STATE OF MICHIGAN

COURT OF APPEALS

IIP-MI 4 LLC and LIVWELL MICHIGAN LLC, Petitioners-Appellees, v CITY OF WARREN, Respondent-Appellant.	UNPUBLISHED January 22, 2026 2:38 PM No. 373070 Tax Tribunal LC No. 24-000081

Before: KOROBKIN, P.J., and MURRAY and MALDONADO, JJ.

PER CURIAM.

Respondent City of Warren (the City) appeals by right the Final Opinion and Judgment of the Michigan Tax Tribunal determining that certain property owned by petitioners IIP-MI 4 LLC and LivWell Michigan LLC (collectively, LivWell) is entitled to a Qualified Agricultural Exemption under § 7ee of the General Property Tax Act, MCL 211.1 *et seq*. We vacate the Tax Tribunal's Final Opinion and Judgment.

I. BACKGROUND

LivWell owns a property primarily used for marijuana production and packaging pursuant to a license issued under the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq*. (MRTMA) and the Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq*. (MMFLA).[1] On or about April 29, 2023, LivWell filed a claim for a Qualified Agricultural Exemption (QAE) pursuant to MCL 211.7ee from certain school operating taxes. On or about May 12, 2023, the City sent LivWell notice via mail informing them that the City's tax assessor had denied LivWell's request for a QAE. The notice further advised that a "taxpayer who

[1] We use the common spelling of marijuana, unless quoting statutes or documents in the record that refer to "marihuana."

timely and properly filed Form 2599 may appeal an assessor's denial of the [QAE] for the 2023 assessment year to the July or December Board of Review under MCL 211.ee [sic]."[2]

LivWell appealed to the 2023 December Board of Review, which denied the QAE on December 22, 2023. Twenty-four days later, on January 15, 2024, LivWell appealed to the Tax Tribunal. The City argued that LivWell was not entitled to a QAE because marijuana production is commercial, not agricultural. Moreover, the Tax Tribunal could not assert jurisdiction because the school operating tax had been levied in the summer, so MCL 211.7ee(6) required LiveWell to appeal to the 2023 July Board of Review, which LivWell failed to do. LivWell argued that marijuana is a plant produced for agricultural use. And regarding jurisdiction, MCL 211.7ee(6) simply prevented them from appealing a 2024 QAE denial to the 2023 December Board of Review. LivWell further argued they had not been provided proper notice of their appeal rights because the notice indicated an appeal could be made "to the July or December Board of Review under MCL 211.ee [sic]."

The Tax Tribunal found that LivWell was required to appeal to the 2023 July Board of Review to properly invoke the Tribunal's jurisdiction. Nevertheless, the Tribunal concluded that jurisdiction could be assumed on the basis that the appeal notice was "plainly misleading." The Tax Tribunal then went on to determine that property was primarily devoted to agricultural use, such that it qualified for the QAE. The City now appeals.

II. STANDARDS OF REVIEW

Judicial review of Tax Tribunal decisions "is limited." *Campbell v Dep't of Treasury*, 509 Mich 230, 237; 984 NW2d 13 (2022). "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Const 1963, art. 6, § 28. Thus, when analyzing whether the Tax Tribunal "properly interpreted and applied the statutes governing its jurisdiction," as at issue here, "this Court's review is limited to determining whether the Tax Tribunal committed an error of law in its interpretation and application of the statutes." *New Covert Generating Co, LLC v Cover Twp*, 334 Mich App 24, 45; 964 NW2d 378 (2020). All the factual findings made by the Tax Tribunal are final if supported by competent and substantial evidence. *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). However, we review questions of law—including questions of statutory interpretation and the Tax Tribunal's jurisdiction to hear a case—de novo. *Strata Oncology, Inc v Dep't of Treasury*, 348 Mich App 378, 387; 18 NW3d 367 (2023). Under de novo review, we "review the legal issue independently, without required deference to the courts below." *Wright v Genesee Co*, 504 Mich 410, 417; 934 NW2d 805 (2019).

[2] This reference to MCL 211.ee appears to be a typographical error. The parties agree that the correct provision is MCL 211.7ee, which is the statute that the parties dissected before the Tax Tribunal and on appeal.

III. TAX TRIBUNAL'S JURISDICTION

The City argues that the Tax Tribunal lacked jurisdiction to hear LivWell's appeal regarding the denial of their claim for a QAE under MCL 211.7ee and that the lack of jurisdiction required dismissal. We agree.

The Michigan Tax Tribunal was created by the Tax Tribunal Act, MCL 205.701 *et seq*. *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 541; 817 NW2d 548 (2012). "The jurisdiction of the Tax Tribunal is granted by statute." *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239; 477 NW2d 492 (1991). The Tax Tribunal "has no equitable power to waive or otherwise disregard a statutory requirement or filing deadline." *Sixarp, LLC v Byron Twp*, ___ Mich ___; ___ NW3d ___ (2025) (Docket No. 166190); slip op at 6. In the absence of statutory authority, the Tax Tribunal lacks subject-matter jurisdiction and "should not proceed further except to dismiss the action." *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW2d 215 (2002). This is because the "lack of subject-matter jurisdiction is so serious a defect in the proceedings that a tribunal is duty-bound to dismiss a plaintiff's claim even if the defendant does not request it." *Bluewater Nat Gas Holding, LLC v Ray Twp*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 373788); slip op at 3, quoting *Electronic Data Sys Corp*, 253 Mich App at 544.

To determine if the Tax Tribunal had subject-matter jurisdiction to hear this case, we must interpret several statutes. "The goal of statutory interpretation is to discern and give effect to the Legislature's intent," the best indicator of which is "the language of the statute itself." *New Covert Generating Co, LLC*, 334 Mich App at 51 (citation omitted). "If the statute is unambiguous, this Court must assume that the Legislature intended the meaning clearly expressed and must enforce the statute as written." *Bluewater Nat Gas Holding, LLC*, ___ Mich App at ___; slip op at 4 (quotation marks and citation omitted). "When considering the correct interpretation, the statute must be read as a whole, and individual words and phrases, while important, should be read in the context of the entire legislative scheme." *Id*. (quotation marks, citations, and brackets omitted). "Moreover, under *in pari materia*, 'statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law.' " *Id*. quoting *Sixarp, LLC*, ___ Mich at ___; slip op at 11 (quotation marks and citations omitted). "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." *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002).

The first relevant statute in this case is MCL 205.735a, which "is part of a set of laws that govern the appeal of property-tax assessments in Michigan." *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 570; 861 NW2d 347 (2014). MCL 205.735a has repeatedly been interpreted to be a jurisdictional statute. For example, the Supreme Court recently considered MCL 205.735a(3)—which addresses the appeal of assessment disputes—and determined that the "Legislature has clearly mandated that the requirement for appeal in the [Tax Tribunal] under MCL 205.735a(3) is jurisdictional." *Sixarp, LLC*, ___ Mich at ___; slip op at 8. The requirements of MCL 205.735a(3) are as follows:

> 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). [(Emphasis added.)]

The *Sixarp* Court examined this language and determined:

> The statute plainly states that "the assessment *must* be protested *before* the board of review before the tribunal *acquires jurisdiction* of the dispute." MCL 205.735a(3) (emphasis added). As a result, MCL 205.735a(3) "is not a notice statute, but is a jurisdictional statute that governs when and how a petitioner invokes the Tax Tribunal's jurisdiction." [*Sixarp*, ____ Mich at____; slip op at 8.]

The provision at issue in the present case is MCL 205.735a(5), which addresses the appeal of a QAE claim. MCL 205.735a(5) is not meaningfully distinguishable from MCL 205.735a(3):

> For a dispute regarding a determination of a claim of exemption of a principal residence or qualified agricultural property for a year in which the July or December board of review has authority to determine a claim of exemption for a principal residence or qualified agricultural property, the claim of exemption *shall* be presented to either the July or December board of review *before* the tribunal *acquires jurisdiction* of the dispute. [MCL 205.735a(5) (emphasis added).]

The same operative words appear in the same order. Accordingly, MCL 205.735a(5) is jurisdictional.[3] In other words, the Tax Tribunal has jurisdiction to hear a QAE claim *only* if an appeal is first made to the Board of Review with the authority to hear the claim.

In turn, MCL 211.7ee(6) explains which Board of Review has the authority to determine a claim of exemption in a given case:

> An owner of property that is qualified agricultural property on May 1 for which an exemption was not on the tax roll may file an appeal with the July or December board of review in the year the exemption was claimed or the immediately succeeding year. An owner of property that is qualified agricultural property on May 1 for which an exemption was denied by the assessor in the year the affidavit was filed, may file an appeal with the July board of review for summer taxes or, if there is not a summer levy of school operating taxes, with the December board of review.

By its plain language, the provision thus creates two types of potential taxpayer appellants: (1) those who are qualified for an exemption that was not listed on the tax roll, and (2) those who are qualified for an exemption that was denied by the assessor. The former may choose between the

[3] See also *Bluewater Nat Gas Holding, LLC*, ___ Mich App at ___; slip op at 4-5 (determining that MCL 205.735a(6) is jurisdictional); *WA Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 338; 686 NW2d 9 (2004) (determining that MCL 205.735, which governs tax years before 2007, is a jurisdictional statute).

July or December Board of Review. But the latter *must* appeal to *either* the July or December Board of Review, depending on whether there was a summer tax levy.

In a comprehensive Proposed Opinion and Judgment, the Tax Tribunal considered this statutory scheme and determined that LivWell appealed to the wrong Board of Review, divesting the Tax Tribunal of jurisdiction. Parsing MCL 211.7ee(6), the Tax Tribunal stated, in relevant part:

> The second sentence [of MCL 211.7ee(6)] is plainly delineated by the inclusion of the conditions that it applies to claims which were denied by the assessor for the year they were filed and for jurisdictions which levy a school operating tax millage in the summer. Both facts are undisputed in this case. By statute, Petitioner was required to appeal the assessor['s] denial to the 2023 July [Board of Review] and failed to do so. The Tribunal therefore finds that Petitioner failed to properly invoke the Tribunal's jurisdiction under statute.

In its Final Opinion, the Tax Tribunal agreed with the Proposed Opinion's "very thorough analysis" and determined that LivWell was required to appeal to the July Board of Review under MCL 211.7ee(6).

We conclude that the Tax Tribunal's interpretation of the relevant statutes was correct. Neither MCL 205.735a(5) nor MCL 211.7ee(6) is ambiguous. The Tax Tribunal correctly interpreted the plain language of MCL 205.735a(5) to give effect to the Legislature's clear intent to divest the Tax Tribunal of jurisdiction when the proper board does not first hear the claim. See *New Covert Generating Co, LLC,* 334 Mich App at 51. And the Tax Tribunal also correctly interpreted the plain language of MCL 211.7ee(6) to give effect to the Legislature's clear intent to require a taxpayer to appeal its denial of a QAE to the July Board of Review when the City assessed a summer tax levy. See *id*.

It is true, as LivWell argues, that there was no exemption for its property on the tax rolls prior to May 1 of that year, potentially putting the first sentence of MCL 211.7ee(6) into play. But the first sentence does not mention a denial of the exemption as does the second sentence, nor does it refer to the timing implications of summer school taxes, as does the second sentence. Thus, the second sentence is more specific, and LivWell's circumstances fit precisely within that sentence.

Moreover, we are not persuaded that ambiguity exists when several other relevant statutes refer to *both* "the July or December" Board of Review. For example, LivWell points to MCL 211.53b[4] and MCL 205.762a.[5] Those other statutes are part of the statutory scheme governing all appeals, some of which must be heard before the July board, some of which must be heard before

[4] MCL 211.53b(3) states in relevant part that "[t]he board of review meeting in July and December must be held only for the purpose to hear appeals . . ."

[5] MCL 205.762a(3) states in relevant part that "[a]n appeal of a final determination of a claim for exemption of qualified agricultural property . . . shall be filed not later than 30 days after the July or December board of review determines a claim for exemption."

the December board, and some of which may be heard before either. So it makes sense that those provisions refer to both boards. Those provisions do not, however, supplant the plain language of MCL 211.7ee(6), which governs the particular appeal in this case and required that LivWell's appeal be heard before the July Board of Review.

However, the Tax Tribunal went on to conclude that it nevertheless retained jurisdiction because the notice of appeal that the City sent to the taxpayer was "ineffective and misleading" when it stated that the taxpayer could appeal "to either the July or December [Board of Review]." According to the Tax Tribunal, "[p]etitioner's reliance on incorrect information in the notice invoked the Tribunal's jurisdiction for the 2023 tax year only as Petitioner timely appealed the decision of the December 2023 [Board of Review]."

But the "Tax Tribunal does not have jurisdiction over constitutional questions" and lacks the authority to consider whether the procedures followed by a city and its board of review are sufficient to satisfy a taxpayer's constitutional right to procedural due process. *Spranger v City of Warren*, 308 Mich App 477, 484-485; 865 NW2d 52 (2014). Instead, this Court determines constitutional issues on appeal, and if a petitioner has been denied due process, "the only available remedy is a remand for a new hearing before the Tax Tribunal." *Spranger*, 308 Mich App at 484-485. See also *Bluewater Nat Gas Holding, LLC*, ___ Mich App at ___; slip op at 4 (noting that the Tax Tribunal has no power to exercise jurisdiction over a case when a jurisdictional requirement was not met). Accordingly, we conclude that the Tax Tribunal lacked jurisdiction under MCL 205.735a(5) to hear a claim of appeal regarding the denial of a QAE request under MCL 211.7ee and erred by asserting jurisdiction instead of entering a dismissal.

IV. DUE PROCESS

The City next asserts that its notice satisfied procedural due process requirements. We agree.

"The United States and Michigan constitutions preclude the government from depriving a person of life, liberty, or property without due process of law." *Bluewater Nat Gas Holding, LLC*, ___ Mich App at ___; slip op 8. "A local board of review is required to provide constitutionally adequate notice in a manner that is consistent with due-process principles." *Id*. (quotation marks, citation, and brackets omitted). "At a minimum, procedural due process requires notice and an opportunity to be heard in a meaningful time and manner." *Id*., quoting *Sixarp, LLC*, ___ Mich at ___; slip op at 17. "The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance." *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950) (citations omitted). Furthermore, "the means employed to notify interested parties must be more than a mere gesture; they must be means that one who actually desires to inform the interested parties might reasonably employ to accomplish actual notice." *Sidun v Wayne Co Treasurer*, 481 Mich 503, 509; 751 NW2d 453 (2008), citing *Mullane*, 339 US at 315. However, "[p]rocedural due process is a flexible concept, and determining what process is due in a particular case depends on the nature of the proceeding, the risks and costs involved, and the private and governmental interests that might be affected." *Bluewater Nat Gas Holding, LLC*, ___ Mich App at ___; slip op 8 (quotation marks and citation omitted).

The notice at issue in this case is as follows:

> A taxpayer who timely and properly filed Form 2599 may appeal an assessor's denial of the Qualified Agricultural Property Exemption for the 2023 assessment year to the July or December Board of Review under MCL 211.7ee [sic].
>
> Board of Review denials are appealed to the Michigan Tax Tribunal by filing a petition within 35 days of the Board's action.

The Tax Tribunal was not assuaged by the notice's reference to MCL 211.7ee:

> Because the notice also mentioned MCL 211.7ee(6) does not negate the fact that it mislead [sic] Petitioner into believing it could appeal to either the July or December [Board of Review]. The Tribunal agrees with the [Proposed Opinion] that Petitioner's reliance on incorrect information in the notice invoked the Tribunal's jurisdiction for the 2023 tax year only as Petitioner timely appealed the decision of the December 2023 [Board of Review].

To reach its conclusion, the Tax Tribunal relied on multiple opinions of this Court in which the Tribunal's dismissal for lack of jurisdiction was reversed and remanded on the basis that defective notice violated due process: *Geldhof Enterprises Inc v Dep't of Treasury*, unpublished per curiam opinion of the Court of Appeals, issued December 10, 2013 (Docket No. 313142); *Winkler v Markey Twp*, unpublished per curiam opinion of the Court of Appeals, issued August 24, 2023 (Docket No. 362586); and *Kemennu v Dep't of Treasury*, unpublished per curiam opinion of the Court of Appeals, issued June 15, 2023 (Docket No. 362037).

In all three cases, the notices were determined to be constitutionally defective. However, each of these cases is nonbinding and distinguishable.[6] *Geldhof Enterprises* and *Kemennu* both involve notices that were sent to the wrong address, which did not occur in the present case. *Geldhof Enterprises*, unpub op at 2; *Kemennu*, unpub op at 6. And in *Winkler*, the notices "not only lack[ed] information about an appeal deadline but they also lack[ed] any information about petitioner's right to appeal." *Winkler*, unpub at 3.[7]

In contrast, the notice in the instant case clearly notified LivWell of its right to appeal, as well as the timeframe for doing so. The notice informed LivWell that it could appeal its denial of the QAE "for the 2023 assessment year to the July or December Board of Review under MCL 211.7ee [sic]." This language directs the reader to review MCL 211.7ee to determine whether appeal to the July 2023 or December 2023 board is appropriate. LivWell does not contest that it received and read this notice. LivWell argues only that the language of the notice allows the

[6] Unpublished opinions of this Court are not binding precedent. MCR 7.215(C)(1).

[7] Notably, in remanding the matter back to the Tax Tribunal, the *Winkler* panel acknowledged that the Tax Tribunal has no jurisdiction to consider constitutional issues. *Winkler*, unpub at 3.

petitioner to pick which board to be heard by. But that argument ignores the phrase "under MCL 211.7ee."[8] As discussed, MCL 211.7ee(6) clearly explains that a petitioner must appeal its denial of a QAE to the July Board of Review when the City assessed a summer tax levy.

The City also persuasively argues that it would be nearly impossible to tailor all notices to all tax petitioners. Form notices are far more efficient, provided that the notices still comport with due process. In the present case, we conclude that the notice did comport with due process—that is, the notice was more than a mere gesture and was in a form "that one who actually desires to inform the interested parties might reasonably employ to accomplish actual notice." *Sidun*, 481 Mich at 509. Therefore, the notice did not violate due process and does not necessitate remand to the Tax Tribunal.

Because we determine that the Tax Tribunal lacked jurisdiction to hear LivWell's claim and that the City's notice did not violate due process guarantees, we need not consider the City's remaining argument that the Tax Tribunal erred when it granted LivWell's claim for a QAE.

Vacated.

/s/ Christopher M. Murray
/s/ Allie Greenleaf Maldonado

[8] As noted, the notice referred to MCL 211.ee instead of MCL 211.7ee. Nevertheless, LivWell does not argue that this misprint precluded its review of the correct statute. Rather, LivWell challenge's the City's *interpretation* of the statute.

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KOROBKIN, P.J. (*dissenting*).

I respectfully dissent. I would hold that the Tax Tribunal had jurisdiction, on statutory grounds or alternatively because respondent's notice violated petitioners' right to due process. Further, I agree with the Tax Tribunal that petitioners' licensed use of their property to grow marijuana entitles them to a qualified agricultural exemption. Accordingly, I would affirm.

I. TAX TRIBUNAL JURISDICTION

A. STATUTORY GROUNDS

The jurisdiction of the Tax Tribunal is defined by statute. MCL 205.731; MCL 205.735a. As our Supreme Court recently explained:

> The Legislature has clearly mandated that the requirement for appeal in the [Tax Tribunal] under MCL 205.735a(3) is jurisdictional. The statute plainly states that "the assessment *must* be protested *before* the board of review before the tribunal *acquires jurisdiction* of the dispute." MCL 205.735a(3) (emphasis added). As a result, MCL 205.735a(3) "is not a notice statute, but is a jurisdictional statute that governs when and how a petitioner invokes the Tax Tribunal's jurisdiction." *Electronic Data Sys Corp v Twp of Flint*, 253 Mich App 538, 542; 656 NW2d 215 (2002). [*Sixarp, LLC v Byron Twp*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 166190); slip op at 15.]

For our purposes, the more specific provision of MCL 205.735a is subsection (5), which contains a similar jurisdictional requirement that the taxpayer go first to the board of review:

> For a dispute regarding a determination of a claim of exemption of a principal residence or qualified agricultural property for a year in which the July or December board of review has authority to determine a claim of exemption for a principal residence or qualified agricultural property, the claim of exemption shall be presented to *either* the July or December board of review before the tribunal acquires jurisdiction of the dispute. . . . [MCL 205.735a(5) (emphasis added).]

Thus, for the Tax Tribunal to have jurisdiction to decide a claim of exemption for qualified agricultural property, the claim must be presented to the board of review—"either" at its July meeting or its December meeting. *Id*.

In this case, petitioners presented their claim to the December board of review before appealing to the Tax Tribunal. I conclude, therefore, that the Tax Tribunal had jurisdiction.

Respondent, seeing things differently, points to MCL 211.7ee(6). That statutory subsection provides as follows:

> An owner of property that is qualified agricultural property on May 1 for which an exemption was not on the tax roll may file an appeal with the July or December board of review in the year the exemption was claimed or the immediately succeeding year. An owner of property that is qualified agricultural property on May 1 for which an exemption was denied by the assessor in the year the affidavit was filed, may file an appeal with the July board of review for summer taxes or, if there is not a summer levy of school operating taxes, with the December board of review.

Here, petitioners were denied an exemption by the assessor in the year their affidavit was filed, and in Warren, there is a summer tax levy, so respondent argues that the second sentence in MCL 211.7ee(6) governs this situation and petitioners were required to present their claim to the July board of review. Petitioners waited until the December board of review to appeal, which, respondent argues, was too late.

The problem with respondent's argument is that MCL 211.7ee(6) says nothing about the *jurisdiction* of the Tax Tribunal; at most, it merely says when a taxpayer must present their claim to the board of review. And MCL 205.735a(5), which does set forth jurisdictional requirements for appeals to the Tax Tribunal, does not specify to which board of review the taxpayer must first present their claim; it says that "either" one will do. Therefore, whatever MCL 211.7ee(6) might be saying about when a taxpayer in petitioners' position should present their claim to a board of review, its requirements do not appear to limit the jurisdiction of the Tax Tribunal.

Respondent turns back to MCL 205.735a(5) and says that this statute limits the Tax Tribunal's jurisdiction to appeals from "the July or December board of review" with "*authority* to determine a claim of exemption . . . ." *Id.* (emphasis added). Since only the July board of review had such "authority" to determine petitioners' claim under MCL 211.7ee(6), respondent argues,

presenting that claim to that board of review was a jurisdictional prerequisite to a Tax Tribunal appeal.

But this argument quotes only a portion of the relevant sentence from the statute, thereby distorting its meaning. The complete sentence reads as follows:

> For a dispute regarding a determination of a claim of exemption of a principal residence or qualified agricultural property *for a year in which the July or December board of review has authority* to determine a claim of exemption for a principal residence or qualified agricultural property, the claim of exemption shall be presented to *either* the July or December board of review before the tribunal acquires jurisdiction of the dispute. . . . [MCL 205.735a(5) (emphasis added).]

As shown above, the focus of the statute is not on which *month's* board of review "has authority," it is whether the claim is being sought in "a year" in which a board of review has authority. *Id*. In this case, there is no dispute that petitioners were seeking an exemption for the same year in which a board of review had authority to determine the claim. Therefore, the relevant jurisdictional requirement was that they present their claim to "either" the July or December board of review before appealing to the Tax Tribunal. *Id*. Petitioners presented their claim in December, so the Tax Tribunal had jurisdiction.

One might wonder what the point is of MCL 211.7ee(6)'s second sentence—which respondent contends required petitioners to go to the July board of review—if it does not limit the jurisdiction of the Tax Tribunal. The answer lies in the distinction between a "mandatory claims-processing rule" and a requirement that is truly "jurisdictional." *Mich Farm Bureau v Dep't of Environment, Great Lakes & Energy*, 515 Mich 481, 514 n 25; ___ NW3d ___ (2024). Nonjurisdictional claim-processing rules "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Santos-Zacaria v Garland*, 598 US 411, 416; 143 S Ct 1103; 215 L Ed 2d 375 (2023) (cleaned up), quoted in *Mich Farm Bureau*, 515 Mich at 514 n 25. Filing deadlines and exhaustion requirements are "quintessential" claim-processing rules. *Henderson ex rel Henderson v Shinseki*, 562 US 428, 435; 131 S Ct 1197; 179 L Ed 2d 159 (2011); *Santos-Zacaria*, 598 US at 417. Such requirements "may be unalterable on a party's application but can nonetheless be forfeited if the party asserting the rule waits too long to raise the point." *Eberhart v United States*, 546 US 12, 15; 126 S Ct 403; 163 L Ed 2d 14 (2005) (cleaned up). Jurisdictional limitations, by contrast, can be raised at any time and must be enforced by courts (sua sponte, if necessary) "even in the face of a litigant's forfeiture or waiver." *Santos-Zacaria*, 598 US at 416. Recognizing that "[h]arsh consequences attend the jurisdictional brand," *id*. (cleaned up), the United States Supreme Court has adopted a "clear-statement rule," *id.* at 416-417, to distinguish claim-processing rules from jurisdictional requirements:

> If the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional, then courts and litigants will be duly instructed and will not be left to wrestle with the issue. But when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character. [*Arbaugh v Y&H Corp*, 546 US 500, 515-516; 126 S Ct 1235; 163 L Ed 2d 1097 (2006) (footnote and citation omitted).]

I would apply the above principles to our case.[1] To the extent that the second sentence of MCL 211.7ee(6) requires taxpayers in petitioners' position to go to the July board of review rather than the December board of review, our Legislature has not "clearly state[d]" that this requirement is jurisdictional. *Arbaugh*, 546 US at 515. Therefore, we should treat it as a nonjurisdictional claim-processing rule. *Id.* at 516.

As stated, nonjurisdictional claim-processing rules can be forfeited "if the party asserting the rule waits too long to raise the point." *Fort Bend Co, Tex v Davis*, 587 US 541, 549; 139 S Ct 1843; 204 L Ed 2d 116 (2019) (cleaned up). In my view, that's what happened here. When petitioners presented their claim to the December board of review, respondent did not invoke MCL 211.7ee(6) or otherwise object that petitioners' claim was untimely. The board of review considered petitioners' claim on its merits and issued the following notice of its action: "DENIED – DOES NOT *QUALIFY* FOR AGRICULTURAL EXEMPTION" (emphasis added). There is no dispute that petitioners, at that point, timely appealed to the Tax Tribunal. MCL 205.762a(3) ("An appeal of a final determination of a claim for exemption of qualified agricultural property . . . shall be filed not later than 30 days after the July or December board of review determines a claim for exemption."). Thus, the December board of review's final determination—a denial of petitioners' claim on its merits and without reference to any requirement regarding the July board of review—allowed petitioners to proceed as they did to the Tax Tribunal for review of that decision.

Nonjurisdictional claim-processing rules may also yield to "equitable considerations." See *United States v Wong*, 575 US 402, 409-410; 135 S Ct 1625; 191 L Ed 2d 533 (2015). One such consideration here, discussed in more detail below, is that respondent's notice to petitioners that their claim for an exemption was denied specifically stated that they could appeal the denial "to the July *or* December Board of Review . . . " (emphasis added). "A defendant who through misleading representations or otherwise prevents the plaintiff from suing in time will be estopped to plead the statute of limitations. This is equitable estoppel." *Miller v Runyon*, 77 F3d 189, 191 (CA 7, 1996).[2] Respondent told petitioners that they could appeal to the July or December board of review, and petitioners chose December. As MCL 211.7ee(6) is nonjurisdictional, equitable considerations allowed petitioners' appeal to the Tax Tribunal to proceed.

B. DUE PROCESS

Even if respondent's statutory argument as to the Tax Tribunal's jurisdiction were correct, "the statutes at issue here cannot be construed," or applied, "in a manner that would deny petitioner[s] due process of law." *Highland-Howell Dev Co, LLC v Marion Twp*, 478 Mich 932, 933 (2007), cited in *Sixarp*, ___ Mich at ___; slip op at 15. Thus, when the Tax Tribunal would otherwise lack jurisdiction under the applicable statute, the statutory requirement may "be waived

[1] Our Supreme Court has "caution[ed] courts to exercise reasoned judgment before branding an exhaustion-of-administrative-remedies requirement jurisdictional." *Mich Farm Bureau*, 515 Mich at 514 n 25.

[2] "Although this Court is not bound by decisions of federal courts or courts of other states, we may consider them persuasive." *Bank of America, NA v Fidelity Nat'l Title Ins Co*, 316 Mich App 480, 496 n 2; 892 NW2d 467 (2016).

by the court if necessary to remedy a constitutional due-process violation that deprived the taxpayer of their ability to" seek relief. *Sixarp*, ___ Mich at ___; slip op at 15. This includes situations in which an assessor or board of review fails to provide the taxpayer with constitutionally adequate notice of their right to appeal an adverse determination. See *Spranger v City of Warren*, 308 Mich App 477, 483-485; 865 NW2d 52 (2014); *Sixarp*, ___ Mich at ___; slip op at 15-16. I agree with petitioners that the notice employed by respondent did not meet constitutional requirements.

Respondent, in arguing that its notice to petitioners complied with due process, highlights our Supreme Court's recent decision in *Sixarp*, which, like this case, involved a taxpayer's due-process challenge to the adequacy of notice regarding the requirements for appealing a tax assessor's denial of a claimed exemption to the local board of review. *Sixarp*, ___ Mich at ___; slip op at 16-24. In *Sixarp*, the assessor's exemption denial notice advised that the taxpayer could appeal the denial to the March board of review and that doing so was required to preserve its ability to appeal to the Tax Tribunal. *Id*. at ___; slip op at 2-3, 20. The Court in *Sixarp* rejected the taxpayer's argument that the notice was constitutionally defective because it did not specifically include detailed information about the March board of review's meeting dates and times, noting that the taxpayer had received actual notice about the pertinent deadlines from a separate notice of assessment. *Id*. at ___; slip op at 21, 23. These efforts, the Court concluded, were "reasonably calculated, under all the circumstances, to apprise [the taxpayer] of the appeal process and to afford them an opportunity to present their objections." *Sixarp*, ___ Mich at ___; slip op at 23 (cleaned up). That the denial notice "*could have* included more detailed information about when the [board of review] would meet" did not amount to a due process violation. *Id*. at ___; slip op at 20.

Sixarp is distinguishable from this case. The Court there was careful to note that all the information provided to the taxpayer "was *accurate* (if less than complete)." *Id*. at ___; slip op at 23 (emphasis added). By contrast, our caselaw is clear that when a constitutionally required notice is inaccurate or misleading, it violates due process. See *Vicencio v Ramirez*, 211 Mich App 501, 505; 536 NW2d 280 (1995) (holding that "notice must be worded in a manner that would not mislead its recipient in deciding how to respond to the notice given"); *Alan v Wayne Co*, 388 Mich 210, 353; 200 NW2d 628 (1972) (holding that "to comport with due process the notice . . . must not make any misleading or untrue statement").

In this case, I would characterize the notice accompanying the assessor's denial as not merely "less than complete," as in *Sixarp*, ___ Mich at ___; slip op at 23; it was affirmatively misleading. The notice stated the following:

> **Notification of Taxpayer's Right of Appeal**
>
> A taxpayer who timely and properly filed Form 2599 may appeal an assessor's denial of the Qualified Agricultural Property Exemption for the 2023 assessment year *to the July or December Board of Review* under MCL 211.ee [sic].
>
> Board of Review denials are appealed to the Michigan Tax Tribunal by filing a petition within 35 days of the Board's action. [Emphasis added.]

But now, respondent contends that petitioners could appeal *only* to the July board of review, not "the July *or* December" board of review. So respondent's notice was inaccurate and misleading—and petitioners were, in fact, misled.

Respondent argues that the notice was clear because it referred the taxpayer to the relevant statute, MCL 211.7ee, and that statute, in turn, explains that appeals must be filed with the July board of review. But there are two problems with this argument. First, the record reflects that respondent's notice contains a typographical error and does not actually cite the statute; it states that a taxpayer may appeal under "MCL 211.ee," which does not exist. Second, MCL 211.7ee itself is not exactly clear on this issue. Subsection (6) of the statute states:

> An owner of property that is qualified agricultural property on May 1 for which an exemption was not on the tax roll may file an appeal with the July or December board of review in the year the exemption was claimed or the immediately succeeding year. An owner of property that is qualified agricultural property on May 1 for which an exemption was denied by the assessor in the year the affidavit was filed, may file an appeal with the July board of review for summer taxes or, if there is not a summer levy of school operating taxes, with the December board of review. [MCL 211.7ee(6).]

The first sentence of the statute states that the property owner "may file an appeal with the July or December board of review." *Id.* And this first sentence applies in a broad sense to petitioners, as no exemption was on the tax roll for their property. It is only the second sentence, which is more specific than the first because it refers to an exemption being denied by the assessor in the year the affidavit was filed, that indicates (but does not explicitly state) that an appeal may be filed only with the July board of review if there is a summer levy of school operating taxes. As a practical matter, a reasonable taxpayer who receives a notice stating that they may appeal "to the July or December Board of Review," with a citation to MCL 211.7ee,[3] would naturally link that statement to the first sentence of MCL 211.7ee, not the second. Thus, I do not think that respondent's notice to petitioners was " 'reasonably calculated, *under all the circumstances*, to apprise' " petitioners that they could appeal only to the July board of review, and not to the December board of review. *Sixarp*, ___ Mich at ___; slip op at 18 (emphasis added), quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950). Or, put another way, I do not think that "one who actually desires to inform the interested parties" that they must appeal in July, and cannot do so in December, "might reasonably employ" this form of a notice, which expressly advises the recipient that they may appeal in July *or* December. *Sixarp*, ___ Mich at ___; slip op at 18 (cleaned up).

Respondent also argues that it would be excessively burdensome on the municipality to tailor their notices to each individual taxpayer, so it is reasonable to use "standard forms" to provide generalized information about appeals and leave it to the recipient to consult the relevant statute for more specific information. But respondent's argument is undermined by the record evidence here. Respondent's notice was on City of Warren letterhead, and under the heading

[3] Again, the record shows that the actual notice cites to "MCL 211.ee," so this assumes petitioners could discern that MCL 211.7ee was intended.

"Notification of Taxpayer's Right of Appeal," the notice specifically references "an assessor's denial of the Qualified Agricultural Property Exemption for the 2023 assessment year." Thus, the notice was already tailored to a specific city, year, and type of exemption, and respondent knew that there would be a summer levy of school operating taxes. Therefore, notifying the taxpayer that they may appeal only to the July board of review (and not the December board of review) would entail no additional administrative expense or inconvenience. Cf. *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976) (requiring consideration of "the fiscal and administrative burdens that the additional or substitute procedural requirement would entail"), quoted in *Sixarp*, ___ Mich at ___ n 16; slip op at 18 n 16.

Due process is about fundamental fairness. *Sixarp*, ___ Mich at ___; slip op at 17. In my view, it is fundamentally unfair for the government to provide notice that an appeal is available in July or December, along with an incorrect citation to a statute that could also easily be read as allowing an appeal in July or December, if in reality an appeal may be presented only in July and a December appeal is too late. That is, by and large, what happened here. Accordingly, I would waive any jurisdictional requirement that petitioners appeal to the July board of review and affirm the Tax Tribunal's exercise of jurisdiction over petitioners' appeal to remedy the due process violation caused by respondent's defective notice. See *Sixarp*, ___ Mich at ___; slip op at 15-16.

II. QUALIFIED AGRICULTURAL EXEMPTION

Moving to the merits, I agree with the Tax Tribunal that petitioners' licensed use of their property to grow marijuana entitles them to a qualified agricultural exemption under MCL 211.7ee.[4]

"Absent fraud, our review of a decision by the [Tax Tribunal] is limited to determining whether [it] erred in applying the law or adopting a wrong legal principle." *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). "[T]he factual findings of the [Tax Tribunal] are final, provided that they are supported by competent and substantial evidence." *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011) (cleaned up). Substantial evidence is "any evidence that reasonable minds would accept as sufficient to support the decision," and "it may be substantially less than a preponderance of the evidence." *Blake's Farm, Inc v Armada Twp*, ___ Mich App ___, ___; ___ NW3d ___ (Docket Nos. 371397, 371398); slip op at 2 (cleaned up). "The central dispute in this case involves the proper interpretation and application of [statutes], which is a question of law that this Court reviews de novo." *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 627; 752 NW2d 479 (2008).

> When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature. To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself. If the language of a statute is clear and

[4] The majority does not reach this issue because it concludes that the Tax Tribunal did not have jurisdiction and respondent's notice did not violate due process. Because I disagree with the majority on those two points, I must reach the merits to opine as to how respondent's appeal should be resolved.

> unambiguous, the statute must be enforced as written and no further judicial construction is permitted. Effect should be given to every phrase, clause, and word in the statute and, whenever possible, no word should be treated as surplusage or rendered nugatory. Only when an ambiguity exists in the language of the statute is it proper for a court to go beyond the statutory text to ascertain legislative intent. [*Samona v City of Eastpointe*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 366648); slip op at 9 (cleaned up).]

Under MCL 211.7ee(1), "qualified agricultural property" is exempt from certain property taxes under the General Property Tax Act (GPTA), MCL 211.1 *et seq*. "Qualified agricultural property" for purposes of that exemption includes "unoccupied property and related buildings located on that property devoted primarily to agricultural use as defined in . . . MCL 324.36101." MCL 211.7dd(d). And MCL 324.36101 defines "agricultural use" to mean

> the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; maple syrup production; Christmas trees; and other similar uses and activities. [MCL 324.36101(b).]

Applying that definition here, petitioners' use of their property is devoted primarily to "the production of plants . . . useful to humans." *Id*. It can hardly be denied that marijuana is a plant. Additionally, the Tax Tribunal found that petitioners' property is primarily devoted to producing it, a finding that is supported by competent and substantial evidence. See *President Inn Props*, 291 Mich App at 631. And, although marijuana remains somewhat controversial, it is "useful to humans," as required by MCL 324.36101(b). Petitioners are licensed by the state to produce marijuana for medical use, and in the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq*., "[t]he people of the State of Michigan [found] and declare[d] that . . . [m]odern medical research . . . has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions." MCL 333.26422(a). Petitioners are also licensed to produce marijuana for nonmedical use, the purposes of which, according to the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq*., include "remov[ing] the commercial production and distribution of marihuana from the illicit market; prevent[ing] revenue generated from commerce in marihuana from going to criminal enterprises or gangs; . . . [and] ensur[ing] the safety of marihuana and marihuana-infused products . . . ." MCL 333.27952. Therefore, applying the clear and unambiguous statutory text of MCL 211.7ee(1), MCL 211.7dd(d), and MCL 324.36101(b), see *Samona*, ___ Mich App at ___; slip op at 9, petitioners' property is devoted primarily to agricultural use, entitling them to a qualified agricultural exemption.

Respondent, disagreeing with the Tax Tribunal, argues that marijuana production is not agricultural use because marijuana is not explicitly enumerated in MCL 324.36101(b). Although "[a] tax exemption for real or personal property under the GPTA is available only when the Legislature *expressly* exempts that property from taxation," *Campbell v Dep't of Treasury*, 509 Mich 230, 241; 984 NW2d 13 (2022), citing MCL 211.1, the Legislature in MCL 324.36101(b) expressly included "plants," and marijuana is a plant. The specific type of plant or animal need

not appear on the nonexclusive list of plants and animals in MCL 324.36101(b) for the qualified agricultural exemption to apply.

Respondent also argues that petitioners are not entitled to an exemption because producing marijuana is a commercial activity. MCL 211.7dd(d) states: "Property used for commercial storage, commercial processing, commercial distribution, commercial marketing, or commercial shipping operations or other commercial or industrial purposes is not qualified agricultural property." The MRTMA, in turn, describes its licensing system as one "to control the commercial production and distribution of marihuana . . . ." MCL 333.27952. Similarly, the Medical Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq.*, describes its licensees as "commercial entit[ies]." MCL 333.27102.

This argument falls short, for two reasons. First, the statutory definitions in the MRTMA and MMFLA are limited to their use in those acts. See *Blake's Farm*, ___ Mich at ___ n 2; slip op at 5 n 2 (rejecting suggestion that a definition of "commercial purpose" elsewhere in the GPTA applies to qualified agricultural property in MCL 211.7dd(d)). And second, the use of the term "commercial" in the GPTA must be understood in the context of the act as a whole. See *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009) ("Individual words and phrases, while important, should be read in the context of the entire legislative scheme. While defining particular words in statutes, we must consider both the plain meaning of the critical word or phrase and its placement and purpose in the statutory scheme.") (footnote omitted). Broadly speaking, nearly all agricultural use has some commercial "purpose" in the sense that practically all the crops, dairy products, cattle breeding, nursery stock, and other products and activities listed in MCL 234.36101(d) are eventually destined for use in commerce. But if property used for all such products and activities were deemed "not qualified agricultural property," MCL 211.7dd(d), virtually no property would qualify.

Instead, a fair reading of MCL 211.7dd(d) is that the Legislature intended to exclude only those postproduction or ancillary activities involved in the agricultural product's transition into the commercial marketplace. In *Blake's Farm*, for example, the portion of the petitioner's apple-orchard property used for a restaurant, gift shop, event space, and related uses was deemed commercial, while the portion of the property used to grow apples—which, presumably, were also eventually sold in commerce—remained exempt as qualified agricultural property. See *Blake's Farm*, ___ Mich App at ___; slip op at 1-2, 5-6. Similarly, in the present case, the Tax Tribunal granted petitioners only an 80% exemption, as 20% of the property was used for nonagricultural purposes such as processing, storing, and packaging marijuana to prepare for shipment.[5] See MCL 211.7dd(d) ("An owner shall not receive an exemption for that *portion* of . . . the property that is used for a commercial or industrial purpose . . . .") (emphasis added). Petitioners' use of property to grow marijuana is not excluded from the qualified agricultural exemption merely because the end product eventually enters a commercial marketplace.[6]

[5] No portion of petitioners' property was used for retail operations.

[6] Also instructive is the State Tax Commission's *Qualified Agricultural Property Exemption Guidelines* (August 2018), which states that property used for "raising horses for sale" qualifies

Lastly, respondent argues that providing a tax exemption for property used to produce marijuana would contravene one of the MRTMA's purposes—to subject marijuana to taxation. As its name reflects, one purpose of the MRTMA is to create a system that taxes marijuana-related businesses. MCL 333.27952. But the MRTMA specifically provides only for an *excise* tax on marijuana. MCL 333.27963. The MRTMA is silent as to property taxes, and we may not "read into" the MRTMA what was not within the electorate's intent "as derived from the language of the statute." *AFSCME v Detroit*, 468 Mich 388, 400; 662 NW2d 695 (2003).[7] Given that silence, we must apply and enforce the clear and unambiguous language of the GPTA as written, which provides for a qualified agricultural exemption—the statutory definition of which includes petitioners' licensed use of their property to produce marijuana. The Tax Tribunal therefore did not err in determining that petitioners are entitled to the exemption as set forth in its opinion and judgment.

III. CONCLUSION

For the reasons stated, I would affirm the judgment of the Tax Tribunal because (a) it had jurisdiction, on statutory grounds or alternatively as required by due process, and (b) petitioners are entitled to a qualified agricultural exemption. Accordingly, I respectfully dissent.

/s/ Daniel S. Korobkin

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for the exemption. *Id*., p 4. A state agency's guidance is not binding on courts and cannot conflict with the plain meaning of the relevant statute, but it is entitled to respectful consideration, should not be rejected without cogent reasons, and can aid our interpretation and application of the law. See *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 93, 103; 754 NW2d 259 (2008).

[7] "The intent of the electors governs the interpretation of voter-initiated statutes" such as the MRTMA, "just as the intent of the Legislature governs the interpretation of legislatively enacted statutes." *State v McQueen*, 493 Mich 135, 147; 828 NW2d 644 (2013) (cleaned up). "[T]he plain language of the statute . . . provides the most reliable evidence of the electors' intent." *Cannarbor Inc v Dep't of Treasury*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 370919); slip op at 5 (cleaned up).