STATE OF MICHIGAN

COURT OF APPEALS

MARCIA LEVENFELD, Petitioner-Appellant,	UNPUBLISHED January 12, 2012
v	No. 300358 Tax Tribunal LC No. 00-357642
COUNTY OF BERRIEN, Respondent-Appellee.	

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Petitioner Marcia Levenfeld appeals as of right the decision of the Michigan Tax Tribunal (MTT) to deny Levenfeld a principal residence exemption (“PRE”).[1] We affirm.

As reflected in a warranty deed executed in March 2005, Levenfeld, a married woman,[2] solely acquired the fee simple interest in property located on Main Drive in the Village of Grand Beach, Michigan, situated in New Buffalo Township and Berrien County. The property was conveyed to Levenfeld by G & G Real Estate Development Corporation, an Illinois corporation. Levenfeld executed a homeowner’s PRE affidavit, which indicated that there was no co-owner of the property, that the property was Levenfeld’s principal residence, that she had not claimed any other PRE, and that she and her spouse did not claim an exemption in another state. Levenfeld was granted a PRE on the property for the tax years 2005, 2006, and 2007. Levenfeld paid her property taxes for those years absent any delinquency, benefiting from the PRE. In August 2008, the Berrien County Treasurer sent a letter to Levenfeld, which indicated that the treasurer’s office was reviewing homestead properties for tax years 2005 through 2008 to make sure they were in compliance with PRE requirements. The letter further provided that, “[b]ased on information received,” the treasurer was reversing the PRE on Levenfeld’s property for the 2006

[1] The PRE is also known as the homestead exemption and is governed by MCL 211.7cc and MCL 211.7dd, which are provisions contained in the General Property Tax Act (GPTA), MCL 211.1 *et seq.* *Eldenbrady v City of Albion*, __ Mich App __; __ NW2d __ (2011), slip op at 3.

[2] Levenfeld’s husband is Scott Levenfeld, who owns a house in Illinois that is titled solely in his name.

and 2007 tax years. Accompanying the letter was a Michigan Department of Treasury form declaring notice of a PRE denial and stating simply that Levenfeld's PRE was being denied/adjusted because "[t]he property claimed is not the owner's principal residence." In September 2008, the county treasurer sent Levenfeld an invoice showing, given the PRE denial, that $11,254 was owed in property taxes for 2006 and that $10,300 was owed in property taxes for 2007. The $11,254 due for 2006 included a non-homestead tax of $8,742, plus interest and fees. The $10,300 due for 2007 included a non-homestead tax of $9,066, plus interest and fees. In November 2008, Levenfeld paid these tax bills in full.

In September 2008, Levenfeld, through counsel, filed a petition with the Small Claims Division of the MTT, challenging the PRE rejection. Through discussions with the county treasurer's office, Levenfeld discovered that her PRE had been revoked because she failed to file a state individual income tax return. Addressing that matter, Levenfeld's MTT petition expressed:

> Ms. Levenfeld's Michigan Homestead Exemption was reversed based on the fact that she does not file a Michigan Income Tax return which, because of her income level, Ms. Levenfeld is not required to file. The attached documentation (MI Driver's License, MI Voters Registration, Vehicle Certificate of Title and Vehicle Registration) evidences Ms. Levenfeld's entitlement for a Michigan homestead exemption.

For the tax years in question, Levenfeld's Michigan operator's license, voter registration card, and vehicle certificate of title and registration listed her address as being located on Main Drive in Grand Beach, Michigan – the property previously covered by the PRE.

Respondent Berrien County filed an answer to Levenfeld's petition, wherein the county asserted, "Marcia and Scott Levenfeld are filing a joint tax return[,] [and] Scott is claiming homestead in Illinois and Marcia is claiming homestead in Michigan."[3]

In a supporting memorandum filed by Levenfeld in the Small Claims Division of the MTT, she argued that the property was her principal residence, which she considered to be her home, that she did not file a Michigan tax return for the years 2005 through 2007 because she had no income, and that she filed a Michigan return for 2008 after finally landing a job in 2008.

Before setting forth the rulings issued in the MTT, and to give some context to those rulings, we initially note that the statutory provision at issue in this case is MCL 211.7cc, which provides in relevant part:

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[3] The answer and attached documentation indicated that the taxable value of the property in 2006 was $485,719 and was $503,690 in 2007. The state equalized value (SEV) for those years was $568,100 and 642,400, respectively. The answer and documents also reflected that the property was zoned single family residential and was sold to Levenfeld for $1,150,000.

> (1) A principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section. . . . .
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> (2) Except as otherwise provided in subsection (5), an owner of property may claim 1 exemption under this section by filing an affidavit on or before May 1 with the local tax collecting unit in which the property is located. The affidavit shall state that the property is owned and occupied as a principal residence by that owner of the property on the date that the affidavit is signed. The affidavit shall be on a form prescribed by the department of treasury. . . . The affidavit shall require the owner claiming the exemption to indicate if that owner or that owner's spouse has claimed another exemption on property in this state that is not rescinded or a substantially similar exemption, deduction, or credit on property in another state that is not rescinded. . . . .
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> (3) Except as otherwise provided in subsection (5), a husband and wife who are required to file or who do file a joint Michigan income tax return are entitled to not more than 1 exemption under this section. For taxes levied after December 31, 2002, a person is not entitled to an exemption under this section if any of the following conditions occur:
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> (a) That person has claimed a substantially similar exemption, deduction, or credit on property in another state that is not rescinded.
>
> *(b) Subject to subdivision (a), that person or his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section, unless that person and his or her spouse file separate income tax returns.*
>
> (c) That person has filed a nonresident Michigan income tax return, except active duty military personnel stationed in this state with his or her principal residence in this state.
>
> *(d) That person has filed an income tax return in a state other than this state as a resident* . . . . [Emphasis added.][4]

Operating in conjunction with the State Office of Administrative Hearings and Rules, a hearing referee for the Small Claims Division of the MTT conducted a hearing on Levenfeld's

[4] This is the current version of the statute through 2010 PA 17. Except for some minor changes, irrelevant for our purposes, made in 2008 PA 96 (adding subsection 5 exception to introduction of subsections 2 and 3), the language is the same as that which controlled in tax years 2006 and 2007.

petition in January 2010. The referee took testimony and admitted various documents into evidence.[5] In March 2010, the referee filed a proposed opinion and judgment. In his findings of fact, the referee found, by a preponderance of the evidence, that the property was located on Main Drive in Grand Beach, that the property was residential, that Levenfeld owned the property, that she occupied the property on or before May 1, 2005, and that Levenfeld filed the PRE affidavit in 2005. The referee further found that Levenfeld "and her husband have a prenuptial agreement to maintain separate properties[,]" that neither Levenfeld nor her husband "has an ownership interest in the other's real estate[,]" and that Levenfeld "does not have an Illinois homestead exemption." In its conclusions of law, the referee ruled:

> 1. [Levenfeld] has proven, by a preponderance of the evidence, that the subject property is qualified to receive an exemption under MCL 211.7cc for the tax years at issue.
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> 2. The following authority and reasoned opinion supports this burden of proof determination:
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> [Levenfeld] has fulfilled the requirement under MCL 211.7cc to be entitled to a Michigan PRE. She resides at, votes from, files Michigan income taxes when required, registers vehicles and maintains a Michigan driver's license using the subject property's address. [Levenfeld] does not file a Federal income tax form as married filing separately however Michigan statute does not make that a requirement.
>
> [Levenfeld] has no interest in her husband's Illinois property and therefore does not have an Illinois homestead. The Michigan residence is the one property claiming an exemption by [Levenfeld].

Although the hearing referee found that Levenfeld was entitled to a PRE, he did reject that part of Levenfeld's argument which contended that the Illinois exemption enjoyed by Scott Levenfeld was not substantially similar to Michigan's PRE. The referee ruled:

> [Levenfeld's] Attorney questioned the similarity requirement of the PRE statues claiming that the Illinois and Michigan exemptions are not substantially similar as required by Michigan's statute because one results in a tax savings of $290 [Illinois] and the other of over $9,000 [Michigan]. Northing in the statue requires a similar payment, property taxes are not uniform across the country. The requirement refers to an exemption to a person's home and the requirements to obtain the exemption.

In June 2010, the MTT, noting that neither party had filed exceptions to the referee's proposed opinion and judgment, nonetheless issued its final opinion and judgment that rejected

[5] The record on appeal does not contain a transcript of the hearing, and Levenfeld indicates that there is no recording or transcript of the hearing.

the referee's conclusions and instead found that Levenfeld was not entitled to the PRE. In examining MCL 211.7c(1) and (2), the MTT did find that there was no evidence indicating that Levenfeld did not live on the property, that the evidence established that she treated the property as a principal residence, and that Levenfeld "claimed the PRE by filing the appropriate affidavit." The MTT then focused on MCL 211.7cc(3)(b), which does not allow a PRE for a property owner if "that person or his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section, unless that person and his or her spouse file separate income tax returns." The MTT found that Levenfeld and her husband filed joint federal and Illinois income tax returns for the tax years at issue here, 2006 and 2007, during which timeframe Scott Levenfeld owned residential property in Illinois and claimed a homestead exemption on the property under Illinois law. The MTT thus concluded that §§ 7cc(3)(b) applied, depriving Levenfeld of any right to a PRE. With respect to §§ 7cc(3)(b), the MTT further ruled:

> [Levenfeld's] argument that the Illinois exemption is not "substantially similar" based on comparative monetary benefit also fails. The Hearing Referee correctly found that the dollar benefit need not be substantially similar. The Illinois exemption is based in statute and is titled General Homestead Exemption. The requirements include either ownership or lease with tax liability for residential property and occupancy. There are further limitations for married couples claiming multiple homesteads. The limitations in MCL 211.7cc(3) cannot be read to mean that (i) the exact requirements or language of the laws must be nearly identical. The underlying concept, an exemption from a portion of property taxation based on establishment of a principal residence, is substantially similar.

The MTT noted that the alleged prenuptial agreement, to the extent that it might support granting Levenfeld a PRE, could not control over clear state law relative to PRE eligibility. The MTT also cited MCL 211.7cc(3)(d), which does not allow a PRE for a property owner if "that person has filed an income tax return in a state other than this state as a resident[.]" The MTT indicated, however, that it was unclear whether the Illinois income tax filings declared Levenfeld to be a resident of Michigan or Illinois, as the tax documents were never provided. It is not clear from the final opinion and judgment whether the MTT actually relied on §§ 7cc(3)(d) as further support for its ruling, given the residence matter. However, in denying Levenfeld's motion for rehearing, the MTT stated:

> [Levenfeld's] spouse owned property in another state and claimed and received an exemption similar to the exemption at issue in this case. During that time period, [Levenfeld] filed a joint income tax return with [her] spouse in another state *as residents of that state*. The [MTT] need not consider [Levenfeld's] Constitutional [due process] arguments as MCL 211.7cc(3)(b) and MCL 211.7cc(3)(d) are clearly and directly on point. Based on the facts of this case, [Levenfeld] does not qualify for the requested exemption. [Emphasis added.]

Accordingly, the MTT's ruling below was that Levenfeld was not entitled to a PRE in accordance with §§ 7cc(3)(b) and (d). Levenfeld appeals as of right pursuant to MCL 205.753, challenging the MTT's findings on (b) and (d) of §§ 7cc(3). We note that if either (b) or (d) applies, no PRE is permitted. MCL 211.7cc(3) ("a person is not entitled to an exemption under this section if *any* of the following conditions occur") (emphasis added).

In the absence of fraud, our review of a decision issued by the MTT is limited to determining whether it erred in applying the law or adopted a wrong principle, and the MTT's factual findings are conclusive if, on the whole record, they are supported by competent, material, and substantial evidence. *Klooster v City of Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011); *Mich Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994); *Eldenbrady v City of Albion*, __ Mich App __; __ NW2d __ (2011), slip op at 2. "Because tax exemptions are disfavored, the burden of proving entitlement to an exemption rests on . . . the party asserting the right to the exemption." *Elias Bros Restaurants, Inc v Treasury Dep't*, 452 Mich 144, 150; 549 NW2d 837 (1996).

An issue of statutory construction is a question of law that is reviewed de novo. *Klooster*, 488 Mich at 295-296. "The primary goal of statutory interpretation is to give effect to the Legislature's intent, focusing first on the statute's plain language." *Id.* at 296. The words used by the Legislature in crafting a statute provide us with the most reliable evidence of the Legislature's intent. *Id.* "When construing a statute, a court must read it as a whole." *Id.* This Court generally defers to the MTT's construction of a statute that it is charged with enforcing and administering. *Twentieth Century Fox Home Entertianment, Inc v Dep't of Treasury*, 270 Mich App 539, 541; 716 NW2d 598 (2006). The interpretation of a statute by an agency charged with executing the statute is entitled to the most respectful consideration and should not be overruled or rejected absent cogent reasons. *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 629; 765 NW2d 31 (2009). That said, ultimately, an agency's construction of a statute is not binding on the courts and cannot conflict with the Legislature's intent as expressed in clear statutory language. *In re Rovas Complaint Against SBC Mich*, 482 Mich 90, 103; 754 NW2d 259 (2008). Whether the Legislature intended to grant a tax exemption must never be implied from language that will admit of a reasonable contrary construction. *Eldenbrady*, __ Mich App __, slip op at 2. If a tax exemption does exist, it cannot be enlarged by construction inconsistent with the express terms used by the Legislature. *Stege v Dep't of Treasury*, 252 Mich App 183, 189; 651 NW2d 164 (2002).

As indicated above, "[a] principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under . . . MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section. . . ." MCL 211.7cc(1). An "owner" includes "[a] person who owns property." MCL 211.7dd(a)(*i*). A "principal residence" is defined as "the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established." MCL 211.7dd(c). MCL 380.1211(1), which is referred to in §§ 7cc(1), provides in part:

> Except as otherwise provided in this section and section 1211c, the board of a school district shall levy not more than 18 mills for school operating purposes or the number of mills levied in 1993 for school operating purposes, whichever is

> less. A *principal residence*, qualified agricultural property, qualified forest property, supportive housing property, and industrial personal property are exempt from the mills levied under this subsection except for the number of mills by which that exemption is reduced under this subsection. [Emphasis added.]

Accordingly, a PRE results in exempting a residence from a tax levied by a school district for school operating purposes up to 18 mills.[6]

On appeal, Levenfeld initially spends time arguing that the hearing referee was correct in finding that Levenfeld was entitled to a PRE. We, however, need to focus our attention on the MTT's final opinion and judgment. Levenfeld does proceed to challenge the MTT's ruling that she was not qualified for a PRE on the basis of MCL 211.7cc(3)(d), which, as indicated above, does not allow a PRE for a property owner if "that person has filed an income tax return in a state other than this state *as a resident*[.]" (Emphasis added.) Levenfeld argues that the MTT itself acknowledged that there were no Illinois tax return documents in evidence, making it unclear whether Levenfeld filed as an Illinois resident, yet, in the rehearing opinion, the MTT concluded, absent any support, that Levenfeld and her husband had filed tax returns as Illinois residents. We agree with Levenfeld that the MTT erred in applying §§ 7cc(3)(d). There is no evidence, let alone competent, material, and substantial evidence, that Levenfeld, filing Illinois tax returns jointly with her husband, did so as a listed Illinois resident. All of the evidence indicates that Levenfeld was a resident of Michigan in 2006 and 2007. Moreover, the MTT even stated in its final opinion and judgment that the documentation and testimony indicated that Levenfeld "did treat the subject property [in Michigan] as a principal residence."[7]

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[6] Each mill represents $1 of tax assessment per $1,000 of a property's assessed value. Black's Law Dictionary (7th ed). Using the Michigan Department of Treasury's property tax calculator, if we input a taxable value of $500,000 relative to property located in the Village of Grand Beach, Township of New Buffalo, and County of Berrien, the estimated property tax for 2010 absent a PRE is $21,930, and the estimated tax with a PRE is $12,840, reflecting a difference of just over $9,000, which is consistent with the dollar amount bandied about by Levenfeld and addressed by the referee and MTT. Simply doing the math, 18 mills on a property with a taxable value of $500,000 would result in an exemption equaling $9,000 ($500,000 x 18 ÷ $1,000 = $9,000). Furthermore, documents in the record reflect that, absent consideration of interest and administrative fees, Levenfeld owed and paid an additional $8,742 for 2006 property taxes and $9,066 for 2007 property taxes after the PRE was revoked.

[7] We note that in *Stege*, 252 Mich App at 195, this Court held that "the plain language of the Michigan homestead exemption does not prohibit both a Michigan property tax homestead exemption for a Michigan home and a simultaneous Illinois homestead income tax credit for a separate Illinois home." However, *Stege* has no bearing on our case because the tax years at issue in *Stege*, as well as the date the opinion was issued, were all before the Legislature amended MCL 211.7cc under 2003 PA 105, adding the husband and wife exceptions found in §§ 7cc(3)(a)-(e), which encompass the exceptions at issue here.

Levenfeld maintains that the MTT also erred in applying MCL 211.7cc(3)(b), which, as indicated above, does not allow a PRE for a property owner if "that person or his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section, unless that person and his or her spouse file separate income tax returns." There appears to be no dispute that Levenfeld and her husband did not file separate income tax returns for tax years 2006 and 2007; they filed joint Illinois and federal income tax returns. There is also no dispute that Levenfeld's husband owns property in a state other than Michigan, i.e., Illinois. Levenfeld argues, however, that the Illinois exemption is *not substantially similar* to Michigan's PRE. The MTT, as well as the hearing referee, found that the exemptions in the two states were substantially similar despite the large discrepancy between the resulting tax savings.[8]

Levenfeld argues that Scott Levenfeld's Illinois homestead exemption resulted in a property tax savings of only $290 per year with respect to his separately titled home in Illinois, whereas giving Levenfeld a PRE on her Michigan house would entitle her to a tax savings of roughly $9,000 per year. There is no transcript of the referee hearing and there are no tax documents in the record showing the dollar numbers attributed to Levenfeld's husband relative to his tax savings. However, the hearing referee and the MTT ostensibly accepted those figures as accurate, and the county makes no argument to the contrary. The county simply argues, in a single sentence and absent citation to authority, that "[t]he Illinois exemption is based on the same statutory construction that the Michigan exemption is based on, that is, a taxpayer need not pay school tax on a personal residence which they own and occupy." Levenfeld contends that the Illinois exemption applied automatically to Mr. Levenfeld's property, nominally reducing his tax burden, unlike in Michigan where a property owner has to affirmatively elect a PRE, resulting in a substantial monetary gain. Levenfeld argues that the MTT's interpretation of §§ 7cc(3)(b) effectively reads out the language "substantially similar," which language reflects an intention to have a quantitative analysis performed.

We discussed above the parameters of Michigan's PRE and how it operates to save money on property taxes. In Illinois, the general homestead exemption is found in 35 Ill Comp Stat 200/15-175, which provides in part:

> Except as provided in Sections 15-176 and 15-177, homestead property is entitled to an annual homestead exemption limited, except as described here with relation to cooperatives, to a reduction in the equalized assessed value of homestead property equal to the increase in equalized assessed value for the

[8] Given that Levenfeld and her husband did not file separate income tax returns for tax years 2006 and 2007, and considering the hearing referee's finding that the exemptions were substantially similar, the referee's conclusion that Levenfeld was entitled to a PRE defies logic, as §§ 7cc(3)(b) would clearly apply. This may explain why the MTT conducted its own analysis and rendered a contrary opinion despite the fact that the county did not file an exception to the referee's proposed judgment.

> current assessment year above the equalized assessed value of the property for 1977, up to the maximum reduction set forth below. . . . .
>
> [Except] as provided in Sections 15-176 and 15-177, for taxable years 2004 through 2007, the maximum reduction shall be $5,000[.] . . . . [[9]]

Accordingly, the Illinois homestead exemption operates differently than Michigan's PRE, where it reduces a property's equalized assessed value, limited to $5,000 for the tax years at issue here, which value is then subjected to the applicable tax rate or millage, resulting in a tax savings that typically would be fairly minimal; $290 for Mr. Levenfeld. Our PRE, on the other hand, does not operate to reduce a property's taxable value or SEV; rather, it more directly reduces the tax liability on a home by lowering the mills. We note that the dramatic difference in tax savings here when comparing application of Michigan's PRE to the Illinois homestead exemption results because of the fairly high taxable value of Levenfeld's house in Michigan. If, instead of a taxable value hovering around $500,000, Levenfeld's property had a taxable value of $50,000, her estimated tax without a PRE, using the Michigan Department of Treasury's property tax calculator, would be $2,193, and the estimated tax with a PRE would be $1,284, reflecting a tax savings of only $909. Similarly, any tax savings enjoyed by a resident under the Illinois statute would generally vary depending on a home's equalized assessed value. We tend to agree, therefore, with the MTT that the Legislature did not equate substantial similarity with comparative monetary benefit, as such an approach would result in varying conclusions dependent on the particular value of the homes being examined, even where the same state is being compared against Michigan. The question is whether the statutes are substantially similar, not whether application of the statutes results in tax savings that are substantially similar. It would defy logic to find, for example, that Michigan's PRE is substantially similar to Illinois' exemption in one case, given a miniscule difference in tax savings, but yet find in a second case that Michigan's PRE is not substantially similar to the Illinois exemption, given an enormous difference in tax savings.

Additionally, we find that the different underlying methodologies used in calculating the tax benefit, i.e., reduction in equalized assessed value versus a direct reduction in mills and thus tax liability, does not mean that the exemptions are not substantially similar. This is evident from the language in MCL 211.7cc(3)(b), where the Legislature speaks of an "exemption, *deduction, or credit*" that is substantially similar to a Michigan PRE, which reflects that different methodologies may indeed be employed, yet a substantial similarity could still exist. (Emphasis added.)

We tend to agree with the MTT that the Legislature was concerned with the "type" of exemption, as in a "homestead" exemption, when mandating a comparison of statutory schemes for purposes of §§ 7cc(3)(b). 35 Ill Comp Stat 200/15-175 defines "homestead property" as including, in part, "residential property that is occupied by its owner or owners as his or their

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[9] We note that the statute proceeds to address variations on the exemption formula based on certain criteria, but we cannot delve into the variations as the record provides no details whatsoever regarding Scott Levenfeld's residence.

principal dwelling place[.]" This language is comparable to the language and definitions in MCL 211.7cc and MCL 211.7dd, which govern our PREs, thereby making the exemptions substantially similar.

Giving "respectful consideration" to the MTT's interpretation, contemplating the language of MCL 211.7cc(3)(b), considering Levenfeld's burden to establish entitlement to an exemption, and given that the language at issue is somewhat "doubtful and obscure," there do not exist "cogent reasons" for overruling the MTT's construction of MCL §§ 7cc(3)(b). *In re Rovas*, 482 Mich at 103.

Affirmed. Having fully prevailed on appeal, we award taxable costs to the county pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter