

STATE OF MICHIGAN
COURT OF APPEALS

RAVENNA CASTINGS CENTER,
Petitioner-Appellant,

UNPUBLISHED
May 6, 2004

v

TOWNSHIP OF RAVENNA,
Respondent-Appellee.

No. 242286
Michigan Tax Tribunal
LC No. 00-288443

Before: O’Connell, P.J., and Jansen and Murray, JJ.

O’CONNELL, P.J. (dissenting).

I respectfully dissent. In my opinion, this petition was timely filed under MCL 211.53a and, therefore, the Michigan Tax Tribunal (MTT) has jurisdiction to hear this dispute. I would remand this matter to the MTT for a decision on the merits.

MCL 211.53a reads as follows:

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

A clear reading of the statute provides that if a mutual mistake has occurred then a taxpayer may recover the taxes paid “if suit is commenced within 3 years from the date of payment.” *Id.* In the present case, the township admits that both it and the taxpayer made a rudimentary blunder with regard to petitioner’s taxes. In fact, the township agreed to repay petitioner the excess taxes. Unfortunately, however, the township has spent the funds and now lacks the funds to accomplish this task.

In a case such as this, when both parties agree a mutual mistake has occurred, in my opinion, the mistake falls within the clear, plain language of the statute. The majority’s hypertechnical definition of “mutual mistake” contorts the phrase’s plain meaning, making it inapplicable to a factual situation where the Legislature certainly intended it to apply. I conclude that when both parties admit that a simple mistake has been made, the MTT has jurisdiction to hear the merits of a case brought within three years pursuant to the plain language in MCL

211.53a. At the very least, petitioner should have the right to develop the facts to establish that a mutual mistake has occurred.

I would remand this case to the MTT for further proceedings.

/s/ Peter D. O'Connell