

This Time its Personal (?) Property Classification and Recent Amendments to Michigan's Property Tax Laws

JASON C. LONG*

I. INTRODUCTION

Under Michigan law, all property that is not expressly exempt is subject to *ad valorem* taxation.¹ To implement this requirement, taxing jurisdictions in Michigan must place all property that is subject to taxation into certain tax classifications. The classifications distinguish between real and personal property, and real and personal property are further distinguished into classifications such as commercial real property, commercial personal property, industrial real property, industrial personal property, and so forth.²

In the past, all non-residential property was subject to the same tax rate, regardless of whether the property was classified as real property or personal property. Beginning in 2008, however, Michigan law is changing. In conjunction with the new Michigan Business Tax Act, Michigan adopted legislation that reduces the tax rates that apply to property classified as commercial personal property, and provides even greater reductions in the tax rate for property classified as industrial personal property. The tax rates for real property, regardless of its classification, remain unchanged. Accordingly, whether property is classified as real property or personal property, and commercial, industrial, or some other classification, will become more important, and more likely to be contested, under Michigan's new tax structure.

This Article will discuss the interaction between Michigan's property tax classification system and the recent amendments to Michigan's property tax laws. Part II will discuss the classification system and which property will be subject to lower tax rates under the recent amendments. Next, Part III will discuss the definitions of real and personal property under Michigan's General Property Tax Act, the distinctions between real and personal property, and the Act's property classifications. It will also identify issues that may arise regarding property classification and discuss challenges to property classification under Michigan law. Finally, Part IV will offer several conclusions, with the apparent effect of the amendments being that taxpayers may likely seek to have more property classified as personal property, and particularly industrial personal property.³

* Jason C. Long is a shareholder of Steinhart Pesick & Cohen, P.C., in Birmingham, Michigan. He earned his B.A., *cum laude*, from Oakland University and his J.D., *summa cum laude*, from the University of Detroit Mercy School of Law. Mr. Long, a former judicial clerk to the Hon. Michael F. Cavanagh, Justice of the Michigan Supreme Court, practices in property taxation, eminent domain, and other real estate litigation.

¹ See MICH. COMP. LAWS ANN. § 211.1 (West 2003).

² See *id.* § 211.34c (West 2005).

³ As discussed below, whether the new tax structure may result in a corresponding desire on the part of taxing jurisdictions to favor real property classifications is less clear.

II. CLASSIFICATION AND TAX RATES

Michigan's General Property Tax Act (the "GPTA") sets forth the classifications into which taxing jurisdictions must place all taxable property in the state.⁴ This classification system assists in the equalization process, which is designed to ensure that properties located in different taxing jurisdictions are provided equal treatment for tax purposes. In the past, classification was not a significant concern for taxpayers or taxing jurisdictions because all non-residential property was taxed at the same rate, regardless of its classification. Under recent amendments to Michigan's tax structure, however, property that is classified as either commercial personal property or industrial personal property will be taxed at a lower rate, a benefit that other classes of property will not enjoy.

A. *The Origins of Property Classification*

The Michigan Constitution sets forth the fundamental principles of Michigan's property tax system. It provides for the Michigan Legislature to establish uniform property taxation according to property's true cash value, and to establish a system to equalize property assessments:

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 percent; and for a system of equalization of assessments.⁵

The Michigan Legislature implemented these requirements in the GPTA, providing that taxing jurisdictions "shall estimate, according to [their] best information and judgment, the true cash value of every parcel of real property" as well as "the true cash value of all the personal property" in the state.⁶ The GPTA and other legislation also provide for a system of county and state-level equalization.⁷

As a general matter, the equalization process is designed to ensure that assessments across the state's various taxing jurisdictions are equal, such that all taxpayers are assessed at a uniform level of their properties' values. As the Supreme Court observed in *In re Appeal of General Motors Corp.*,⁸ if "the requirement of cash value were met, the requirement of uniformity would also be met . . ."⁹ But the accuracy of assessments in the taxing jurisdictions across the state may vary. To account for that, the assessments for each jurisdiction are reviewed at both the county and state levels. If the county's board of commissioners, or the state equalization board, concludes that the assessments in any given jurisdiction vary from true cash

⁴ See MICH. COMP. LAWS ANN. § 211.34c.

⁵ MICH. CONST. art. 9, § 3.

⁶ MICH. COMP. LAWS ANN. § 211.24.

⁷ See *id.* §§ 211.34-.34e (providing for county-level equalization); §§ 209.1-.9 (West 2003) (providing for state-level equalization).

⁸ 376 Mich. 373; 137 N.W.2d 161 (1965).

⁹ *Id.* at 379; 137 N.W.2d at 165.

value, then either board may adjust the total amount of the jurisdiction's assessment.¹⁰ The adjustment will increase or decrease the amount of the jurisdiction's assessment as a whole such that the board is satisfied that the amount of the assessment accords with the total true cash value of property in the jurisdiction.¹¹

In any event, all property, both real and personal, historically had been equalized together.¹² That changed in 1979. In conjunction with the Michigan electorate adopting several constitutional amendments intended to limit taxation, commonly known as the "Headlee Amendment,"¹³ the Michigan Legislature amended the state's tax statutes to create property classifications for equalization purposes.¹⁴ Under this legislation, property is equalized only within its class; that is, the county and state boards review the assessments for each class to determine whether the assessments vary from true cash value, and then adjust by class if necessary.¹⁵ The amendments resulted in a challenge to the classification system, with taxpayers arguing that, by dividing property into classifications, the legislation undermines constitutional uniformity. But the Michigan Court of Appeals rejected that challenge, reasoning that the classifications actually enhance uniformity:

Equalization by class promotes equality of assessments between property of different classes within a taxing unit because of the difficulty in equalizing assessments of property in the aggregate when the properties are distinctly different in nature. Equalization by class is especially important in promoting the principle of uniformity where there is a substantial chance that discrimination against certain classes of property will occur due to underassessments in other classes of property. Equalization by class accomplishes the constitutional mandate that assessments for all property must be at the same percentage of true cash value.¹⁶

Thus, the property classification system was upheld against the constitutional challenge.

For some thirty years since this legislation's adoption, Michigan property has been placed into classifications for property tax purposes. Under the GPTA, there are six classifications of real property: agricultural, commercial, developmental, industrial, residential, and timber

¹⁰ See MICH. COMP. LAWS ANN. § 211.34 (authorizing county commissioners to apply a multiplication factor to adjust assessments); see *id.* § 209.4 (authorizing the state board of equalization to adjust assessments).

¹¹ Assessments are adjusted by jurisdiction because each taxing jurisdiction prepares its own assessments. The purpose of equalization is to ensure uniformity across jurisdictions; that is, to ensure that each jurisdiction's assessment accords with true cash value as a whole. Whether any individual property's assessment within a jurisdiction reflects the property's true cash value presents an assessment issue, not an equalization issue. See *Ypsilanti Twp. Supervisor v. State Tax Comm'n*, 386 Mich. 343, 355; 192 N.W.2d 227, 232 (1971) ("If [the township assessor] under-assessed but treated all property owners equally, Ypsilanti Township's total equalized value, even though increased, would not adversely affect any individual taxpayer. If he over-assessed and was equalized at a lower figure than his own total, again the individual taxpayer would not be adversely affected").

¹² See, e.g., *General Motors*, 376 Mich. at 377; 137 N.W.2d at 164.

¹³ See, e.g., Kevin C. Kennedy, *The First Twenty Years of the Headlee Amendment*, 76 U. DET. MERCY L. REV. 1031 (1999).

¹⁴ See 1978 Mich. Pub. Acts 381; 1979 Mich. Pub. Acts 114; 1981 Mich. Pub. Acts 52; see also *O'Reilly v. Wayne County*, 116 Mich. App. 582, 587; 323 N.W.2d 493, 495 (1982) (describing the amendments).

¹⁵ See Kennedy, *supra* note 13, at 1071.

¹⁶ *O'Reilly*, 116 Mich. App., *supra*, at 594; 323 N.W.2d, *supra*, at 498.

cutover. Likewise, the GPTA provides five classifications for personal property: agricultural, commercial, industrial, residential, and utility.¹⁷

B. *Tax Rates Applicable to the Classes of Assessable Property*

Historically, a property's classification related only to equalization, and did not impact the tax rate that applied to the property. Michigan property taxes are calculated using a millage rate, meaning that property is taxed at a rate equaling a certain number of dollars for every \$1,000 of the property's taxable value. The number of dollars per one thousand dollars of taxable value equals the "millage rate."¹⁸ As mentioned, all non-residential property in Michigan had been taxed at the same millage rate, regardless of whether the property was classified as real or personal, and regardless of whether it was classified as commercial, industrial, or otherwise.

But that changed effective January 1, 2008. In conjunction with the new Michigan Business Tax Act,¹⁹ which replaced the Single Business Tax Act,²⁰ the Michigan Legislature adopted a series of amendments to the Revised School Code,²¹ the Plant Rehabilitation and Industrial Development Districts Act,²² and the GPTA that significantly reduce the tax rates applicable to property classified as commercial and industrial personal property. For property classified as commercial personal property, the amendments created an exemption from up to 12 mills of the local school district operating millage.²³ The Michigan State Tax Commission, which generally supervises the administration of Michigan tax laws,²⁴ estimated that these amendments will reduce the average amount of taxes due for commercial personal property by 23%.²⁵

The amendments result in even greater tax reductions for property classified as industrial personal property. Beginning in 2008, such property is exempt from up to 18 mills of the local school district operating millage,²⁶ and is exempt from the six-mill state education tax.²⁷ Under these amendments, industrial personal property is taxed at a rate similar to the rate that applies under Michigan's principal residence exemption, which exempts an individual's principal residence from certain school millages.²⁸

¹⁷ See MICH. COMP. LAWS ANN. § 211.34c(2). The GPTA's classification for residential personal property applied only to taxes levied before January 1, 2003. See *id.* § 211.34c(3)(d). Generally, household personal property, which would likely include most residential personal property, is tax-exempt under the GPTA. See *id.* § 211.9(1)(f) (exempting "personal property owned and used by a householder").

¹⁸ See BLACK'S LAW DICTIONARY 994 (6th ed. 1990).

¹⁹ See MICH. COMP. LAWS ANN. §§ 208.1101-1601 (West 2003).

²⁰ See *id.* §§ 208.1-145 (repealed by 2007 Mich. Pub. Acts 325).

²¹ See MICH. COMP. LAWS ANN. §§ 380.1-1853 (West 2005).

²² See MICH. COMP. LAWS ANN. §§ 207.551-572 (West 2003).

²³ See 2007 Mich. Pub. Acts 37 (amending MICH. COMP. LAWS ANN. § 380.1211).

²⁴ See MICH. COMP. LAWS ANN. § 209.104.

²⁵ See MICHIGAN STATE TAX COMM'N, BULLETIN NO. 7 OF 2007, at 4 (Oct. 2, 2007) ("classification of personal property as Commercial Personal Property will result in an average 23% reduction from the current tax liability").

²⁶ See 2007 Mich. Pub. Acts 37 (amending MICH. COMP. LAWS ANN. § 380.1211). The exemption may be less than 18 mills if the operating millage that the school district levied in 1993 was less than 18 mills. In such a case, the exemption will equal the school district's 1993 operating millage. See *id.*; see also MICHIGAN STATE TAX COMM'N, BULLETIN NO. 7 OF 2007, *supra* note 25, at 4.

²⁷ See 2007 Mich. Pub. Acts 38 (amending MICH. COMP. LAWS ANN. § 211.903).

Property classified as industrial personal property also receives other benefits from the changes in Michigan's tax structure. For example, under the new Michigan Business Tax Act, a property owner may claim a credit against the business tax for 35% of personal property taxes paid on property classified as industrial personal property.²⁹ The reductions in the effective millage rates that apply to industrial personal property, together with the credit against the business tax, will reduce the average tax liability for property classified as industrial personal property by nearly 65%.³⁰ Property classified as commercial personal property, on the other hand, did not receive this benefit.

These amendments represent a significant change in Michigan's property tax laws. Historically, a property's classification pertained only to the equalization process and had nothing to do with the tax rate that applied to the property. With lower millage rates now applying to the commercial and industrial personal property classes, property owners will have incentive to attempt to have more of their property classified as personal property, and specifically as industrial personal property, which is taxed at a lower rate.³¹

Whether taxing jurisdictions have incentive to attempt to include as much property as possible within the real property classifications, however, is less clear. The assessor in each taxing jurisdiction, which may be a city or township, is responsible for preparing the assessment roll, and for classifying property.³² But the reduced millage rates that apply to commercial and industrial personal property result from local school and state education millages no longer applying to such property. This may create incentive for school districts and state educational bodies to favor real property classifications when possible, but the GPTA does not involve such entities in the assessment or classification process. Thus, while property owners may favor personal classifications, and specifically commercial and industrial classifications, when possible, there is no such direct incentive for taxing jurisdictions like cities and townships to favor real property classifications. Whether taxing jurisdictions would seek to favor real

²⁸ See MICH. COMP. LAWS ANN. § 211.7cc. Certain industrial personal property that is subject to taxation under the Plant Rehabilitation and Industrial Development Districts Act also received an effective tax reduction under the new tax structure. See 2007 Mich. Pub. Acts 39 (amending MICH. COMP. LAWS ANN. §§ 207.564 and 207.564a to exempt certain property classified as industrial personal property from school millages and the state education tax).

²⁹ See MICH. COMP. LAWS ANN. § 208.1413(1)(a), (4). Similar credits are available for personal property that is taxed under the Plant Rehabilitation and Industrial Development Districts Act, as well as certain natural gas pipeline property and telephone personal property. See *id.* § 208.1413(1), (4).

³⁰ See SENATE FISCAL AGENCY, BILL ANALYSIS, S.B. 94 (CR-1): REVISED FLOOR ANALYSIS (June 29, 2007) ("This credit would equal 35.0% of the taxes paid on industrial personal property. Together with the exemption from the 6-mill State education tax and the 18-mill local school property tax, industrial personal property would realize an average effective personal property tax reduction of 64.9%").

³¹ It is worth noting that even in the past, there was incentive for property owners to prefer personal property classifications over real property classifications when possible. This was because taxing jurisdictions generally value personal property using multiplier tables that depreciate the property's value from its original purchase price, meaning that personal property's value for tax purposes tends to decrease over time. See, e.g., *Wayne County v. State Tax Comm'n*, 261 Mich. App. 174, 181; 682 N.W.2d 100, 107 (2004) (discussing the impact of personal property multipliers). Real property, on the other hand, may increase or decrease in value over time depending on market conditions. See THE APPRAISAL INSTITUTE, *THE APPRAISAL OF REAL ESTATE* 434-35 (12th ed., 2001). Having property classified as personal rather than real, therefore, gave owners more hope for reduced property tax liability.

³² See MICH. COMP. LAWS ANN. § 211.10(1) ("assessment of all the property in the state liable to taxation shall be made annually in all townships, villages, and cities by the applicable assessing officer"); § 211.24 ("the assessor shall make and complete an assessment roll"); § 211.34c (providing that "the assessor shall classify every item of assessable property according to the definitions contained in this section").

property classifications is therefore unclear. Nevertheless, because the different millage rates apply and will certainly affect property owners' tax burdens, the distinctions between real and personal property under the GPTA, the precise meanings of the GPTA's property classifications, and the process for placing properties into those classifications, take on additional significance under Michigan's new tax structure.

III. REAL PROPERTY, PERSONAL PROPERTY, AND CLASSIFICATION UNDER MICHIGAN'S GENERAL PROPERTY TAX ACT

The GPTA divides all taxable property in Michigan into real property and personal property, and requires taxing jurisdictions to assign all taxable property into classifications that are generally based on the property's use. Accordingly, after defining real and personal property, the GPTA defines the properties that should be classified as commercial and industrial personal property. Those definitions depend in part on which properties are classified as commercial and industrial real property. Structuring the definitions of these classes of personal property on definitions of real property, and other issues in the definitions of the commercial and industrial personal property classifications, can create ambiguities in the classification process. These ambiguities have largely gone unexplored, likely because until now, property classification was not significant to either taxing jurisdictions or taxpayers.

A. Real and Personal Property Under the GPTA

Because Michigan's new tax structure applies reduced millage rates to certain classifications of personal property but not to real property, the new tax structure will place greater emphasis on the fundamental distinctions between real and personal property under the GPTA. Whether any specific item should be classified as personal property or as part of the underlying real property can have consequences far greater than the distinction ever had in the past. As mentioned, even in the past property owners had incentives to favor items' classification as personal property when possible, because personal property's value is more likely to be depreciated and result in a lower taxable value and lower taxes. But under the new tax structure, with reduced millage rates that apply to certain personal property but not to any real property, owners have more reason to favor personal property classifications. Thus, the GPTA's definitions of real and personal property, and the analysis used to distinguish between real and personal property, also have magnified significance.

1. The Definition of "Real Property" Under the GPTA

First, the GPTA generally defines "real property" to include land, buildings and fixtures on land, appurtenances to the land, and certain other property:

For the purpose of taxation, real property includes all of the following:

- (a) All land within this state, all buildings and fixtures on the land, and all appurtenances to the land, except as expressly exempted by law.
- (b) All real property owned by this state or purchased or condemned for public highway purposes by any board, officer, commission, or department of this state

and sold on land contract, notwithstanding the fact that the deed has not been executed transferring title.

(c) For taxes levied after December 31, 2002, buildings and improvements located upon leased real property, except buildings and improvements exempt under section 9f or improvements assessable under section 8(h), if the value of the buildings or improvements is not otherwise included in the assessment of the real property. However, buildings and improvements located on leased real property shall not be treated as real property unless they would be treated as real property if they were located on real property owned by the taxpayer.³³

In the past, buildings and improvements on leased real property were considered personal property, except where the real property was also taxed to the tenant.³⁴ But in a series of acts that became effective in 2003, the Michigan Legislature amended the GPTA to generally provide that improvements on leased property shall be considered real property. But property that fits the definition of “leasehold improvements” under the GPTA’s definition of personal property were excepted from this change and remain personal property under the GPTA so long as their value is not attributed to the underlying real property.³⁵

2. *The Definition of “Personal Property” Under the GPTA*

The GPTA’s definition of personal property is more broad-ranging than its definition of real property. “Personal property” generally includes all goods, chattels, and effects located in Michigan, as well as a number of other items:

For the purposes of taxation, personal property includes all of the following:

(a) All goods, chattels, and effects within this state.

(b) All goods, chattels, and effects belonging to inhabitants of this state, located without this state, except that property actually and permanently invested in business in another state shall not be included.

* * *

(f) All other personal property not enumerated in this section and not especially exempted by law.

(g) The personal property of gas and coke companies, natural gas companies, electric light companies, waterworks companies, hydraulic companies, and pipe line companies transporting oil or gas as public or common carriers, to be assessed in the local tax collecting unit in which the personal property is located. The mains, pipes, supports, and wires of these companies, including the supports

³³ MICH. COMP. LAWS ANN. § 211.2(1).

³⁴ *See id.* (historical notes).

³⁵ *See* 2000 Mich. Pub. Acts 415 (amending MICH. COMP. LAWS ANN. § 211.2 to provide that improvements on leased real property generally must be classified as real property); 2002 Mich. Pub. Acts 620 (amending MICH. COMP. LAWS ANN. § 211.2 to provide that certain leasehold improvements and other items shall be classified as personal property). Certain property located in renaissance zones and other similar areas that the Legislature has designated, were also excepted from this amendment and remain personal property under the GPTA. *See* MICH. COMP. LAWS ANN. § 211.9f.

and wire or other line used for communication purposes in the operation of those facilities, and the rights of way and the easements or other interests in real property by virtue of which the mains, pipes, supports, and wires are erected and maintained, shall be assessed as personal property . . .

(h) During the tenancy of a lessee, leasehold improvements and structures installed and constructed on real property by the lessee, provided and to the extent the improvements or structures add to the true cash taxable value of the real property notwithstanding that the real property is encumbered by a lease agreement, and the value added by the improvements or structures is not otherwise included in the assessment of the real property . . . Leasehold improvements and structures assessed under this subdivision shall be assessed to the lessee.

* * *

(k) For taxes levied after December 31, 2002, a trade fixture.³⁶

The definition of personal property also reiterates that improvements on leased real property are generally considered real property, subject to the exceptions provided in the definition of personal property itself.³⁷

As the Michigan State Tax Commission has stated, the GPTA's definition of "personal property" is, in fact, more of a listing. "The probable reason is" that "there are thousands of different items" that may qualify as personal property, and therefore "personal property" defies easy definition.³⁸ Under Michigan law, definitions from a standard dictionary may generally be used to give meaning to terms that are not defined in statutes.³⁹ Such an analysis of the terms within the definition of "personal property," however, does not provide any valuable insight. For example, the dictionary definitions of "chattel" are "a movable article of personal property" and "any tangible property other than land and buildings."⁴⁰ Likewise, in other contexts the Michigan courts have applied the legal definition of "chattel," which is generally an "article of

³⁶ MICH. COMP. LAWS ANN. § 211.8. Other items defined as personal property under the GPTA include interests in certain publicly-owned real property, *see id.* § 211.8(c), tombs and vaults kept for hire, *see id.* § 211.8(e), interests in economic rent, *see id.* § 211.8(i and j), and a wind energy system, which is specifically described in the definition. *See id.* § 211.8(l). Because the definition of "personal property" generally encompasses "All goods, chattels, and effects within" Michigan, it is important to note that many items of personal property are tax exempt. These include heavy earth moving equipment, inventory held for resale, computer software, intangible property, and several other items specifically identified in the GPTA. *See id.* §§ 211.9, .9b, .9c, .9d, .9e, .9f, .9g, .9g[1], .9i, .9j, .9k.

³⁷ *See id.* § 211.8(d).

³⁸ *See* MICHIGAN STATE ASSESSORS BOARD, ASSESSOR'S TRAINING MANUAL 12-1 (1998).

³⁹ *See, e.g.,* Horace v. City of Pontiac, 456 Mich. 744, 756; 575 N.W.2d 762, 767 (1998). A "standard" dictionary is a layman's dictionary, as opposed for example to a legal dictionary that should be used to define legal terms. *See id.* Recently, the Michigan Supreme Court has often turned to the RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY as a layman's dictionary. *See* People v. Keller, 479 Mich. 467, 515 n.41; 739 N.W.2d 505, 514 n.41 (2007); People v. Peals, 476 Mich. 636, 641; 720 N.W.2d 196, 198 (2006); People v. Perkins, 473 Mich. 626, 633; 703 N.W.2d 448, 452 (2005); Kreiner v. Fischer, 471 Mich. 109, 130; 683 N.W.2d 611, 624 (2004); People v. Babcock, 469 Mich. 247, 266; 666 N.W.2d 231, 242 (2003); Chandler v. Muskegon County, 467 Mich. 315, 320; 652 N.W.2d 224, 227 (2002); *In re* Hathaway, 464 Mich. 672, 685; 630 N.W.2d 850, 856 (2001). The court has not, however, exclusively used this dictionary. *See, e.g.,* Renny v. Michigan Dep't of Transp., 478 Mich. 490, 500; 734 N.W.2d 518, 523 (2007) (citing THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, NEW COLLEGE EDITION (1978)).

⁴⁰ WEBSTER'S RANDOM HOUSE COLLEGE DICTIONARY 206 (2005).

personal property.”⁴¹ Thus, the GPTA’s definition of personal property may be best understood as meaning all property that is not real property, as well as all property that the GPTA specifically identifies as personal property.⁴²

Other components of the statutory personal property list, however, do have meanings under Michigan law. One item on the list, for example, is “trade fixtures.” Under Michigan law, “fixtures” are items of property that have “a possible existence apart from realty, but which may, by annexation, be assimilated into realty.”⁴³ “Trade fixtures” are a subcategory of fixtures that are installed by a tenant on leased property and may be removed by the tenant at the lease’s termination even though, as a fixture, the item would normally have become part of the underlying real property.⁴⁴ Because a tenant can remove its trade fixtures, Michigan courts have held that trade fixtures are personal property as between the tenant and its landlord. But the courts had historically held that, as to third parties, trade fixtures are real property just as any other fixture would be. Therefore, in *Michigan National Bank v. City of Lansing*,⁴⁵ the Michigan Court of Appeals held that although certain items in a bank building may have qualified as the bank’s trade fixtures, “for the purpose of taxation, trade fixtures are properly classified as real property.”⁴⁶ The Legislature effectively overruled cases like *Michigan National Bank*, however, when it amended the GPTA to provide that beginning in 2003 trade fixtures are personal property for purposes of taxation.⁴⁷

3. *Distinguishing Between Real and Personal Property Under the GPTA*

Though distinguishing between real and personal property can be straightforward in many instances, as when distinguishing between land and movable furniture, for example, the distinction can also be more complex. The complexity would arise particularly with items that may reasonably be either real property or personal property in varying circumstances. Because of the differing millage rates that can apply to real and personal property under Michigan’s new tax structure, the distinctions in the difficult cases are much more significant.

To distinguish between real and personal property, Michigan law applies the analysis that governs whether an item is a fixture.⁴⁸ Under the GPTA, if an item is a fixture, then it is real property and taxable as such; on the other hand, if the item is not a fixture, then the item is

⁴¹ *Clancy v. Oak Park Village Athletic Ctr.*, 140 Mich. App. 304, 308 n.2; 364 N.W.2d 312, 315 n.2 (1985).

⁴² *See, e.g.*, MICHIGAN STATE TAX COMMISSION, INSTRUCTIONS FOR FORM L-4175 (2004) (stating that personal property encompasses “tangible property that is not real estate”).

⁴³ *Wayne County v. Britton Trust*, 454 Mich. 608, 615; 563 N.W.2d 674, 678 (1997).

⁴⁴ *See id.*, 454 Mich. at 613; 563 N.W.2d at 678; *see also* Jason C. Long, Casenote: Fixture Qualification, 75 U. DET. MERCY L. REV. 717, 724 (1998) (noting that if an item was installed on a leased property “in good faith intended for use in the tenant’s trade, it could be removed” from the property as a trade fixture).

⁴⁵ 96 Mich. App. 551; 293 N.W.2d 626 (1980).

⁴⁶ *Id.*, 96 Mich. App. at 556; 293 N.W.2d at 628; *but see* MICHIGAN STATE TAX COMM’N, BULLETIN No. 1 OF 2003 (Jan. 8, 2003) (stating that the Michigan State Tax Commission “has always considered trade fixtures to be personal property”).

⁴⁷ *See* MICH. COMP. LAWS ANN. § 211.8(k).

⁴⁸ *See, e.g.*, *Continental Cablevision of Mich., Inc. v. City of Roseville*, 430 Mich. 727, 735; 425 N.W.2d 53, 56-57 (1988).

personal property,⁴⁹ and under Michigan's new tax structure may qualify for taxation at a reduced millage rate applying to personal property.

“Generally, fixtures are defined as items ‘having a possible existence apart from realty, but which may, by annexation, be assimilated into realty.’”⁵⁰ This is one reason that distinguishing between real and personal property can be complex; an item may be either real or personal property depending on whether the item and the circumstances surrounding that item satisfy the analysis for the item to qualify as a fixture. In *Continental Cablevision of Michigan, Inc. v. City of Roseville*, the Michigan Supreme Court addressed whether wires extending from utility poles to residences were fixtures, and thus taxable to the residences' owners as real property, or personal property that belonged to the cable television company that had installed the wires. In doing so, the court explained the three-step analysis that applies to determine whether such an item is a fixture:

Courts of this state have consistently applied a three-factor test to determine whether an item of property constitutes a fixture. The factors are: [1] *annexation* to the realty, either actual or constructive; [2] *adaptation* or application to the use or purpose to which that part of the realty to which it is connected is appropriated; and [3] *intention* to make the article a permanent accession to the freehold.⁵¹

Michigan courts have developed analyses for each of the factors in the fixtures analysis.

(a). *Annexation*

First, annexation refers to whether an item is physically attached to the underlying real estate. The Michigan Supreme Court explained the requirements for annexation in the condemnation action *Wayne County v. Britton Trust*:

Annexation refers to the act of attaching or affixing personal property to real property and, as a general proposition, an object will not acquire the status of a fixture unless it is in some manner or means, albeit slight, attached or affixed, either actually or constructively, to the realty. That is, if the object is not attached to the land or to some structure or appliance which is attached to it, it will retain its character as personalty though intended for permanent use on the premises.⁵²

Britton Trust also explained that even though an item may not be physically affixed to the underlying real estate, it may nevertheless “acquire the status of a fixture by constructive annexation.”⁵³ An item becomes a fixture through constructive annexation when the item, though not physically attached to the real property, is necessary for the property's use and operation:

⁴⁹ See *Continental Cablevision*, 430 Mich. at 735; 425 N.W.2d at 56.

⁵⁰ *Britton Trust*, 454 Mich. at 613; 563 N.W.2d at 678.

⁵¹ *Continental Cablevision*, 430 Mich. at 735-36; 425 N.W.2d at 57 (internal quotations omitted).

⁵² *Britton Trust*, 454 Mich. at 615; 563 N.W.2d at 678-79 (internal quotation omitted).

⁵³ *Id.*

The doctrine of constructive annexation has frequently been applied in the case of articles which are not themselves actually or directly annexed to the realty, but are part of, or accessory to, articles which are so annexed. Thus, where the principal part of the machinery is fixture due to actual annexation to the realty, the parts of it, although not actually annexed to the freehold, are fixtures where they would, if removed, leave the principal part unfit for use, and where of themselves they are not capable of general use elsewhere.⁵⁴

Though small, a key to the doors in a building is an example of an item that is constructively annexed to the real property.⁵⁵ Larger and more valuable items have also been held to be fixtures through constructive annexation.⁵⁶

(b). *Adaptation*

The second step in the fixtures analysis, whether the item has been adapted to the underlying real estate, refers to “the relationship between the chattel and the use which is made of the realty to which the chattel is annexed.”⁵⁷ *Britton Trust* was the first Michigan case to explicitly address this step in the analysis in any detail, stating that an “object introduced onto the realty may become a fixture if it is a necessary or at least a useful adjunct to the realty, considering the purposes to which the latter is devoted.”⁵⁸ Thus, even though an item is annexed to real estate, it may or may not be adapted to that real estate:

[A] plumbing apparatus would not be adapted to the use or purpose to which the realty is put if it were simply bolted to a wall for decoration. However, when that same apparatus is made a part of the property’s plumbing system, it becomes adapted to the use or purpose to which the realty is put because it is used as a part of the operation of the real estate.⁵⁹

Thus, an item must be both annexed to the realty, and adapted to the realty, to become a fixture.

⁵⁴ *Id.* (quoting *Carmichall v. United States*, 273 F.2d 392, 395 (Fifth Cir., 1960)).

⁵⁵ *See* *Detroit Trust Co. v. Detroit City Serv. Co.*, 262 Mich. 14, 30; 247 N.W. 76, 81 (1933).

⁵⁶ *See In re Slum Clearance*, 332 Mich. 485, 495; 52 N.W.2d 195, 199 (1952) (holding that materials necessary to operate plating machines were constructively annexed to the real estate).

⁵⁷ *Britton Trust*, 454 Mich. at 618; 563 N.W.2d at 680 (internal quotation omitted).

⁵⁸ *Id.*

⁵⁹ 1 JOHN G. CAMERON, JR., MICHIGAN REAL PROPERTY LAW: PRINCIPLES AND COMMENTARY §4.5, at 136 (3d ed., 2005).

(c). *Intention*

The third step in the analysis for determining whether an item has become a fixture is examining the intent of the person that annexed the adapted item. The *Britton Trust* court explained that intent is measured using an objective standard:

This Court examines the objective visible facts to determine whether intention to make the article a permanent accession to the realty exists. The surrounding circumstances determine the intent of the party making the annexation, not the annexor's secret subjective intent. Intent may be inferred from the nature of the article affixed, the purpose for which it was affixed, and the manner of annexation.⁶⁰

Notably, the “permanence required is not equated with perpetuity. It is sufficient if the item is intended to remain where affixed until worn out, until the purpose to which the realty is devoted is accomplished, or until the item is superseded by another item more suitable for the purpose.”⁶¹ The intention factor has long been considered the most important component of the fixtures analysis under Michigan law.⁶²

4. *The Fixtures Analysis and Michigan's New Tax Structure*

Determining whether an item satisfies the requirements to become a fixture has been a confounding and variable enterprise. As the Supreme Court of Washington stated, “Every lawyer knows that cases can be found in this field that will support any position that the facts of his particular case require him to take.”⁶³ Under Michigan's new tax structure, property owners have incentive to take the position that more items do not satisfy the fixtures analysis, and therefore are personal property that may qualify for the reduced millage rates. Michigan's new tax structure will therefore result in more emphasis on the application of the fixtures analysis for determining whether any given item is a fixture.

Further, while the GPTA specifies certain items that should be treated as personal property for tax purposes even though they may otherwise qualify as fixtures, such as billboards, taxpayers and taxing jurisdictions may have more reason to examine the existing decisions under Michigan law explaining which items are and are not fixtures. Michigan's courts have held that the following items are all fixtures under Michigan law: heating devices,⁶⁴ bowling alleys,⁶⁵

⁶⁰ *Britton Trust*, 454 Mich. at 619; 563 N.W.2d at 680 (citations and footnotes omitted).

⁶¹ *Michigan Nat'l Bank*, 96 Mich. App. at 554; 293 N.W.2d at 627.

⁶² *See, e.g.*, *Manwaring v. Jenison*, 61 Mich. 117, 135; 27 N.W. 899, 903 (1886).

⁶³ *Strain v. Green*, 172 P.2d 216, 218 (Wash. 1946). A more recent commentary reiterated this sentiment:

The law of fixtures, determining when an object which was formerly a chattel has become part of land, is recognized to be complex and confusing. The distinction between fixtures and chattel is elusive, the case law is neither uniform nor consistent, and the law lacks coherence and clarity.

Peter Luther, *Fixtures and Chattels: A Question of More or Less* . . . , 24 OXFORD J. LEGAL STUD. 597 (2004) (footnotes and internal quotations omitted).

⁶⁴ *See Atlantic Die Casting Co. v. Whiting Tubular Prods. Inc.*, 337 Mich. 414, 424; 60 N.W.2d 174, 179 (1953).

⁶⁵ *See Jackson Lodge No. 113, B.P.O.E. v. Camp*, 303 Mich. 370, 374; 6 N.W.2d 549, 551 (1942).

appliances located in apartments that are necessary for the properties to operate as apartments,⁶⁶ machinery necessary for the real property's operation,⁶⁷ spare parts for such machinery,⁶⁸ elevators,⁶⁹ items substituted for other items that were considered fixtures,⁷⁰ greenhouses,⁷¹ and dock levelers, which bridge gaps between loading docks and trucks parked in the docks.⁷² On the other hand, Michigan's courts have held that certain supplies, even when used in conjunction with a building, are "clearly" personal property:

[U]nused supplies consisting of such articles as paper towels, soap, paint and electric light bulbs, cannot be classed as fixtures or improvements but are clearly personal property. Neither can used supplies and detached equipment such as pails, mops, vacuum cleaners, ladders, electric grinder, drill press, etc., be considered as fixtures or improvements.⁷³

Similarly, Michigan's courts have stated in the past that they can "conceive of no circumstances under which chairs, tables, movable desks, stoves, tools and ordinary vehicles could be classed as fixtures at all."⁷⁴ Whether an item is a fixture is highly factual, however, and it "is conceivable that a court would determine an item one day to be a fixture and another day, with a different set of facts, not a fixture."⁷⁵

In addition, authorities addressing whether an item is a fixture must give way when the GPTA specifically provides that an item is real or personal property. This is the case, for example, with trade fixtures. Historically, Michigan's courts had held that because a tenant can remove its trade fixtures and the end of its tenancy, the items were personalty as between the landlord and the tenant, but as to all third parties, including the taxing jurisdiction, such items were real property.⁷⁶ Amendments to the GPTA altered that rule, providing that for purposes of taxation, trade fixtures are personal property. Therefore, under Michigan's new tax structure, items that qualify as trade fixtures may be taxed at the reduced millage rates.

Another area that may become more disputed under the new tax structure involves "leasehold improvements." In some real estate markets, a tenant may rent an unfinished building, sometimes known as a "shell" building, and then have the building's interior finished to meet the tenant's particular needs.⁷⁷ The finishes may include "floor finish, walls, permanent wall finish, permanently-installed storefronts, [and] normal building mechanical systems."⁷⁸ Interior finishes such as these are the "leasehold improvements" that are specified as personal property under the GPTA. While nothing in the legislation that amended Michigan's tax

⁶⁶ See *First Mortgage Bond Co. v. London*, 259 Mich. 688, 692; 244 N.W. 203, 204 (1932).

⁶⁷ See *Detroit Trust Co. v. Detroit City Serv. Co.*, 262 Mich. 14, 29-30; 247 N.W. 76, 81 (1933).

⁶⁸ See *In re Slum Clearance*, 332 Mich. at 495; 32 N.W.2d at 199.

⁶⁹ See *Colton v. Michigan Lafayette Bldg. Co.*, 267 Mich. 122, 127; 255 N.W. 433, 434 (1934).

⁷⁰ See *Wilson v. Boyer*, 275 Mich. 667, 673-74; 267 N.W. 760, 762 (1936).

⁷¹ See *Tuinier v. Bedford Twp.*, 235 Mich. App. 663, 669; 599 N.W.2d 116, 119 (1999).

⁷² See *Howard Plating Indus. Inc., v. City of Madison Heights*, _ M.T.T.R. _ (Docket No. 119656, July 8, 1992).

⁷³ *Colton*, 267 Mich. at 127; 255 N.W. at 434-35.

⁷⁴ *Scudder v. Anderson*, 54 Mich. 122, 125; 19 N.W. 775, 776 (1884).

⁷⁵ 1 CAMERON, *supra* note 59, §4.7, at 138.

⁷⁶ See *Michigan Nat'l Bank*, 96 Mich. App. at 556; 293 N.W.2d at 628.

⁷⁷ See MICHIGAN STATE TAX COMM'N, BULLETIN NO. 8 OF 2002 (Jun. 18, 2002).

⁷⁸ *Id.*

structure altered the analysis for whether an item qualifies as a leasehold improvement, landlords and tenants may seek to have more improvements taxed as leasehold improvements because as personal property, the leasehold improvements would qualify for the reduced millage rates.

This distinction between items that qualify as real property, and those that are deemed personal property, may involve controversies that cannot now be imagined. “The law of fixtures is an evolving area of the law, and many items now considered personal property may in the future be considered fixtures that pass with the land.”⁷⁹ Applying the fixtures analysis to distinguish between real and personal property therefore may continue to prove challenging.⁸⁰

In any event, Michigan’s new tax structure makes a fundamental distinction between real property and personal property: all real property is taxed at a higher millage rate, while certain classifications of personal property qualify for reduced millage rates. This change in the tax structure may give taxpayers greater incentive to favor defining more property as personal property when possible. As mentioned, there is certainly no shortage of instances when property is plainly real property, or plainly personal property. But the changes in Michigan’s tax structure have increased the emphasis, and the stakes, on the decisions that will be necessary for those items of property that fall into the gray areas between real and personal property.

B. Classifications Under the General Property Tax Act

Whether any given item of property is defined as real or personal property is only the first factor that will receive greater emphasis under Michigan’s new tax structure. After all, even if an item is defined as personal property, not every item of personal property qualifies for the reduced millage rates. Rather, only the commercial and industrial classes of personal property will qualify. The GPTA requires taxing jurisdictions to assign classifications to property, and sets forth definitions for the property classifications.⁸¹ One of the bases for classifying personal property is the classification of the real property where the personal property is located, and thus can result in varying tax treatment for otherwise identical properties.

1. Industrial Property Classifications

Under the GPTA’s definition, the class of industrial personal property includes equipment located on industrial parcels, as well as mining companies’ property:

Industrial personal property includes the following:

- (i) All machinery and equipment, furniture and fixtures, and dies on industrial parcels, and inventories not exempt by law.

⁷⁹ 1 CAMERON, *supra* note 59, at §4.28, at 152. For example, there was a time that doors and windows in structures were considered personal property that the property’s seller could remove upon selling the property. Courts then began to distinguish between exterior doors, which protected the building from the elements and were part of the building, and interior doors, which were not, later arriving at the modern view that all such items are part of the real property. *See* Luther, *supra* note 63, at 608.

⁸⁰ *See* RAY A. BROWN, THE LAW OF PERSONAL PROPERTY §16.1, at 516 (3d ed. 1975).

⁸¹ *See* MICH. COMP. LAWS ANN. § 211.34c.

(ii) Personal property of mining companies valued by the state geologist.⁸²

This definition conditions which personal property shall be classified as industrial personal property, and therefore will be taxed at the lower rate under Michigan's new tax structure, upon whether the personal property is located on parcels classified as industrial real property. In turn, industrial real property is defined to include properties used in manufacturing and processing, utility property, and property used in the removal or processing of aggregates:

Industrial real property includes the following:

(i) Platted or unplatted parcels used for manufacturing and processing purposes, with or without buildings.

(ii) Parcels used for utilities sites for generating plants, pumping stations, switches, substations, compressing stations, warehouses, rights-of-way, flowage land, and storage areas.

(iii) Parcels used for removal or processing of gravel, stone, or mineral ores, whether valued by the local assessor or by the state geologist.

(iv) For taxes levied after December 31, 2002, buildings on leased land used for industrial purposes.

(v) For taxes levied after December 31, 2002, buildings on leased land for utility purposes.⁸³

Thus, whether the real property on which personal property is located is used for "manufacturing and processing purposes," and other uses included within the definition of "industrial real property," is the critical factor in determining whether items of personal property should be classified as industrial personal property.

But the GPTA does not define the term "manufacturing and processing" that controls whether a property may be classified as industrial real property. The applicable dictionary definitions of "manufacture" generally mean to produce something from source material, especially on a large scale:

1. to make or produce by hand or machinery, esp. on a large scale. 2. to work up (material) into form for use: *to manufacture cotton*.

* * *

4. to produce in a mechanical way . . . 5. the making of goods or wares by manual labor or by machinery, esp. on a large scale: *the manufacture of cars*. 6. the making or producing of something; generation . . .⁸⁴

"Process" has many dictionary definitions, but the applicable definitions focus on systematic or continuous actions treating or preparing materials:

⁸² *Id.*

⁸³ *Id.* § 211.34c(2)(d).

⁸⁴ RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY, *supra* note 40, at 753.

1. a systematic series of actions directed to some end: *a process for homogenizing milk*. 2. a continuous action, operation, or series of changes taking place in a definite manner . . .

* * *

10. to treat or prepare by some particular process, as in manufacturing.⁸⁵

Other Michigan statutes provide additional guidance on the meaning of “manufacturing and processing.” The Plant Rehabilitation and Industrial Development Districts Act, sometimes known as the “Industrial Facilities Tax Act” (the “IFTA”),⁸⁶ which exempts certain properties from taxation under the GPTA, defines “manufacture of goods or materials” and “processing of goods or materials” to mean the uses identified in the North American Industry Classification System (“NAICS”):

“Manufacture of goods or materials” or “processing of goods or materials” means any type of operation that would be conducted by an entity included in the classifications provided by sector 31-33 — manufacturing, of the North American industry classification system, United States, 1997, published by the office of management and budget, regardless of whether the entity conducting that operation is included in that manual.”⁸⁷

The NAICS, developed by the United States Office of Management and Budget, describes certain economic activities to assist in compiling statistics about business activity. It describes the manufacturing sector in a manner consistent with the dictionary definitions:

The Manufacturing sector comprises establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of manufactured products is considered manufacturing, except in cases where the activity is appropriately classified in . . . Construction. Establishments in the Manufacturing sector are often described as plants, factories, or mills and characteristically use power-driven machines and materials handling equipment . . . The new product of a manufacturing establishment may be finished in the sense that it is ready for utilization or consumption, or may be semifinished to become an input for an establishment engaged in further manufacturing.⁸⁸

The NAICS then extensively itemizes activities that fall within the manufacturing sector, and places the activities into categories like “food manufacturing,” “textile mills,” “fabricated metal product manufacturing,” “machinery manufacturing,” and “transportation equipment

⁸⁵ *Id.* at 981. Other definitions for “process” concern matters like service of process, processing photographic film into photographs, and even hair straightening. *See id.*

⁸⁶ *See* MICH. COMP. LAWS ANN. § 207.553(3) (stating that “‘Industrial facility tax’ means the specific tax levied under this act”); *see also* Great Lakes Div. v. City of Ecorse, 227 Mich. App. 379, 418; 576 N.W.2d 667, 685 (1998).

⁸⁷ MICH. COMP. LAWS ANN. § 207.552(10).

⁸⁸ OFFICE OF MANAGEMENT AND BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM, UNITED STATES 1997, at 105 (1997).

manufacturing,” as well as a category of “miscellaneous manufacturing,”⁸⁹ that should all qualify as “manufacturing and processing” under the IFTA.

Were a Michigan court called on to define “manufacturing and processing” under the GPTA, it is unclear whether that court would place more emphasis on the dictionary definitions or the IFTA definition, which incorporates the NAICS. After all, Michigan law provides that statutory language “shall be construed and understood according to the common and approved usage of the language,”⁹⁰ which is generally provided by dictionary definitions.⁹¹ Only when statutes use “technical words and phrases,” and words that “may have acquired a peculiar and appropriate meaning in the law,” must courts use those technical and legal meanings in construing statutes.⁹² “Manufacturing and processing” do not seem to be technical terms, and, given the consistency between the dictionary definitions and the NAICS, it does not appear that the terms have acquired a peculiar legal meaning. Nevertheless, it is no stretch to conclude that the GPTA and the IFTA are *in pari materia*, as the GPTA governs the taxation of property, while the IFTA provides certain exemptions from the GPTA, and therefore that the two statutes should be read together to ensure harmony in Michigan’s property tax laws.⁹³ In other instances when Michigan’s courts have had to apply statutory language, they have explained that it is helpful to refer to other related statutes using the same terms.⁹⁴ Thus, a court interpreting the GPTA would likely use the IFTA’s definitions to inform its analysis of which uses qualify as “manufacturing and processing.”

Because the dictionary definitions and the NAICS descriptions are relatively similar, applying one of them rather than the other would not likely result in a significant difference in outcome. Under these definitions, property should be classified as “industrial real property” when it is used for purposes of (i) making material into a product or working the material into form for use, whether by machine or by hand, and (ii) systematically treating or preparing materials for use, or for (iii) any of the other more straightforward uses that the GPTA identifies, such as utility uses, warehousing,⁹⁵ and operations like gravel and sand pits, and stone quarries.⁹⁶ Under these definitions, “industrial real property” would encompass a range of uses. This range

⁸⁹ See *id.* at 105-361.

⁹⁰ MICH. COMP. LAWS ANN. § 8.3a (West 2004).

⁹¹ See *Horace*, 456 Mich. at 756; 575 N.W.2d at 767.

⁹² MICH. COMP. LAWS ANN. § 8.3a.

⁹³ The Michigan Supreme Court has explained that statutes are *in pari materia*, and must be read in connection, when they relate to the same persons or things or have a common purpose:

Statutes *in pari materia* are those which relate to the same person or thing, or the same class of persons or things, or which have a common purpose. It is the rule that in construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although enacted at different times, and containing no reference one to the other.

City of Detroit v. Michigan Bell Tel. Co., 374 Mich. 543, 558; 132 N.W.2d 660 (1965).

⁹⁴ See *Szydelko v. Smith’s Estate*, 259 Mich. 519, 521; 244 N.W. 148, 149 (1932).

⁹⁵ See MICH. COMP. LAWS ANN. § 211.34c(2)(d). For example, a “warehouse” is defined as “a building for the storage of goods, merchandise, etc.” RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY, *supra* note 40, at 1378. Similarly, while there is no definition for “generating plants,” the definition of “generate” is “to bring into existence; originate; produce,” and the applicable definition of “plant” is “a factory, workshop, etc., where a product is manufactured.” *Id.* at 512, 940. These definitions contrast somewhat with the definition of “manufacturing,” as they are much more narrow and specific and do not encompass the range of uses that “manufacturing and processing” seems to include.

would include properties such as the historic Ford Rouge plant, where raw materials like iron ore arrived and were made into the finished product of automobiles,⁹⁷ as well as properties where materials arrive and are made into some type of product, whether a finished product or simply another form of the materials that will be passed on for further manufacturing, including properties where the products are made by hand.⁹⁸

The GPTA requires that any personal property consisting of “machinery and equipment, furniture and fixtures, and dies” that is located on such real property must be classified as industrial personal property.⁹⁹ This use of the term “fixtures” may seem to be at odds with other uses of that term in the GPTA and Michigan law. After all, the GPTA’s definition of real property includes all “fixtures,”¹⁰⁰ and, as the Michigan Supreme Court held in *Continental Cablevision*, if an item qualifies as a fixture, it is real property for purposes of taxation.¹⁰¹ Further, the GPTA’s classification provision states that the “classifications of assessable *personal property* are described” to include industrial personal property, which in turn includes “machinery and equipment, furniture and fixtures, and dies.”¹⁰² The GPTA’s definition of “personal property,” of course, excludes any reference to fixtures.¹⁰³ As a whole, the GPTA seems to intend that fixtures shall be treated as real property. The use of the term “fixtures” in the definition of the industrial personal property class seems to be a use of that term in a “mercantile” sense, referring to items that are used in a particular industry but that do not meet the legal standards for becoming a fixture.¹⁰⁴ Nevertheless, the term’s presence in the definition

⁹⁶ See MICHIGAN STATE TAX COMMISSION, *THE CLASSIFICATION OF REAL PROPERTY* 6 (2007) (stating that “Gravel and sand pits as well as stone quarries should be included in the industrial classification”).

⁹⁷ See *Rouge Steel Co. v. City of Dearborn*, 8 M.T.T.R. 136, 142-44 (Docket No. 146773, Nov. 9, 1993) (describing the Ford Rouge plant).

⁹⁸ See RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY, *supra* note 40, at 753 (defining “manually” to mean “by hand”); see also OFFICE OF MANAGEMENT AND BUDGET, *supra* note 88, at 105 (“establishments that transform materials or substances into new products by hand . . . may also be included in this [manufacturing] sector”).

⁹⁹ MICH. COMP. LAWS ANN. § 211.34c(3). Relatedly, a “die” is defined as a device that is used to cut or impress other material:

1. a. any of various devices for cutting or forming material in a press or a stamping or forging machine. b. a hollow device of steel for cutting the threads of bolts or the like. c. a steel block or plate with small conical holes through which wire, plastic rods, etc., are drawn.
2. an engraved stamp for impressing a design upon some softer material.

RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY, *supra* note 40, at 344.

¹⁰⁰ See MICH. COMP. LAWS ANN. § 211 2(1)(a).

¹⁰¹ See *Continental Cablevision*, 430 Mich. at 735; 425 N.W.2d at 56.

¹⁰² MICH. COMP. LAWS ANN. § 211.34c(3) (emphasis added).

¹⁰³ See *id.* § 211.8.

¹⁰⁴ See Long, *supra* note 44, at 724 n.52. Such use may also arise from the imprecise use of “furniture, fixtures, and equipment,” an accounting term that is sometimes used in valuation disputes. See *Amway Grand Plaza Hotel v. City of Grand Rapids*, __ M.T.T.R. __, __ (Docket No. 237807, Nov. 26, 2001) (using the term “furniture, fixtures, and equipment” to refer to hotel furnishings that were personal property rather than real property); *NBD Bancorp, Inc. v. Federal Deposit Ins. Corp.*, 643 F. Supp. 1119, 1123 (E.D. Mich. 1986) (using the term “furniture, fixtures, and equipment,” to refer to a bank’s equipment). Michigan principles for interpreting statutes acknowledge that the same term may be used differently within a statute; a term’s meaning may vary when “it is necessary to assign different meanings to the same term in order to make the statute sensible, consistent, and operative.” *Loomis v. Mack*, 183 Mich. 674, 687; 150 N.W. 370, 374 (1915). This principle would seem to apply in this instance, because if “fixtures” does not have this “mercantile” meaning in § 211.34c, then the GPTA’s definitions of real and personal property may not be operative.

of the industrial personal property class may provide property owners with an argument that certain items, even if they do satisfy the fixtures analysis, should nevertheless be taxed as personal property.

In any event, the GPTA's definition of the industrial personal property class requires that personal property that is located on real property that falls within the industrial real property classification must be classified as industrial personal property. Thus, "industrial personal property," which is taxed at the reduced millage rate under the recent amendments to Michigan's property tax laws, will mirror the broad range of properties that qualify as industrial real property.¹⁰⁵

2. *Commercial Property Classifications*

The GPTA defines the commercial personal property class to include personal property on commercial real property, outdoor signs, and certain vehicles:

Commercial personal property includes the following:

- (i) All equipment, furniture, and fixtures on commercial parcels, and inventories not exempt by law.
- (ii) All outdoor advertising signs and billboards.

¹⁰⁵ There may be an exception for "utility personal property." Although the GPTA provides that real property used for utility purposes is to be classified as industrial real property, *see* MICH. COMP. LAWS ANN. § 211.34c(2)(d), not all personal property located on such parcels will be classified as industrial personal property. The GPTA defines the class of "utility personal property" to include certain transmission equipment, wells, and equipment at utility substations:

Utility personal property includes the following:

- (i) Electric transmission and distribution systems, substation equipment, spare parts, gas distribution systems, and water transmission and distribution systems.
- (ii) Oil wells and allied equipment such as tanks, gathering lines, field pump units, and buildings.
- (iii) Inventories not exempt by law.
- (iv) Gas wells with allied equipment and gathering lines.
- (v) Oil or gas field equipment stored in the open or in warehouses such as drilling rigs, motors, pipes, and parts.
- (vi) Gas storage equipment.
- (vii) Transmission lines of gas or oil transporting companies.

Id. § 211.34c(3)(e). To the extent that such items are located on real property "used for utilities," which falls within the industrial real property classification, *see id.* § 211.34c(2)(d)(ii), they must be classified as "utility personal property," which does not benefit from the reduced tax rates. Items of personal property that do not fall within the "utility personal property" class but are located on real property used for utilities, however, apparently should be classified as industrial personal property.

(iii) Well drilling rigs and other equipment attached to a transporting vehicle but not designed for operation while the vehicle is moving on the highway.

(iv) Unlicensed commercial vehicles or commercial vehicles licensed as special mobile equipment or by temporary permits.¹⁰⁶

As with “industrial personal property,” the GPTA’s definition of commercial personal property conditions much of the personal property that shall receive the commercial classification, and therefore benefit from a reduced millage rate, upon whether the personal property is located on parcels classified as commercial real property.

(a). *Personal Property that is “Commercial Personal Property” Because it is Located on Commercial Real Property*

Analyzing commercial real property is necessary to determine whether personal property will qualify as “commercial personal property.” The class of commercial real property is defined to include properties used for wholesale and retail operations, properties used by certain clubs, certain recreational properties, apartments, and buildings on leased property:

Commercial real property includes the following:

(i) Platted or unplatted parcels used for commercial purposes, whether wholesale, retail, or service, with or without buildings.

(ii) Parcels used by fraternal societies.

(iii) Parcels used as golf courses, boat clubs, ski areas, or apartment buildings with more than 4 units.

(iv) For taxes levied after December 31, 2002, buildings on leased land used for commercial purposes.¹⁰⁷

Once again, whether the real property on which personal property is located is used for “commercial purposes” is the critical factor in determining whether items of personal property should be classified as commercial personal property.

As is the case with “industrial real property,” the GPTA does not define the terms used to identify the properties that must be classified as commercial real property, requiring application of dictionary definitions of these terms. The first such term is “commercial,” as any property used for “commercial purposes” should be classified as commercial real property. “Commercial” use means generally use in commerce or to generate a profit, particularly on a wide scale:

¹⁰⁶ *Id.* § 211.34c(3)(b). Generally, licensed commercial vehicles are taxed under the Michigan Vehicle Code, *id.* §§ 257.801-.810 (West 2007), in lieu of taxation under the GPTA. See, e.g., CITIZENS RESEARCH COUNCIL OF MICHIGAN, OUTLINE OF THE MICHIGAN TAX SYSTEM 67 (2007) (stating that vehicles are taxed under this act “In lieu of general property and other taxes”).

¹⁰⁷ MICH. COMP. LAWS ANN. § 211.34c(2)(b).

1. of, pertaining to, or characteristic of commerce. 2. produced, marketed, etc., with emphasis on salability, profit, or the like: *a commercial book*. 3. able or likely to yield a profit. 4. suitable for a wide popular market: *commercial uses for satellites*. 5. engaged in, used for, or suitable to commerce or business, esp. of a public or nonprivate nature: *commercial vehicles*.¹⁰⁸

Of course, “commerce” would encompass the types of activities identified as industrial uses, so “commercial” use under the GPTA must be understood to be limited to those uses in commerce emphasizing profitability that do not also qualify as industrial uses. Otherwise, the classifications of industrial and commercial real property would be redundant, in conflict with established principles of statutory construction.¹⁰⁹

Regardless, the GPTA elaborates on which properties are “used for commercial purposes,” stating that a property is so used whether it is used for “wholesale, retail, or service.” The word “whether” is “used to introduce the first of two or more alternatives,”¹¹⁰ meaning that wholesale, retail, and service uses are various alternatives that qualify as commercial uses. “Wholesale,” the first alternative, is defined to mean “the sale of goods in quantity, as to retailers.”¹¹¹ The second alternative, “retail,” means “the sale of goods to ultimate consumers,” usually “in small quantities.”¹¹² “Service,” the third alternative, is defined more broadly to mean the provision of accommodations or activities rather than goods:

3. the providing or a provider of accommodation and activities required by the public, as maintenance or repair: *guaranteed service and parts*. 4. the organized system of apparatus, appliances, employees, etc., for supplying some accommodation required by the public: *a television repair service*.

* * *

24. supplying services rather than products or goods: *the service professions*. 25. supplying maintenance and repair: *a service center for electrical appliances* . . . 28. to make fit for use; repair or restore: *to service an automobile*.¹¹³

The definition of “service” also includes a “supplier of utilities,”¹¹⁴ but because the GPTA includes utility use in the industrial classification, and the definitions cannot be redundant, use for service as a commercial purpose must be understood to exclude utility uses.

Other uses that the GPTA identifies as commercial uses are addressed in other legislation. For example, although “fraternal” generally refers to a “society of men associated in brotherly union, as for mutual aid or benefit,”¹¹⁵ an entire chapter of the Michigan Compiled Laws

¹⁰⁸ RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY, *supra* note 40, at 245.

¹⁰⁹ *See, e.g., Inter-Cooperative Council v. Dep’t of Treas.*, 257 Mich. App. 219, 225-26; 668 N.W.2d 181, 185 (2003).

¹¹⁰ RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY, *supra* note 40, at 1392.

¹¹¹ *Id.* at 1396. Other definitions of “wholesale” pertain to other actions “on a large scale,” especially actions “without discrimination.” *Id.*

¹¹² *Id.* at 1052. Other definitions for “retail” reinforce this, providing that “retail” can mean sales in a “retail quantity” and “directly to the consumer.” *Id.*

¹¹³ *Id.* at 1121.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 489.

addresses fraternal societies. This chapter provides for the incorporation, and treatment by the government, of fraternal societies like the Ancient Order of Hibernians and many others.¹¹⁶ Likewise, while “ski area” might refer to any “space or surface” devoted to skiing,¹¹⁷ the Ski Area Safety Act specifically defines a “ski area” as “an area used for skiing and served by 1 or more ski lifts.”¹¹⁸ As such, “ski area” has likely acquired a meaning in Michigan law that must be applied to that term.

Under the GPTA’s terms, like industrial real property, “commercial real property” will also encompass a range of properties. This range will include any property where goods are sold, whether to a buyer intending to sell the goods again or to the goods’ ultimate consumer, as well as properties used to provide accommodations or activities, like vehicle repair, down to recreational properties like “ski areas” and golf courses. Therefore, “All equipment, furniture, and fixtures on” such properties must be classified as commercial personal property.¹¹⁹

(b). Other Commercial Personal Property

In addition to treating items located on property used for commercial purposes as commercial personal property, the GPTA also specifically identifies other property as commercial personal property. For example, the GPTA provides that “All outdoor advertising signs and billboards” must receive the commercial personal property classification.¹²⁰ Michigan courts have treated billboards as “trade fixtures,”¹²¹ which in the past the court had held were real property for tax purposes.¹²² Effective in 2003, the GPTA was amended to provide that all trade fixtures shall be taxed as personal property; the same amendments adopted this explicit requirement that all outdoor advertising signs and billboards must be classified as commercial personal property.¹²³ Thus, such signs will qualify for a reduced millage rate under Michigan’s new tax structure.

The GPTA also specifically provides that certain vehicles must be classified as commercial personal property. First, it addresses “well drilling rigs and other equipment attached to a transporting vehicle but not designed for operation while the vehicle is moving on the highway.”¹²⁴ This provision is straightforward as it applies to well-drilling equipment, which is typically mounted on a truck. The description is broad enough, however, seemingly to

¹¹⁶ See MICH. COMP. LAWS ANN. § 457.41-48 (West 2002) (providing “for the incorporation of state conventions and divisions of the Ancient Order of Hibernians”); see also *id.* §§ 457.1-708 (providing for the incorporation of numerous fraternal societies).

¹¹⁷ RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY, *supra* note 40, at 66.

¹¹⁸ MICH. COMP. LAWS ANN. § 408.322(f) (West 1999).

¹¹⁹ *Id.* § 211.34c(3)(b).

¹²⁰ *Id.* § 211.34(3)(b)(ii). Notably, this section of the GPTA historically provided that “Outdoor advertising signs and billboards” must be classified as commercial personal property. In 2002, the Michigan Legislature amended this section to make clear that “All outdoor advertising signs” must receive this classification. See 2006 Mich. Pub. Acts 620 (emphasis added).

¹²¹ See *Outdoor Sys. Advertising, Inc. v. Korth*, 238 Mich. App. 664, 667; 607 N.W.2d 729, 730 (1999) (holding that billboards were trade fixtures in a lease dispute); see also *City of Norton Shores v. Whiteco Metrocom*, 205 Mich. App. 659, 661-62; 517 N.W.2d 872, 873 (1994) (holding that billboards were trade fixtures in an eminent domain context).

¹²² See *Michigan Nat’l Bank*, 96 Mich. App. at 556; 293 N.W.2d at 628.

¹²³ See 2006 Mich. Pub. Acts 620.

¹²⁴ MICH. COMP. LAWS ANN. § 211.34c(3)(b)(iii).

encompass other equipment that is similar, such as a truck-mounted tree spade, to other “equipment” on a vehicle that is not intended for use while the vehicle is moving such as cranes that are mounted on the trucks that they unload, and equipment that might commonly be considered part of the vehicle itself, such as the tank on a septic-cleaning vehicle.

Other vehicles that the GPTA specifically identifies as “commercial personal property” include unlicensed commercial vehicles. “Commercial vehicles” might mean any vehicles used to earn a profit,¹²⁵ but the Michigan Legislature has defined that term in the Michigan Vehicle Code to mean vehicles used to transport people and goods, and to tow other vehicles:

“Commercial vehicle” includes all motor vehicles used for the transportation of passengers for hire, or constructed or used for transportation of goods, wares or merchandise, and/or all motor vehicles designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.¹²⁶

Thus, “commercial vehicle” has a meaning in Michigan law that should be ascribed to the GPTA’s use of that term.¹²⁷ Of course, the classification requirement applies only to “unlicensed” commercial vehicles, as licensed vehicles are taxed under the Michigan Vehicle Code itself.¹²⁸

“Special mobile equipment” is another type of property that the GPTA provides must be classified as commercial personal property. The GPTA does not define this term, and dictionary definitions provide little insight.¹²⁹ But “special mobile equipment” is defined in the Michigan Vehicle Code, and means vehicles that are not designed or used primarily for transporting people or property:

“Special mobile equipment” means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, mobile office trailers, mobile tool shed trailers, mobile trailer units used for housing stationary construction equipment, ditch-digging apparatus, and well-boring and well-servicing apparatus. The foregoing enumeration shall be considered partial and shall not operate to exclude other vehicles which are within the general terms of this definition. Although not within the general terms of this definition, the combination of a mobile car crusher trailer permanently attached to a truck tractor or road tractor shall be considered special mobile equipment for purposes of this act.¹³⁰

¹²⁵ RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY, *supra* note 40, at 245.

¹²⁶ MICH. COMP. LAWS ANN. § 257.7.

¹²⁷ *See id.* § 8.3a.

¹²⁸ *See id.* §§ 257.801-810; *see also* CITIZENS RESEARCH COUNCIL OF MICHIGAN, *supra* note 106, at 67 (stating that vehicles are taxed under the Michigan Vehicle Code “In lieu of general property and other taxes”).

¹²⁹ “Special” has several definitions, but is primarily defined to mean “of a distinct or particular kind or character.” The applicable definition of “mobile” is “contained in or utilizing a motor vehicle for ready movement from place to place,” while “equipment” means “the articles, implements, etc., used or needed for a specific purpose or activity.” RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY, *supra* note 40, at 1176, 792, and 417. Any number of items could fall within these definitions.

¹³⁰ MICH. COMP. LAWS ANN. § 257.62.

Notably, the Michigan Vehicle Code’s definition of “special mobile equipment” seems to duplicate the GPTA’s specific provision that “well drilling rigs and other equipment attached to a transporting vehicle but not designed for operation while the vehicle is moving on the highway” shall be classified as commercial personal property. The Michigan Vehicle Code’s definition even specifically identifies “well-boring” apparatus as special mobile equipment. Again, because Michigan statutes cannot be construed to be redundant, the definition of “special mobile equipment” must be understood to encompass only that equipment that is not specifically identified in another section. In this instance, the ambiguity is seemingly inconsequential because both “equipment attached to a transporting vehicle but not designed for operation while the vehicle is moving on the highway” and “special mobile equipment” are classified as commercial personal property. Finally, commercial vehicles operating on “temporary permits,” which are governed by the Michigan Vehicle Code,¹³¹ are also included as “commercial personal property.”

(c). *Summary*

The class of “commercial personal property” thus includes a broad range of items, both because “commercial real property” includes many types of property, and because items that the GPTA specifically identifies as commercial personal property can include a number of types of property. Although this property does not receive the same benefit that industrial personal property receives under Michigan’s new tax structure, it nevertheless will be taxed at a lower rate than has applied in the past.

3. *Classification of Properties That are Used for More than One Purpose*

The GPTA also provides for the classification of properties that are used for multiple purposes. If a property’s uses fall within more than one of the GPTA’s classifications, the GPTA provides that the taxing jurisdiction’s assessor must determine which use most significantly influences the parcel’s value:

If the total usage of a parcel includes more than 1 classification, the assessor shall determine the classification that most significantly influences the total valuation of the parcel.¹³²

The property then will be classified under the use that has the most significant influence on the property’s value.¹³³

Under this provision, any number of factors relating to value can influence a property’s classification. For example, it is not uncommon for a property to be used to both prepare a company’s products, which would generally qualify as “manufacturing and processing” such that the property would be classified industrial, and to sell the products, which would generally qualify as wholesale or retail use and result in a commercial classification. The relative portions

¹³¹ *Id.* § 257.243.

¹³² *Id.* § 211.34c(5).

¹³³ MICHIGAN STATE TAX COMM’N, THE CLASSIFICATION OF REAL PROPERTY, *supra* note 96, at 1.

of the property devoted to the “industrial” use and the “commercial” use, the value of industrial and commercial property in the property’s market, and the building’s own position in that market will all affect the property’s classification under the GPTA.

4. *Issues Arising in Property Classification*

Any number of issues can arise in classifying personal property as either industrial or commercial under the GPTA’s definitions. First, because the classification of many items of personal property will depend on the classification of the real property where such items are located, the classification of real property is a significant issue for personal property, and whether the property owner will enjoy the full benefit of Michigan’s new tax structure. After all, an item of personal property that is commonly used in both businesses that produce goods as well as businesses that sell goods, like a desktop computer, will be taxed differently depending on whether the real property where the business is located is classified as commercial or industrial. In determining which classification the property should receive, the classification of the real property where it is located will be critical.

In many taxing jurisdictions throughout Michigan, a real property’s zoning classification is a significant factor for the taxing jurisdiction in classifying the property under the GPTA.¹³⁴ When property classification was not related to the applicable tax rates, zoning essentially provided a useful shorthand for taxing jurisdictions to place property into one of the GPTA’s classifications. But following zoning when determining property classification for tax purposes can have pitfalls under Michigan’s new tax structure that work to the detriment of both the taxpayer and the educational bodies whose millages are inapplicable to commercial and industrial personal property. For example, some communities’ zoning ordinances are “pyramid” or “cumulative” ordinances. These zoning ordinances classify land uses from least intense to most intense; they restrict areas zoned for the least intense uses to those uses, but also permit less intense uses in areas that are zoned for more intense uses.¹³⁵ Thus, industrial use, a more intense use, may not be permitted in a commercial or business district, a less intense use, but commercial and business use may be permitted in an industrial district.¹³⁶ This type of zoning has resulted in a variety of commercial uses being located in industrial districts. It is not uncommon in Michigan to find retail operations, whether selling goods on-site or through catalog and internet orders, located in light industrial buildings that are in districts zoned for industrial uses. Similarly, service operations, including services ranging from photography to automotive repair to athletic and dance instruction, are all commonly located in light industrial buildings that are in light industrial districts. Because the GPTA provides that a property’s classification must follow the property’s “use,” rather than the uses permitted on the property, commercial operations that

¹³⁴ See MICHIGAN STATE TAX COMM’N, BULLETIN NO. 7 OF 2007, *supra* note 25, at 5 (stating that taxing jurisdictions may “look at the zoning of the real property to help provide clues as to the determination of the classification of the personal property”). In other publications, however, the Michigan State Tax Commission has stated that a property’s zoning “does not dictate” its classification under the GPTA. MICHIGAN STATE TAX COMM’N, THE CLASSIFICATION OF REAL PROPERTY, *supra* note 96, at 1.

¹³⁵ See CLAN CRAWFORD, JR., MICHIGAN ZONING AND PLANNING § 5.07, at 147 (3d ed., 1988). This text notes, however, that modern zoning ordinances are moving away from “pyramiding.” *See id.*

¹³⁶ *See, e.g.,* Genesee Land Corp. v. Leon Allen & Assocs., 50 Mich. App. 296, 298; 213 N.W.2d 283, 284 (1973).

locate in industrial districts may be misclassified under the GPTA when zoning is used to guide GPTA classification.¹³⁷

The same misclassification can result from non-conformities and special land uses. Generally, a non-conforming use is a use of property that is contrary to the provisions of the applicable zoning ordinance. Often, non-conforming uses are property uses that were already established when the local municipality adopted a zoning ordinance that altered the permissible uses on the property. Because the property's use was already established, it is permitted to continue under the zoning ordinance subject to certain limitations.¹³⁸ Similarly, a special land use is a use permitted in a zoning district "only under certain circumstances ordinarily listed in the ordinance and usually only after obtaining a permit."¹³⁹ These are additional instances of property uses that do not necessarily match the property's zoning, and may feature any variety of uses located in zoning districts where such uses would not generally be located. Accordingly, these are additional instances when using a property's zoning district to drive its classification under the GPTA can result in misclassification of the real property, and therefore the misclassification of personal property.

Another pitfall can be efforts to classify property based on its "highest and best use." Under Michigan law, property's market value for tax purposes is calculated at the property's highest and best use, which is "that most likely legal use which will yield the highest present worth" of a property. The highest and best use concept "recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay."¹⁴⁰ Thus, even though a property is presently used for one purpose, its "highest and best use" may be for some other purpose. But unlike the valuation process, the GPTA provides that classification depends on a property's "use," not its highest and best use.¹⁴¹ The GPTA in two instances provides for classification based on something other than a property's "use." The first is for properties larger than fifteen acres "with a market value in excess of its value in use," which the GPTA provides must be classified as developmental real property.¹⁴² The other involves the residential class of real property. The GPTA provides that "[p]latted or unplatted parcels, with or without buildings . . . which are used for, *or probably will be used for*, residential purposes," and "[p]arcels that are used for, *or probably will be used for*, recreational purposes," must all be classified as residential real property.¹⁴³ Otherwise, classifying real

¹³⁷ On the other hand, zoning can be useful in classifying vacant parcels of real property that are smaller than five acres. The GPTA provides that vacant parcels over five acres must be classified as developmental real property. See MICH. COMP. LAWS ANN. § 211.34c(2)(c). But smaller vacant parcels fall within the general classifications. See, e.g., *id.* § 211.34c(2)(b)(i) (providing that commercial real property includes "parcels used for commercial purposes . . . with or without buildings"). When there is not already activity on a property comprising its "use," future activities on the property are limited to those uses permissible under its zoning, or those uses for which the property could reasonably have its zoning changed. That may provide the only insight into the property's "use," and thus its proper GPTA classification. Because vacant property is vacant, of course, it would not contain personal property and is not addressed further in this Article.

¹³⁸ See CRAWFORD, *supra* note 135, at §5.01, p. 129-30.

¹³⁹ *Id.* § 6.04, at 169. "Such uses are called by such various names as *exceptions, waiver uses, special exceptions, special uses, or conditional uses.*" *Id.*

¹⁴⁰ *Edward Rose Bldg. Co. v. Independence Twp.*, 436 Mich. 620, 633; 462 N.W.2d 325, 331 (1990).

¹⁴¹ See MICH. COMP. LAWS ANN. § 211.34c (providing that commercial real property "includes the following . . . parcels *used for commercial purposes*") (emphasis added).

¹⁴² See *id.* § 211.34c(2)(c).

¹⁴³ *Id.* § 211.34c(2)(e) (emphasis added).

property based on something other than the property's "use" can result in misclassification of the personal property located on the real property.

These and other issues that may arise in classifying property under the GPTA were of little consequence in the past, when property classifications did not affect the amount of taxes that the taxpayer would pay or that the taxing jurisdiction might expect to collect. But now that the applicable millage rate depends on whether personal property is classified as industrial personal property or commercial personal property, the classification of personal property, and therefore the classification of the real property where the personal property is located, is magnified. For example, if a taxing jurisdiction follows its zoning ordinance in classifying real property, and classifies real property that is in an industrial zone, but is used for a service purpose like automotive repair, as "industrial real property," then the personal property located on that property would also be "industrial real property" under the GPTA. As such, even though the property is used for service purposes and should be classified as "commercial," the personal property would be classified as industrial and taxed at the reduced millage rate. The taxing jurisdiction would therefore have bestowed a benefit on the taxpayer, and would have foregone revenue to which the educational bodies whose millages do not apply were otherwise entitled, based on a flawed application of the GPTA's property classifications. Similarly, a taxing jurisdiction following its zoning ordinance may misclassify a non-conforming use, like an industrial use located in a zoning district designed for commercial uses, by classifying the property used for industrial purposes as "commercial" under the GPTA. Personal property located on the parcel would therefore also qualify as commercial personal property, improperly denying the taxpayer the reduced millage rate that should apply to industrial personal property and resulting in overtaxation.

Likewise, properties used for more than one purpose could become a source of dispute under Michigan's new tax structure. Taxpayers may seek to emphasize the manufacturing aspects of their properties, seeking an industrial classification, while taxing jurisdictions may seek to emphasize the value of the property's commercial components. There is no shortage of instances where such a dispute may arise, as companies produce goods ranging from clothing to wood products to windows that are sold in showrooms at the same location where the items were produced. Under the GPTA, the use that has the more significant influence on the real property's value should control its classification, and in turn control the classification of much of the personal property located there. Determining which use has the greater influence could be quite nuanced, leaving whether the owner should receive the full benefit of Michigan's new tax structure subject to debate. Such a debate would have been purely academic in the past, but now that the applicable millage rates for personal property depend on property classification, taxpayers with significant personal property could have a tremendous stake in whether such a property is classified as commercial or personal. Thus, disputes over the classification of property used for more than one purpose, as well as disputes over the classification of other real property that controls the classification of personal property, will receive much greater scrutiny under Michigan's new tax structure than it ever has in the past.

C. Challenging Property's Classification Under the GPTA

The increased scrutiny on property classification that will result from the changes in Michigan's tax structure will also result in more scrutiny on the classification appeal process, as taxpayers and potentially taxing jurisdictions may seek to ensure that properties are properly classified so that the correct millage rate will apply. Under the GPTA, the taxing jurisdiction first assigns a property's classification. It provides that the local assessor shall determine the classification for all assessable property within the taxing jurisdiction.¹⁴⁴ Taxing jurisdictions must notify property owners of the classification placed on their properties in the notice of assessment that must also advise property owners about changes in their properties' state equalized values and taxable values.¹⁴⁵ The GPTA requires that these notices must be provided to property owners and "mailed not less than 10 days before the meeting of the board of review."¹⁴⁶

To appeal a property's classification, the GPTA requires that the property owner must notify the local assessor of the dispute and appear before the taxing jurisdiction's March Board of Review.¹⁴⁷ The Board of Review may either affirm the classification placed on the property or grant the taxpayer relief by altering the classification. If either the local assessor or the taxpayer is dissatisfied with the Board of Review's decision, then either one may appeal to the State Tax Commission. But the State Tax Commission's decision is the final word on property's classification in any given year:

An owner or assessor may appeal the decision of the March board of review by filing a petition with the state tax commission not later than June 30 in that tax year. The state tax commission shall arbitrate the petition based on the written petition and the written recommendations of the assessor and the state tax commission staff. An appeal may not be taken from the decision of the state tax commission regarding classification complaint petitions and the state tax commission's determination is final and binding for the year of the petition.¹⁴⁸

On the other hand, the Michigan Tax Tribunal has considered whether an item of property is real property or personal property in the context of an appeal challenging real property's assessment. In such instances, if the item is personal property, then the Tribunal has not accounted for the items in valuing the real property.¹⁴⁹ But the Tribunal has explained that it lacks jurisdiction to consider a given item of property's classification under the GPTA.¹⁵⁰

Appealing a property's classification is importantly different from appealing the property's assessed and taxable value. Under amendments to the Michigan Tax Tribunal Act that were adopted in 2006,¹⁵¹ property owners need not appear before the taxing jurisdiction's March

¹⁴⁴ *See id.*

¹⁴⁵ *See id.* § 211.24c(1), (2).

¹⁴⁶ *Id.* § 211.24c(4).

¹⁴⁷ *See id.* § 211.34c(6). The March Board of Review is a body appointed by the jurisdiction's governing body to consider protests from persons who believe that their properties' assessments are incorrect. *See generally id.* § 211.29 (discussing township boards of review), § 211.30 (discussing boards of review in general).

¹⁴⁸ *Id.* § 211.34c(6).

¹⁴⁹ *See, e.g.,* College Inn of Big Rapids v. City of Big Rapids, _ M.T.T.R. __, __ (Docket No. 299574, July 7, 2005) (concluding that the value of a sign could not be taken into account in valuing the petitioner's real property because the sign was a trade fixture and thus personal property).

¹⁵⁰ *See* TES Filer City Station v. Filer Twp., _ M.T.T.R. __, __ (Docket No. 192808, Jan. 23, 2004).

¹⁵¹ *See* 2006 Mich. Pub. Acts 174.

Board of Review to appeal the assessed and taxable values placed on real property with commercial, industrial, and developmental classifications.¹⁵² Similarly, the taxpayer is not required to appear before the March Board of Review to appeal the assessed and taxable values placed on personal property with commercial, industrial, and utility classifications, so long as the taxpayer filed a personal property statement before the Board of Review began to meet.¹⁵³ But to appeal any property's classification, the taxpayer must appear before the March Board of Review.¹⁵⁴ In the instances that Michigan law imposes a requirement to appear before the March Board of Review, that requirement has been considered jurisdictional.¹⁵⁵ Failure to challenge a property's classification before the March Board of Review could therefore be construed to foreclose the State Tax Commission's jurisdiction to consider a classification challenge, and along with it the taxpayer's right to challenge its property's classification. Thus, taxpayers must appeal to the applicable board of review. Further, because the classification of many items of personal property depend on the classification of the real property where the personal property is located, taxpayers may desire to appeal the classification of both the real and personal property to ensure that their rights are preserved.

IV. CONCLUSION

In a 2007 bulletin addressing the recent changes in Michigan's tax structure, the Michigan State Tax Commission observed that the legislation adopting the changes did not alter the GPTA's definitions of the commercial and industrial classes of personal property.¹⁵⁶ Based on the lack of any changes in those definitions, the commission emphasized that "nothing in the new laws merits any changes in classification of personal property."¹⁵⁷ The State Tax Commission's conclusion only follows, however, if personal property was correctly classified before the new laws were adopted.

In the past, whether property was classified correctly was not important because all property, real and personal, was taxed at the same millage rate.¹⁵⁸ Under Michigan's new tax structure, however, "incorrect classification can lead to incorrect payment of property taxes," and additionally can affect a taxpayer's obligations under the Michigan Business Tax Act.¹⁵⁹ Because the new tax structure provides lower millage rates for personal property that is classified as either commercial or industrial personal property, whether property is personal property at all, and which GPTA classification will apply, are both much more significant than they have been in the past. Further, when possible, taxpayers may likely favor identifying more property as personal property, and having that personal property classified as industrial, which provides the most favorable tax rate. Whether taxing jurisdictions may have a converse incentive to favor identifying more property as real property, which is taxed at a higher rate, and classifying more personal property as commercial personal property rather than industrial personal property, is

¹⁵² See MICH. COMP LAWS ANN. § 205.735a(4)(a).

¹⁵³ See *id.* § 205.735a(4)(b). The GPTA requires that all persons in possession of personal property must file a statement with the taxing jurisdiction identifying the personal property in that person's possession. See *id.* § 211.19.

¹⁵⁴ See *id.* § 211.34c(6).

¹⁵⁵ See *id.* § 205.735(1); see also *Ford Motor Co. v. City of Woodhaven*, 475 Mich. 425, 430; 716 N.W.2d 247, 250 (2006).

¹⁵⁶ MICHIGAN STATE TAX COMM'N, BULLETIN No. 7 OF 2007, *supra* note 25, at 1.

¹⁵⁷ *Id.*

¹⁵⁸ See *id.* at 4.

¹⁵⁹ *Id.*

less clear. Under the new tax structure, the reduced millage rates for commercial and industrial personal property result from local school district and state educational millages no longer applying to such property. But it is the local taxing jurisdictions that prepare property assessments and classifications, and they may or may not seek to protect these educational bodies' tax revenue streams when preparing assessments and classifications.

In any event, the increased significance of properly identifying property as real or personal, and placing the property into its proper classification, will require emphasis on the means for distinguishing between real and personal property, and emphasis on the GPTA's language explaining the property classifications, that was not required in the past. Although Michigan law provides an established process for distinguishing between real and personal property using the traditional fixtures analysis, there is limited authority addressing the GPTA's classifications. Indeed, because classification cannot be appealed to Michigan's courts, the only authority addressing the GPTA's classifications beyond the GPTA itself are bulletins and other publications from the State Tax Commission.¹⁶⁰ Therefore, both taxpayers and taxing jurisdictions must ensure that they understand the GPTA's language, and the manner that the GPTA's language must be applied, in an effort to achieve the paramount goals of tax equality and uniformity.

¹⁶⁰ See, e.g., *id. see also*; MICHIGAN STATE TAX COMMISSION, THE CLASSIFICATION OF REAL PROPERTY, *supra* note 96.