increase in the tentative state equalized valuation or the tentative taxable value for the year. The notice shall specify each parcel of property, the tentative taxable value for the current year, and the taxable value for the immediately preceding year. The notice shall also specify the time and place of the meeting of the board of review. The notice shall also specify the difference between the property's tentative taxable value in the current year and the property's taxable value in the immediately preceding year.
> (2) The notice shall include, in addition to the information required by subsection (1), all of the following:
> (a) The state equalized valuation for the immediately preceding year.
> (b) The tentative state equalized valuation for the current year.
> (c) The net change between the tentative state equalized valuation for the current year and the state equalized valuation for the immediately preceding year.
> (d) The classification of the property as defined by section 34c.
> (e) The inflation rate for the immediately preceding year as defined in section 34d.
> (f) A statement provided by the state tax commission explaining the relationship between state equalized valuation and taxable value. If the assessor believes that a transfer of ownership has occurred in the immediately preceding year, the

statement shall state that the ownership was transferred and that the taxable value of that property is the same as the state equalized valuation of that property.

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(4) The assessment notice shall be addressed to the owner according to the records of the assessor and mailed not less than 14 days before the meeting of the board of review. The failure to send or receive an assessment notice does not invalidate an assessment roll or an assessment on that property.

(6) The state tax commission shall prepare a model assessment notice form that shall be made available to local units of government.

***" (Emphasis added)

Even if a taxpayer fails to complete required statements of assessable property and the values are therefore purely estimated, the taxpayer will get notice of the amount and can still submit the statements prior to commencement of the March Board of Review, in order to preserve the personal property protest right to the March Board of Review and right to appeal to the Tax Tribunal.[41] MCL 205.735a(4)(b) essentially gives a grace period from the February 20 deadline and encourages the filing of statements of assessable property before commencement of the March Board of Review. Failure, however, to comply cuts off the right to appeal the personal property valuation to the Tax Tribunal. Legislatively, this provides strong incentive to comply with the required filing of the statement of assessable property. As noted herein previously, NCG did not comply with submitting the required completed statements and when it did submit statements, they were incomplete and misleading.

E. Statements of assessable property must be filed prior to commencement of the March Board of Review in order to confer jurisdiction on the Michigan Tax Tribunal to hear personal property valuation appeals under MCL 205.735a(4)(b).

Consistent with the statutory scheme requiring taxpayers to submit annual statements of assessable property, the Tax Tribunals jurisdiction to hear appeals under MCL 205.735a provides in relevant part that:

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[41] MCL 205.735a(4)(b).

" ***

(3) Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6).

(4) In the 2007 tax year and each tax year after 2007, all of the following apply:

(a) For an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial real property, industrial real property, or developmental real property, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6).

(b) For an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial personal property, industrial personal property, or utility personal property, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6), if a statement of assessable property is filed under section 19 of the general property tax act, 1893 PA 206, MCL 211.19, prior to the commencement of the board of review for the tax year involved.

(c) For an assessment dispute as to the valuation of property that is subject to taxation under 1974 PA 198, MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123, the technology park development act, 1984 PA 385, MCL 207.701 to 207.718, the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797, the commercial rehabilitation act, 2005 PA 210, MCL 207.841 to 207.856, or 1953 PA 189, MCL 211.181 to 211.182, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6). This subdivision does not apply to property that is subject to the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786.

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(6) The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property is invoked by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved....

***" (Emphasis added)

In applying the referenced rules of statutory interpretation to MCL 205.735a(4)(b), analysis begins by looking at the plain language of MCL 205.735a(4)(b) to determine legislative

intent.[42] The entire sentence must be looked at, including every clause, rather than just looking at a word or two removed from the context, otherwise a specious interpretation may occur.[43] On its face, the language used in MCL 205.735a(4)(b) seems to be very clear and provides a special Tax Tribunal jurisdictional provision just for personal property tax disputes regarding valuation. To find as the Court of Appeals did, namely the requirement to file a statement of assessable property only applies as a prerequisite to a direct appeal to the Tax Tribunal, can only be accomplished by unintended contortions rendering the contextual language nugatory. The Court of Appeals Opinion gave only judicial gloss to the actual words used in this statutory provision and instead went straight to searching for outside rationales. Doing so was an improper last resort finding of ambiguity.[44] The Court of Appeals identified the comma separating the modifying condition in the third sentence of MCL 205.735a(4)(b). This comma in no way creates an ambiguity (the meaning is changed if the comma is removed). The legislature knows how to use grammar and MCL 205.735a(4)(b) must be read within its grammatical context.[45] If we start to look at statutory language and begin by removing commas, almost all statutes would have changed meaning or would require interpretation as ambiguous.

MCL 205.735a(4)(b) plainly grants the jurisdiction to hear personal property valuation protests and appeals on a conditional basis by the use of the word "if". The conditions and consequence are all in one sentence and must logically be understood to be in reference to one another. There are three parts to the conditional sentence.

First, the sentence defines its scope; "[f]or an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206,

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[42] *Fisher Sand & Gravel, supra,* 560.
[43] *Johnson, supra*, 177; *Sanchick, supra*, 559.
[44] *Lansing Mayor, supra*, 165.
[45] *Niles Township, supra*, 315.

MCL 211.34c, as commercial personal property, industrial personal property, or utility personal property".

Second, the sentence sets forth its consequence; ", the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6),".

Third, the sentence provides the condition; if a statement of assessable property is filed under section 19 of the general property tax act, 1893 PA 206, MCL 211.19, prior to the commencement of the board of review for the tax year involved.

These three provisions work together to very plainly set forth the legislative intent regarding jurisdiction; clearly nothing else was intended and no ambiguity exists.[46] To find otherwise, as the Court of Appeals did, erroneously renders the sentence structure and the comma at the end of the above consequence nugatory.[47]

Incontrovertibly, the above requirement that a statement of assessable property be filed applies to both protest to the Board of Review and the direct appeal to the Tax Tribunal with regard to personal property valuation. This harmoniously fits within the statutory scheme and there is absolutely no reason to resort to finding an ambiguity.

Analysis of the last antecedent rule further supports the error in the Court of Appeals Opinion. The last antecedent rule is a grammatical rule "which provides that a modifying clause is confined solely to the last antecedent".[48] In this case, the Court of Appeals attempts to solely confine the application of the third part of the sentence (the modifying condition requiring the statement of assessable property) to the last part of the second part of the sentence (direct appeal

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[46] *In re: MCI Telecommunications, supra*, 411.
[47] *Johnson, supra* at 177.
[48] *Cameron V Auto Club Ins. Ass'n*, 476 Mich 55, 71; 718 NW2d 784 (2005)

to the Tax Tribunal). However, this is an improper grammatical interpretation as "the last antecedent rule does not apply where the modifying clause is set off by a punctuation mark, such as a comma ...".[49] In this case, the modifying condition in the third part of the sentence (prerequisite to file the statement for assessable property) applies to the whole second part of the sentence based upon the position of the comma (applies to both protests to the board of review and direct appeal to the Tax Tribunal).[50]

The Court of Appeals relies on *Spartan Stores, supra*, in refusing to follow the plain grammatical language used in MCL 205.735a(4)(b). The Court of Appeals Opinion cited *Spartan Stores* for the holding that:

> "The Legislature enacted MCL 205.735a to allow specified persons to bypass the Board of Review and appeal property tax assessments directly to the Tax Tribunal."[51]

The Court of Appeals Opinion, page 4, then goes on to find that its interpretation regarding the jurisdiction of the Tax Tribunal is consistent with the legislative intent as expressed in *Spartan Stores* and best fulfills the objective of the statute. *Spartan Stores*, however, is distinguishable from the case at bar. In *Spartan Stores* the court was considering the proper definition of the term "party in interest" as provided for in MCL 205.735(a)(6).[52] The language in MCL 205.735a(6) does not tie itself into an activity (i.e., filing of a statement of assessable property) to be performed under the GPTA (i.e., MCL 211.19). In *Spartan Stores* the court was using rules of interpretive assistance with regard to an undefined phrase being "party in interest". In *Spartan Stores* the Court had no reason to look at the GPTA to determine the meaning of a "party in interest" and instead based its interpretation on what it could best discern from the MTTA only.

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[49] *Cameron, supra* at 71.
[50] Sutherland Statutory Construction, Sixth Edition Volume 2A section 47:33 page 373.
[51] Court of Appeals Opinion, 3.
[52] See statutory language on page 26 herein.

Unlike the case at bar, *Spartan Stores* was not analyzing MCL 205.735a(4)(b) which is a quite different provision since it directly ties into the filing of statements of assessable property under the GPTA. MCL 205.735a(4)(b) intertwines the GPTA and MTTA to such an extent that they should be read harmoniously and "in pari materia" in this regard.[53] Unlike MCL 205.735a(6), MCL 205.735a(4)(b) is a special jurisdictional provision related to certain personal property appeals to the Tax Tribunal and simply applying the plain grammatical language brings harmony between relevant provision of the GPTA and MTTA. The plain language does not conflict with any clear legislative intent.

The language used in MCL 205.735a(4)(b) is clear, unambiguous and not equally susceptible to more than single meaning.[54] The decision to block personal property valuation appeals from Tax Tribunal jurisdiction where the statements of assessable property (MCL 211.19) are not timely or completely filed is a policy decision of the Legislature. Separation of powers principles require that the judiciary respect legislative policy choices.[55] It is recognized that the legislature is better situated than the judiciary to assess the trade-offs associated with a particular policy choice.[56] This Honorable Court must enforce MCL 205.735a(4)(b) as written, even if it believes the result to be harsh.

Contrary to the assertions that local units of government interpret MCL 205.735a(4)(b) as allowing personal property valuation protest to the Board of Review even if the taxpayer does not file a statement of assessable property, such consideration would require a finding of

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[53] *People v Rahilly, supra*, 112-113.
[54] *Lansing Mayor, supra*, 166.
[55] *DiBenedetto v West Shore Hospital*, 461 Mich 394, 405; 605 NW2d 300 (2000).
[56] *Devillers v Auto Club Ins. Assoc.*, 473 Mich 562, 589; 702 NW2d 539 (2005).

ambiguity in the statutory language.[57] In any case, attached is a webpage regarding personal property from the city assessor for the City of Lansing, one of Michigan's largest cities and one of the state's most respected assessors.[58] This webpage indicates that failure to file the personal property tax statement eliminates the right to appeal value at the local or state level or file a correction (Section 154) with the State Tax Commission. Clearly one of the largest cities in the state does not administer MCL 205.735a(4)(b) in the manner that the Court of Appeals erroneously believes was intended.

Since the Court of Appeals Opinion affirmed the Tax Tribunal Opinion, it is interesting to note where the Tax Tribunal did in fact attempt to review other statutory authority to resolve the purported ambiguity, the Tax Tribunal misinterpreted the procedure. In this regard the Tax Tribunal stated as follows:

> "Under MCL 211.24(f), the assessor is required to estimate the true cash value of all personal property, which is not required to be based on any personal property statement that may be filed. As an example, a taxpayer has a small office with a desk, a chair and computer, with a total value of $10,000. The taxpayer does not file a personal property statement. Following MCL 211.24(f), the assessor estimates the true cash value of the taxpayer's personal property at $100,000. Under Respondent's interpretation of MCL 211.19, even if the taxpayer appeals this estimated true cash value to the March Board of Review, the taxpayer could not appeal to the Tribunal because he did not file a personal property statement. The tribunal does not believe that this was the intent of the statute."[59]

This above scenario is inaccurate from the standpoint that if the taxpayer did not file a personal property statement as required pursuant to MCL 211.19, thinking they only had a small amount of personal property, and the assessor then estimated a large amount of personal property, the Assessor would send a tax notice to the taxpayer not less than 14 days before the meeting of the

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[57] Additionally, if ambiguous, rules of construction would have us look at other statutory provisions first to determine legislative intent rather than searching for self-serving secondary sources.

[58] See webpage attached as Exhibit 2

[59] Tax Tribunal Opinion, 10, footnote 4.

March Board of Review informing them of the estimated value pursuant to MCL 211.24c(4). It is then incumbent upon the taxpayer, if it wishes to protest to the March Board of Review, to actually file a statement of assessable property prior to commencement of the Board of Review pursuant to MCL 205.735(a)(4)(b). The taxpayer would only be stuck with the increased assessment if they failed to file the required statement of assessable property even after notice of the increased assessment. It would be entirely the taxpayer's fault for not abiding by legal requirements to file a personal property statement and further by not preserving the right to appeal to the Tax Tribunal.

Denial of the right to protest to the Board of Review due to a taxpayer's failure to comply with prerequisite filings is not a matter of first impression in this state. In *AERC of Michigan, LLC v City of Grand Rapids,* 266 Mich App 717; 702 NW2d 692 (2005) the court ruled that the ability to protest before the Board of Review could be denied based upon the failure of a petitioner to comply with city prerequisites for review by the board. In this case, the petitioner wished to initiate an appeal of real property tax assessments before the city's board of review. The city required that all appeals must first be submitted for an assessor's review. This review required completion of an appeal form and for commercial properties, an income information sheet. Counsel for petitioner sent in an appeal form that contained only the address, parcel number, assessment and taxable value of the parcel. The assessor contacted and advised counsel that the filing was incomplete and reviewed the requirements for submitting an appeal. The same incomplete letter of protest was resubmitted; therefore, the assessor did not submit the protest to the Board of Review. Additionally, when counsel appeared before the Board of Review, the Board declined to hear the appeal. The Court of Appeals upheld the local decision

denying the petitioner the right to protest before the Board of Review.[60] The Court of Appeals stated that:

> "Under such circumstances, the failure to obtain board of review stems from petitioner's knowing decision not to avail itself of the procedure for review and not from any improper exercise of discretion or authority by the taxing authority."[61]

While the result may be harsh, the case clearly stands for the proposition that statutory procedures must be followed to properly protest before the March Board of Review. If such procedures are not followed, then there is no right to protest. If a failure to follow a city rule can prevent protest to the Board of Review, certainly failure to follow a state statute could do the same. This case falls directly in line with MCL 205.735a(4)(b) requiring the filing of a statement of assessable property in order to protest to the Board of Review and preserve the right to appeal. Certainly following this statutory procedure and the punishment for failing to do so seems mild compared to the fact that willful neglect or refusal to make out and deliver a statement of assessable property, as required under MCL 211.19, can send the taxpayer to jail on a misdemeanor violation.[62] Requiring the completion and filing of statements of assessable property as a prerequisite to protest to the Board of Review and appeal to the Tax Tribunal is one more attempt to get taxpayers to comply with the requirement that they already have under MCL 211.19. Clearly, the statutory assessment process, combined with the right to appeal under MCL 205.735a(4)(b) work in harmony as a comprehensive property tax administrative scheme.

Similar to *AERC of Michigan, LLC, supra*, decisions from other jurisdictions hold that tax assessment relief is unavailable to taxpayers who fail to meet statutorily-imposed requirements of property statement accurateness and completeness. *Ewing v Tax Assessors of*

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[60] *AERC of Michigan, supra*, 722 – 724.
[61] *AERC of Michigan, supra*, 724.
[62] MCL 211.21.

Town of Jamestown, 104 RI 630, 631-32; 247 A2d 850, 851-52 (1968) (relief from an alleged over-assessment of real property can be denied to a taxpayer who files an account which as to personal property is not true and exact in that it fails to describe and specify the value of each ratable item as required by statute).

In *Xerox Corp v Board of Tax Review*, 240 Conn 192, 204-205; 690 A2d 389, (1997), the Supreme Court of Connecticut held that a taxpayer has no right to protest a tax assessment if the assessment was formulated based on the taxpayer's own deceit or negligence:

> If, as the plaintiff argues, the amended declaration [of personal property] did not contain complete and accurate information, then, as the law clearly directs, it cannot now complain that it was aggrieved by an assessment based on that information, because it was the plaintiff's obligation to furnish to the assessor a complete declaration. In arguing that the town should have contacted the plaintiff to request further information pursuant to such authority granted under § 12-53, the plaintiff attempts to shift the burden of supplying a complete declaration to the town. As a matter of law and policy, it is not incumbent upon an assessor to utilize that power to make up for a taxpayer's reporting shortfalls in the first instance. Such a system would be unworkable.

The Supreme Court of Rhode Island similarly held in *Rock Ridge Limited v Assessor of Taxes of Woonsocket*, 667 A2d 778 (1995) that the filing of a property accounting pursuant to statute was a condition precedent to allowing the taxpayer to seek assessment relief.

Ultimately, in Michigan, the harshness of being cut off from the ability to appeal to the March Board of Review or Tax Tribunal is mitigated by the fact that the State Tax Commission has authority under MCL 211.150(3) "to receive all complaints as to property liable to taxation . . . that have 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." The law still provides recourse where fraud in the assessment has occurred.

F. NCG'S filings were insufficient to confer jurisdiction on the Tax Tribunal to hear their personal property appeals.

Following up on the proper interpretation of MCL 205.735a(4)(b) whereby NCG was required to file the required statement of assessable property prior to commencement of the March Board of Review in order to protest to the Board of Review or directly appeal to the Tax Tribunal regarding its personal property tax valuation, we now turn to the next step to determine if the actions taken by NCG were sufficient to allow the Tax Tribunal to exercise jurisdiction over the personal property tax appeal. The following will conclusively demonstrate why the actions by NCG were insufficient to invoke jurisdiction. The Court of Appeals Opinion erroneously found otherwise.[63]

Analysis of whether NCG's filings are sufficient begins with a review of the recalcitrant actions taken by NCG. For tax year 2010 NCG filed an incomplete form 4175 (personal property statement) prior to commencement of the 2010 March Board of Review.[64] NCG did not protest to the 2010 March Board of Review but instead went directly to the Tax Tribunal with its 2010 valuation appeal (purporting to have jurisdiction under MCL 205.735a(4)(b)). It should be noted that for 2010 NCG did not file a statement of assessable property on forms 3991 and 4094.[65] For 2011, NCG again filed an incomplete 4175 and for the first time filed "under protest" forms 3991 and 4094. NCG falsely reported -0- on the forms 3991 and 4094. NCG protested to the 2011 March Board of Review and then subsequently had the 2011 tax year added to its 2010 Tax Tribunal appeal. A review of the relevant statutory language and required forms

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[63] Court of Appeals Opinion, 5-6.

[64] As referenced in the Township's Application for Leave to Appeal, p 11, fn 13, NCG incompletely reported only recent acquisitions and omitted the amounts that were previously reported when the plant was built in 2004. This clearly would not meet the requirements in MCL 211.19(2) that the statement be "completed".

[65] Attached as Exhibit 1 are the forms 4175, 3991, and 4094. These forms are required to be filed by the STC for electric generating facilities.

will lead to the undeniable conclusion that the incomplete and false statements filed by NCG were insufficient to invoke the jurisdiction of the Tax Tribunal.

Once again, we can begin with a review of the plain language of MCL 205.735a(4)(b) which provides that:

" ***

> (b) For an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial personal property, industrial personal property, or utility personal property, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6), if a statement of assessable property is filed under section 19 of the general property tax act, 1893 PA 206, MCL 211.19, prior to the commencement of the board of review for the tax year involved.
>
> ***"

This special provision regarding personal property assessment disputes unequivocally requires that prior to commencement of the Board of Review a statement of assessable property must be filed under MCL 211.19 in order to protest to the Board of Review or appeal directly to the Tax Tribunal. Analysis of this language requires consideration of what is meant by a statement of assessable property filed under MCL 211.19. These two statutes must be read in harmony together. It is important to understand that this statutory language does not just say a statement of personal property, but rather covers a much broader scope. Under MCL 211.19 there are many different statements of assessable property that a taxpayer can be required to file depending on the type of business.[66] The most common statement is a general personal property statement which must be completed and delivered to the assessor on or before February 20 of each year.[67] Additionally the STC (among others) can require submission of a statement of real

[66] See instructions to Form 4175, Exhibit 1.
[67] MCL 211.19(2).

property assessable.[68] Statements of assessable property, whether personal or real, are required to be on forms prescribed by the State Tax Commission.[69] Additionally, an assessor shall not accept one of these statements of assessable property as final or sufficient if that statement is not in the proper form or does not contain a signature.[70]

With regard to the statements of assessable property referenced in MCL 211.19(2) and MCL 211.19(3) our review of these relevant forms clearly demonstrates the utter lack of sufficiency and total disregard in the forms submitted by NCG. These forms were not completed.

First, a review of the personal property statement form 4175 immediately reveals that there was a problem when NCG submitted an incomplete statement not containing all of its tangible personal property. The certification on the first page of the form indicates that:

> "The undersigned certifies that he/she is an owner, officer and/or the duly authorized agent for the above named taxpayer and that the above summary, with its supporting documents, provides a full and true statement of all tangible personal property owned or held by the taxpayer at the locations listed above on December 31, 2009." (Emphasis added)

This certification clearly requires that the form not just be signed under 211.19 and filed to acquire jurisdiction but rather the form must be fully filled out and contain a complete and true statement. NCG's 2010 filing of form 4175 in no way could be considered completed (MCL 211.19(2)) and the assessor shall not accept this statement as it is not in proper form (MCL 211.19(7)). Additionally, a review of the instructions for the form 4175 further require NCG to file the additional statements of assessable property contained in forms 3991 and 4094. The STC requires through these instructions that:

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[68] MCL 211.19(3).
[69] MCL 211.19(5).
[70] MCL 211.19(7).

> "The cost associated with a generating facility that does not have a fixed undercarriage must be reported to the assessor on the appropriate Real Property Statement (Form 3991-Gas Turbine and Diesel; Form 4070-Hydroelectric; Form 4094-Steam)."[71]

These forms 3991 and 4094 were required to be filed for NCG's electric generating facility by the STC. It should also be noted that forms 3991 and 4094 both state at the top of the forms that "This form is issued under authority of P.A. 206 of 1893. Filing is mandatory. Failure to file is punishable by fine and/imprisonment." (Emphasis added) The filing of these forms was not optional by NCG. For 2010 these forms would have had to be submitted as part of the statement of assessable property filed prior to commencement of the Board of Review in order to invoke jurisdiction pursuant to MCL 205.735(a)(4)(b). For 2010, NCG's filing of the incomplete 4175 and failure to file the 4094 and 3991 clearly prevent the Tax Tribunal from acquiring jurisdiction over the personal property valuation appeal. Attempts to obfuscate the facts and mislead local assessors should not be rewarded.

With regard to NCG's purported filings for 2011, once again they submitted an incomplete personal property statement (failing to include all of their tangible personal property). This time, and even worse than 2010, NCG, recognizing that they may be required to file forms 3991 and 4094 to acquire jurisdiction, filed such forms under protest and falsely reported -0- costs on the forms. As with form 4175, form 3991 and form 4094 also both contain certification that the signator declares the above is a complete and true statement. NCG was false on both accounts. There is absolutely no rationale to determine that these forms were complete or sufficient so as to be considered filed under MCL 211.19. Frankly, these forms serve no purpose as completed by NCG. The forms are intended to provide a complete statement of assessable

[71] Page 8 personal property statement instructions, Exhibit 1.

property for the benefit of both the assessor and the Tax Tribunal. The Tax Tribunal's finding in this case is incredulous where it states that:

> "The statute confirmed jurisdiction, MCL 205.735a(4)(b) does not mandate any specific level of accuracy in the contents of the statement as a jurisdictional prerequisite to an appeal."[72]

Although raised, the Court of Appeals Opinion neglects to directly address this issue of completeness.

These forms submitted by NCG were prepared with blatant disregard for the certifications and required information. The precedent set by allowing such filings to create jurisdiction to protest and appeal to the Tax Tribunal eviscerates a proper functioning of the comprehensive tax assessment system and cannot represent proper jurisprudence. In fact, Michigan case law finds otherwise. In *AERC of Michigan, supra*, the Court properly denied jurisdiction to protest to the Board of Review where the taxpayer did not complete the appropriate required information but instead similarly submitted incomplete forms. NCG's bad behavior cannot and should not be rewarded. The Court of Appeals Opinion allowing NCG to invoke jurisdiction must be overturned. Allowing the Court of Appeals Opinion to stand will only serve to encourage and reward flagrant misbehavior and affirmatively damage the tax assessment process. Such misbehavior, as demonstrated herein, will certainly have deep and far reaching consequences to municipalities, schools and other governmental institutions across the state as discussed herein.

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[72] Tax Tribunal Opinion, 14.

CONCLUSION

For the reasons set forth above, Amici Curiae respectfully request that this Court reverse the Court of Appeals Opinion with regard to the issue of interpretation of MCL 205.735a(4)(b) and application of the same.

Dated: February 18, 2016

Respectfully submitted,

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