STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

SHERRY COMBEN, TREASURER
FOR THE COUNTY OF ANTRIM,

Plaintiff,

File No. 02-7860-PS
v HON. PHILIP E. RODGERS, JR.

THE STATE OF MICHIGAN, DOUGLAS B. ROBERT in his capacity as STATE TREASURER OF MICHIGAN, THE MICHIGAN DEPARTMENT OF TREASURY, PURE RESOURCES, L.P., A Texas limited partnership, DOMINION RESERVES, INC., a Virginia corporation, WOLVERINE GAS & OIL COMPANY, INC a Michigan corporation, WARD HEIRS BEING: EUGENIE R. ANDERSON, STEPHEN WARD DEVINE, ELIZABETH PALMER DEVINE WISEMAN, MICHAEL EDMUND DEVINE, SUZANNE LEE DEVINE, WILLIAM W. DUNN, DAVID W. FAY, EDWIN R. FAY, PETER W. FAY, ROBERT A. FAY, ROSAMOND S. FISHER, FREDERICK T. GOLDING, successor trustee under the Virginia W. Golding Trust Agreement dated August 30, 1989, NANCY HAMILTON, LISA MARRIOTT JONES, DAPHNE FAY LANDRY, GEORGE S. LEISURE, JR., PETER R. LEISURE, FLORA NINELLES, aka Flora Fay Ninelles, MARJORIE S. RICHARDSON, JAMES W. RILEY, JR., WILLIAM A. RILEY, BARBARA F. ROSENBERG, ELIZABETH R.P. SHAW, ANN WARD SPAETH, FREDERICK S. STRONG III, ROBERT A.W. STRONG, Revocable Trust u/a/d 4/17/02, EUGENIE S. KAUFFMAN, THEIR HEIRS AND ASSIGNS,

Defendants.
_____/

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DECISION AND ORDER REGARDING DEFENDANT PURE RESOURCES L.P.'S AMENDED MOTION FOR SUMMARY DISPOSITION AND DEFENDANTS DOMINION RESERVES, INC. AND WOLVERINE GAS & OIL COMPANY, INC.'S MOTION FOR SUMMARY DISPOSITION

With the enactment of 1999 PA 123, being MCL 211.78-78p, the Michigan Legislature made major revisions in the General Property Tax Act ("GPTA"), 1893 PA 206, MCL 221.1, *et seq.*, whereby the statutory scheme for the collection of delinquent real property taxes was changed from a tax sale scheme to one of forfeiture and foreclosure. Pursuant to 211.78(3), the Antrim County Board of Commissioners, with the concurrence of the County Treasurer, elected to have property foreclosed under 1999 PA 123 forfeited to the County Treasurer under Section 78g. Thus, the County became the "foreclosing governmental unit" ("FGU").

On April 3, 2001, the Plaintiff Sherry Comben, Treasurer for the County of Antrim, filed an action for foreclosure upon those parcels that had been forfeited, and where the taxes remained unpaid for the tax years 1997 and 1999. On March 1, 2002, the Circuit Court entered an Order of Foreclosure as to 134 parcels for which taxes had remained unpaid. On June 24, 2002, the Plaintiff brought this Declaratory Judgment action seeking a ruling on nine separate issues related to the foreclosure process.

Defendant Pure Resources L.P. ("Pure Resources") filed a motion for summary disposition, pursuant to MCR 2.116(C)(8) and (10), asking the Court to find that 1999 PA 123 is unconstitutional in that it violates the due process and taking clauses of both the Michigan and United States Constitutions. More specifically, Pure Resources contends that 1999 PA 123 fails to provide the owners of an interest in the subsurface estate with proper notice and an opportunity to be heard to contest the forfeiture proceedings. Pure Resources alternatively contends that oil and gas interests are exempt from ad valorem property taxes because the severance tax on severed minerals is "in lieu of any other taxes."

Defendants Dominion Reserves, Inc. ("Dominion") and Wolverine Oil & Gas Company, Inc. ("Wolverine") filed a motion for summary disposition, pursuant to MCR 2.116(C)(8). These

Defendants seek a ruling from the Court that the GPTA does not apply to leases or the rights to develop and operate any lands of this state for oil and gas, the values created thereby and the property rights attached to or inherent therein because they are exempt by virtue of the Severance Tax Act. These Defendants alternatively seek a ruling from the Court that the GPTA, as amended, if applied to oil and gas interests violates the due process clauses of the Michigan and United States Constitutions.

The Plaintiff filed a brief in response to these Defendants' motions. The State Defendant filed an answer and brief in response to the other Defendants' motions. On December 16, 2002, the Court heard the arguments of counsel and took the matter under advisement. The Court now issues this written decision and order addressing the issues presented.

STANDARD OF REVIEW

MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8), failure to state a claim upon which relief can be granted, is tested by the pleadings alone. Only the legal basis of the complaint is examined. The factual allegations of the complaint are accepted as true, along with any inferences which may fairly be drawn therefrom. Unless the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery, the motion should be denied. *Mills v White Castle System Inc,* 167 Mich App 202, 205; 421 NW2d 631 (1988).

MCR 2.116(C)(10)

MCR 2.116(C)(10) provides that summary disposition may be entered on behalf of the moving party when it is established that, "except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

The applicable standard of review for a motion for summary disposition brought pursuant to MCR 2.116(C)(10) was set forth in *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999) as follows:

This court in *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

ISSUES

The parties agree that the State and County have a significant interest in the taxation of severed mineral interests. The parties also agree that the GPTA generally provides for the assessment of rights and interest in property, the levy and collection of taxes, and the foreclosure, sale and conveyance of property delinquent for taxes.

Although the parties have each framed the issues somewhat differently, the Court agrees with the Plaintiff that the critical issue is whether 1999 PA 123, if properly followed, extinguishes severed oil and gas interests if the property is not redeemed within 21 days after the entry of the order of

foreclosure.[1] If the Court finds that oil and gas interests are extinguished, then the Court must decide whether the statute is constitutional.

I.

The first question this Court must address is whether 1999 PA 123, if properly followed, extinguishes severed oil and gas interests in the property. The argument has been made that severed oil and gas interests are extinguished pursuant to MCL 211.78k(5)(e) which provides:

> (5) The circuit court shall enter judgment on a petition for foreclosure filed under section 78h not more than 10 days after the March 1 immediately succeeding the date the petition for foreclosure is filed for uncontested cases or 10 days after the conclusion of the hearing for contested cases. All redemption rights to the property expire 21 days after the circuit court enters a judgment foreclosing the property as requested in the petition for foreclosure. The circuit court's judgment shall specify all of the following:
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> * * *
>
> (e) That **all existing recorded and unrecorded interests in that property are extinguished**, except a visible or recorded easement or right-of-way, private deed restrictions, or restrictions or other governmental interests imposed pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, if all forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after entry of the judgment. [Emphasis added].

The Court has reviewed the subject legislation, the legislative history and analysis, pertinent case law, relevant statutory provisions and secondary sources. For the reasons stated herein, the Court is convinced that 1999 PA 123 does not extinguish severed oil and gas interests.

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[1]The use of the word "severed" can be confusing. It is commonly used in two different contexts. On the one hand, it can mean that the subsurface estate has been severed from the surface estate by reservation or conveyance. On the other hand, it can mean that oil and gas or other minerals have been severed or removed from the surrounding land by the drilling of producing wells or mining operations. In this opinion, "severed oil and gas interests" refers to subsurface estates in oil and gas that have been severed from surface estates by reservation or conveyance, except where the court is discussing the severance tax on oil and gas as products that have been severed or removed from the land.

A.

General Property Taxation

The pertinent foundation law controlling the taxation of property is found in Const 1963, art IX, § 3, which reads as follows:

> The legislature shall provide for the uniform general ad valorem ***taxation of real and tangible personal property not exempt by law***. 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. The legislature may provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation. Every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates.' [Emphasis supplied.]

Under MCL 211.1, "all property, real and personal, within the jurisdiction of this state, **not expressly exempted**, shall be subject to taxation." [Emphasis supplied.][2]

Therefore, subsurface oil and gas interests are subject to ad valorem property taxation **unless expressly exempted.**

B.

The Nature of Oil and Gas

As a general rule, the owner of the land surface owns the minerals beneath his land. *Manufacturers Nat'l Bank of Detroit v Dep't of Natural Resources*, 420 Mich 128; 141 NW2d 572 (1984). Ordinarily, a deed of land conveys the soil and all which it contains within the boundaries of the description in the deed. *Pellow v Arctic Iron Co*, 164 Mich 87, 105; 128 NW2d 918 (1910).

Black's Law Dictionary (6th ed), p 995, defines "mineral right" as "[a]n interest in minerals in land, with or without ownership of the surface of the land. A right to take minerals or a right to receive a royalty." A mineral right is a right to the minerals themselves, not to the land surrounding the minerals. The ownership of minerals in place may be severed from the remainder of the land by proper conveyances. Upon severance of title to mineral interests from that of the remainder of the

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[2]For an extensive overview of real property taxation in Michigan, see *WPW Acquisition Co v City of Troy*, 250 Mich App 287, 295-302; 646 NW2d 487 (2002).

land, there is no continuing unity of title and each estate may be a freehold of an estate in fee simple. *Van Slooten v Larsen*, 410 Mich 21, 37; 299 NW2d 704 (1980), app dis 455 US 901; 102 S Ct 1242; 71 L Ed 2d 440 (1982); *Rathbun v Michigan*, 284 Mich 521, 534; 280 NW 35 (1938). At common law, these severances created fee estates, corporeal hereditaments, for the owners of the severed mineral interests, that could not be abandoned. *Van Slooten v Larsen, supra* at 37.

The Michigan Supreme Court has held that oil and gas are a part of the realty until severed therefrom. *Eadus v Hunter*, 249 Mich 190; 228 NW 782; *Attorney General v Pere Marquette Ry Co*, 263 Mich 431; 248 NW 860; 94 ALR 520. The only ownership that one can have in unproduced oil and gas is the right, to the exclusion of all others, to reduce the same to possession and thereby acquire title thereto. This fundamental precept of oil and gas law, commonly known as the "law of capture," is based upon the fugitive nature of oil and gas, and has been uniformly adopted throughout the United States. *Attorney General v Pere Marquette R Co*, 263 Mich 431; 248 NW 860 (1933); 94 ALR 520; *Quinn v Pere Marquette R Co*, 256 Mich 143; 239 NW 376 (1931); *Rich v Doneghey*, 71 Okl 204; 177 P 86 (1918); 3 ALR 352. The fugitive nature of oil and gas distinguishes oil and gas from other "hard" minerals.

C.

The Severance Tax Act

An ad valorem tax is defined as a tax levied on property or an article of commerce in proportion to its value as determined by assessment or appraisal. Black's Law Dictionary (6th ed) p 51. Const 1963, art 9, § 3 allows "[t]he legislature [to] provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation."

The Severance Tax Act, MCL § 205.301, *et seq.*, imposes a specific tax, not a property tax, on producers engaged in the business of severing oil and gas from real property. *Elenbaas v Dep't of Treasury*, 231 Mich App 801; 585 NW2d 305 (1998), aff'd in part, rev'd in part 235 Mich App 372; 597 NW2d, 271 (1999), app den 463 Mich 932; 622 NW2d 63. The severance tax is in the nature of an excise tax, a tax on the performance of an act, engagement in an occupation, or enjoyment of a privilege, which is an excise, Black's Law Dictionary (5th ed), as opposed to a property tax. See also, *Gorney v Madison Heights*, 211 Mich App 265, 273; 535 NW 2d 263 (1994) ("excise" is a tax on performance of act, engagement in occupation, or enjoyment of privilege);

Detroit v Walker, 445 Mich 682, 707; 520 NW2d 135 (1994) ("An excise tax is a "privilege" tax that is not imposed directly upon persons or property, but that is instead levied on activities that are voluntarily assumed to the degree to which the privilege is exercised"); *Dooley v Detroit*, 370 Mich 194, 206; 121 NW2d 724 (1963) ("An excise tax is 'a tax imposed upon . . . the engaging in an occupation,' which the constitution authorizes the Legislature to enact"). A basic distinction between an ad valorem property tax and an excise tax is that the former is regarded as primarily in rem in nature while the latter is regarded as in personam in nature. *Continental Motors Corp v Muskegon Twp*, 376 Mich 170, 180; 135 NW2d 908 (1965).

The Severance Tax Act initially went into effect in 1929[3] and has been amended periodically over the years. The severance tax is paid on the value of the gross amount of production of gas and oil as computed immediately after the severance or removal from the land. MCL § 205.303. See, *Fruehauf v Dep't of Treasury*, 9 MTTR 536 (1997), aff'd 10 MTTR 79 (1997).[4] It is styled as a state tax, has the structural attributes of a state tax, and serves a state purpose. It was enacted by the Legislature and is administered by the state. MCL § 205.306. It is collected by the state treasury and accounted for in the state budget. The funds are deposited in the state treasury to the credit of the orphan well fund and the general fund. MCL § 205.314. The state retains all interest and penalties from delinquent taxes. MCL § 205.314.

Critical to the analysis in the instant case is Section 15 of the Severance Tax Act, which provides:

> The severance tax herein provided for shall be ***in lieu of all other taxes***, state or local, upon the oil or gas, the property rights attached thereto or inherent therein, or the values created thereby; upon all leases or the rights to develop and operate any lands of this state for oil or gas, the values created thereby and the property rights attached to or inherent therein: Provided, however, Nothing herein contained shall in anywise exempt the machinery, appliances, pipe lines, tanks and other equipment

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[3]The severance tax "appears to be an excise tax in the nature of payment for the privilege of taking gas and oil from the earth--not a corporation or franchise tax which is levied for the privilege of acquiring and retaining corporate powers." Gross, Michigan's Legislation Governing Oil and Natural Gas, 10 Mich BJ 193, 195 (1931).

[4]"Oil" means petroleum oil, mineral oil, or other oil taken from the earth. MCL § 205.311(1). "Gas" does not include methane gas extracted from a landfill. MCL § 205.311(2).

used in the development or operation of said leases, or used to transmit or transport the said oil or gas: And provided further, That nothing herein contained shall in anywise relieve any corporation or association from the payment of any franchise or privilege taxes required by the provisions of the state corporation laws. MCL § 205.315. [Emphasis supplied.]

The goal of Section 15 is to exempt that which has already been taxed under the Severance Tax Act from other taxes. *Elenbaas, supra.* In *Bauer v Dep't of Treasury*, 203 Mich App 97; 512 NW2d 42 (1993), leave to app den 447 Mich 979; 525 NW2d 450; *Ward Lake Drilling Inc v Michigan Dep't of Treasury*, MTT No. 231337 (1997); and *Cook v Dep't of Treasury*, 229 Mich App 653; 583 NW2d 696 (1998), app den 463 Mich 932; 622 NW2d 63, the Court and Michigan Tax Tribunal held that taxpayers who paid severance taxes on royalties received from the production of oil and gas were exempt from paying income taxes on those royalties.

In *Cowen v Dep't of Treasury*, 204 Mich App 428; 516 NW2d 511 (1994), leave den 447 Mich App 980 and *Ward, supra*, it was held that the severance tax on producers engaged in business of severing oil and gas from soil was in lieu of all other taxes, such that individual oil producers were exempt from imposition of the single business tax.

No court or tribunal has specifically addressed whether the severance tax is in lieu of ad valorem property taxes. As a matter of first impression, this Court finds that it is.

The rationale in *Elenbaas, Bauer, Cook, Cowen* and the other authorities cited above is that the severance tax statute clearly and unambiguously provides that the severance tax is in lieu of "all other taxes, state or local." Thus, when the severance tax applies, it is to be paid in lieu of all other taxes. Ad valorem property taxes are "other taxes."

The State Defendant's argument that the Severance Tax Act only exempts those paying the severance tax from *certain other taxes* has been rejected by the courts. In *Bauer* which was reaffirmed in *Elenbaas*, the Michigan Court of Appeals determined that § 15 was clear and unambiguous and that, when it applies, the severance tax is to be paid in lieu of **all other taxes**. *Bauer* at 100.

Ironically, in *Cowen, supra*, the Tax Tribunal argued that § 15 only exempted ad valorem taxes. The Court of Appeals rejected this restricted interpretation of § 15 and held that leases or rights to develop land for oil and gas, the values created thereby and the property rights attached

thereto as well as the oil and gas itself, property rights attached to the oil and gas, and the values created by the oil and gas are **not subject to any other taxes**. *Id* at 434.

The severance tax act is applicable to oil and gas. When and if oil or gas is discovered and produced, the severance tax is assessed. This alternative tax scheme exempts oil and gas from ad valorem property taxation.

D.

General Property Tax Act

The Court's conclusion that oil and gas interests are exempt from taxation under the GPTA is supported by the conspicuous absence of any reference to subsurface oil and gas interests in the GPTA.

The GPTA specifically provides for the separate assessment of severed "hard" mineral rights from surface rights. MCL § 211.6a. There is no similar provision for severed oil and gas interests. This distinction can be explained by the unique fugitive nature of oil and gas. The sole and exclusive right to produce, take, and market the oil and gas underlying the lands is the only right that one can have to oil and gas in the ground. *Michigan Consol Gas Co v Muzeck*, 4 Mich App 502; 145 NW2d 266 (1966). For this reason, the State Defendant's argument which would treat oil and gas interests the same as "hard" mineral interests is rejected. The State Defendant's reliance on *Curry v Lake Superior Iron Co*, 190 Mich 445; 157 NW19 (1916) is misplaced because that case dealt with "hard" minerals, not oil and gas.

The GPTA also contains assessment provisions that do not contain any reference to subsurface oil and gas interests. MCL 211.34c, for example, provides, in pertinent part, as follows:

> (1) Not later than the first Monday in March in each year, the assessor shall classify every item of assessable property according to the definitions contained in this section.

The classification of industrial real property includes "[p]arcels used for removal or processing of gravel, stone, or mineral ores, whether valued by the local assessor or by the state geologist." None of the real property classifications includes any reference to subsurface oil and gas.

The classifications of assessable personal property include the following:

(e) 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.
(viii) Utility buildings on leased land.

Even though oil and gas wells and the equipment associated with the wells are on the classification list, oil and gas themselves are not. This GPTA provision dovetails with the provision in Section 15 of the Severance Tax Act which reads: "... Nothing herein contained shall in anywise exempt the machinery, appliances, pipe lines, tanks and other equipment used in the development or operation of said leases, or used to transmit or transport the said oil or gas. . ."

The State Defendant's argument that Section 27 defining "cash value" includes severed oil and gas interests in the phrase "valuable deposits *known to be available*" is rejected. Because of their unique nature, oil and gas are only known to be available when a well is drilled and they are actually severed from the land. At that point, the severance tax is assessable and becomes due. This alternative tax treatment of oil and gas is better crafted to deal with the unique nature of oil and gas and the reality that oil and gas do not become tangible property capable of being possessed unless and until a successful producing well is drilled.

E.
Character of Title that Vests in the FGU

Under the GPTA before it was amended, the state did not obtain fee simple absolute title after an annual county tax sale, but acquired only a tax lien against the property, which matured into fee simple absolute title after the expiration of all redemption periods. *Booker v Detroit*, 251 Mich App 167; 650 NW2d 680 (2002). MCL 211.72 provides:

> The tax deeds convey *an absolute title to the land sold*, and constitute conclusive evidence of title, in fee, in the grantee, subject, however, to all taxes assessed and levied on the land subsequent to the taxes for which the land was bid off. This title also is subject to unpaid special assessments and unpaid installments of special assessments. [Emphasis supplied].

Therefore, the state ultimately took fee simple absolute title to the property that was returned for delinquent taxes. However, the title obtained by the state did not include the subsurface estate, if that estate had been severed from the surface estate. *Hammond v Auditor General*, 70 Mich App 149, 153; 245 NW2d 544 (1976).

Hammond was an action to quiet title to certain real property brought by the successors in title to a tax sale purchaser. The conflict involved title to the mineral rights. The Court of Appeals held that the tax sale purchaser did not obtain the subsurface rights because "the [tax sale] deed conveys absolute title only in the sense that absolute title becomes possible through regular foreclosure; this inchoate fee title cannot arise as to lands wholly exempt from taxation and lien of unpaid taxes." In other words, since the subsurface estate is exempt from taxation and lien of unpaid taxes, the title conveying absolute title to the property was held not to include the severed subsurface estate. The Auditor General's deed conveys absolute title, as recited in the statute, only in the sense that absolute title becomes a possibility through regular foreclosure. This inchoate fee title cannot arise as to lands wholly exempt from taxation and the lien of unpaid taxes. "The term 'absolute' as used in the statutory language, 'absolute title . . . in fee,' refers to the nature of the title and not to the nature of the property included under such title." *Id* at 153.

Under the GPTA, as amended, "fee simple title to property returned for taxes vests absolutely in the [FGU], without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after entry of the judgment." MCL § 211.78k(5)(b). The GPTA does not expressly address the effect of the forfeiture and foreclosure procedure on severed oil and gas interests although it does provide that "all existing recorded and unrecorded interests in the property are extinguished." MCL § 211.78k(5)(c). However, if severed oil and gas interests were exempt from ad valorem taxation and were exempt from the lien for unpaid taxes under the GPTA before it was amended and the Legislature did not expressly provide that severed oil and gas interests would be extinguished by the new forfeiture and foreclosure procedure, the

Court concludes that the Legislature never intended for severed oil and gas interests to be extinguished under MCL 211.78k(5)(e). Title to severed oil and gas interests simply does not pass through the property tax reversion process.

F.

Statutory Construction When Amended Legislation Abrogates Common Law and Conflicts with Existing Statute

To interpret the GPTA amendments as extinguishing severed oil and gas interests would be contrary to well-established principles of statutory construction.

First, the Legislature is presumed to have knowledge of existing laws, *Nemeth v Abonmarche Development Inc*, 457 Mich 16; 576 NW2d 641 (1998). If a statute is silent regarding an issue, the Legislature is deemed to act with an understanding of common law in existence before the legislation was enacted. *Nation v WDE Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997). Legislative amendment of the common law is not lightly presumed. The rule has been declared by the United States Supreme Court, as follows: "No statute is to be construed as altering the common law, further than its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express." *Shaw v Railroad Co*, 101 US 557, 565; 25 L Ed 892; *Herd & Co v Krawill Machinery Corp*, 359 US 297, 304-305; 79 S Ct 766, 770-771; 3 L Ed 2d 820 (1959). A statute may take away a common law right, but there is a presumption that the legislature has no such purpose. This rule of statutory interpretation has received wide adoption, and is employed where there is reasonable doubt whether a change in the common law which is claimed to have been made by a statute should apply to a particular situation or circumstance. Where there is doubt regarding the meaning of a statute, it is to be "given the effect which makes the least rather than the most change in the common law." 3 Singer, Sutherland Statutory Construction (5th ed), § 61.01, p 171, quoting *Energetics Ltd v Whitmill*, 442 Mich 38, 51; 497 NW2d 497 (1993). If a change is to be made in the common law, therefore, the legislative purpose to do so must be clearly and plainly expressed. 3 Sutherland, Statutory Construction, § 61.01, p 41 (Sands Ed 1974).

Second, the Legislature is presumed to have considered the effect of the new laws on all existing statutes. *Walen v Dep't of Corrections*, 443 Mich 240, 248; 505 NW2d 519 (1993). Statutes

relating to the same subject or sharing a common purpose are in pari materia and must be read together as one, even if they contain no reference to one another and were enacted on different dates. *Brown v Manistee Co Rd Comm*, 204 Mich App 574, 577; 516 NW2d 121 (1994), citing *Feld v Robert & Charles Beauty Salon*, 174 Mich App 309, 317; 435 NW2d 474 (1989). If two statutes lend themselves to a construction that avoids conflict, that construction should control. *Dodak, House Speaker v State Administrative Bd*, 441 Mich 547, 568-569; 495 NW2d 539 (1993); *Baxter v Gates Rubber Co*, 171 Mich App 588, 590; 431 NW2d 81 (1988). Finally, "[w]hen two statutes conflict, and one is specific to the subject matter while the other is only generally applicable, the specific statute prevails." *Brown, supra* at 577; 516 NW2d 121, accord *Gebhardt v O'Rourke*, 444 Mich 535, 542-543; 510 NW2d 900 (1994); *Jenkins v Carney-Nadeau Public School*, 201 Mich App 142, 145; 505 NW2d 893 (1993). The specific statute is treated as an exception to the general one, even if enacted before the general statute. *Bauer, supra,* at 100, citing *Imlay Twp School Dist v State Bd of Ed*, 359 Mich 478; 102 NW2d 720 (1960).

As noted above, an interpretation of the GPTA amendments that would extinguish severed oil and gas interests in property returned for delinquent taxes would conflict with common law pronouncements concerning the nature of oil and gas and the case law that has evolved from them. In addition, such an interpretation would conflict with or render nugatory other statutory provisions concerning oil and gas interests, including, for example, the Severance Tax Act discussed above and the Dormant Minerals Act.

1.

The Dormant Minerals Act

At common law, severed oil and gas interests, corporeal hereditaments, could not be abandoned. In 1963, the Dormant Minerals Act was enacted. It contravenes the common law by converting a corporeal hereditament which at common law could not be abandoned into an interest which is subject to abandonment. *Van Slooten*, 410 Mich 21, 42; 299 NW2d 704 (1980). It provides that any person holding a mineral interest (including oil and gas) in any land, other than the surface owner, shall be deemed to have abandoned the interest in favor of the surface owner unless such person performs one or more of the enumerated "acts of possession" during any 20-year period. These enumerated acts include: (1) securing a drilling permit; (2) producing or withdrawing oil or

gas, either individually or as part of a pool; (3) selling, leasing, mortgaging or transferring such interest by recorded instrument; (4) using the subject property for underground gas storage; or (5) recording a notice of interest with the local register of deeds. MCL § 554.291; *Wagner v Dooley*, 90 Mich App 759, 765; 282 NW2d 469 (1979), lv den 410 Mich 896 (1981).

The constitutionality of the Dormant Minerals Act was upheld in *Van Slooten* against claims that it impaired the obligation of contract and violated due process and equal protection guarantees of the Michigan and United States Constitutions.[5] As stated by our Supreme Court in *Van Slooten* at 46-47, the act was passed:

> . . . to reduce the likelihood that the presence of unknown or unlocatable owners or fractionalized ownership of severed interests would unnecessarily hinder or prevent the development of these resources by requiring an owner to do certain specified acts indicating ownership or record a claim of interest every 20 years. It places no undue burden upon owners. Without such a requirement, knowledge of the ownership could be lost in time. Potential resources go undeveloped in the absence of viable ownership.

"The primary purpose of the act is not to vest title to the severed interests in the surface owner but rather is to facilitate development of those subsurface properties by reducing the problems presented by fragmented and unknown ownership." *Id* at 44. By requiring a periodic recording of mineral interests in the register of deeds office, once every 20 years, when no active production is ongoing, the Legislature provided a means of insuring that a person interested in purchasing or leasing mineral rights would have information, not older than 20 years, about the identity and whereabouts of the owners of those mineral rights. *Oberlin v Wolverine Gas & Oil Co*, 181 Mich App 506, 511; 450 NW2d 68 (1989).

Thus, the Dormant Minerals Act facilitates the prompt development of the subsurface estate. The Act is designed to increase the marketability and development of severed mineral interests by creating a rule of substantive law which requires owners to undertake minimal acts indicative of ownership at least every 20 years. If the GPTA, as amended, is interpreted to extinguish severed oil

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[5]In *Texaco Inc v Short*, 454 US 516; 102 S Ct 781; 70 L Ed 2d 738 (1982), the United States Supreme Court upheld the constitutionality of an Indiana dormant minerals act. That Court later dismissed an appeal from our Supreme Court's decision in *Van Slooten*. See, 455 US 901; 102 S Ct 1242; 71 L Ed 2d 440 (1982).

and gas rights, it would conflict with the Dormant Minerals Act because the owner of the severed oil and gas interest, who fully complied with the requirements of the Dormant Mineral Act, could nonetheless lose his interest if the surface owner failed to pay taxes.

Since the Legislature did not "clearly and plainly express" an intent to extinguish severed oil and gas interests and doing so would abrogate the common law, conflict with the Severance Tax Act, more specific sections of the GPTA and the Dormant Minerals Act, the Court declines to interpret the GPTA, as amended, to extinguish such interests.

II.

Constitutional Issues

The Court's conclusion that the GPTA, as amended, was not designed to extinguish severed oil and gas interests is further supported by the fact that it is impossible under the GPTA, as amended, to satisfy the due process protections that severed oil and gas interest holders would be entitled to under the state and federal constitutions. In addition, extinguishing the severed oil and gas interests would violate the taking clauses of both the state and federal constitutions.

For tax purposes, oil and gas are treated different than other property. This disparate treatment does not violate the equal protection clauses of the Michigan and United States Constitutions because the state has a rational basis for treating such interests differently.

A.

Due Process

The State Defendant acknowledges that persons with interests in land are entitled to certain due process protections in the tax reversion process as outlined in *Dow v Michigan*, 396 Mich 192; 240 NW2d 450 (1976). It contends that the notice provisions, specifically MCL 211.78i(1) and (2), which require that notice be sent to "the address reasonably calculated to apprise . . . owners of a property interest of the pendency of the administrative show cause hearing and judicial foreclosure hearing" are adequate to satisfy due process. This Court disagrees.

In *Dow v Michigan*, 396 Mich 192, 196; 240 NW2d 450 (1976), the court held:

> [T]he Due Process Clause requires that an owner of a significant interest in property be given proper notice and an opportunity for a hearing at which he or she may contest the state's claim that it may take the property for nonpayment of taxes and that newspaper publication is not constitutionally adequate notice of such right.

The court further held that notice be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id* at 206. The court stated:

> [I]t would satisfy constitutional requirements if the state were to adopt a procedure providing for (i) ordinary mail notice before sale to the person to whom tax bills have been sent and to "occupant," and (ii) after sale to the state, formal notice to all owners of significant property interests of the constitutionally required opportunity for hearing and redemption. [*Id* at 212.]

Admittedly, the Legislature intended to satisfy these due process requirements when it amended the GPTA. House Legislative Analysis, Tax Reversion Program, May 10, 1999. However, as a practical matter, the GPTA does not provide due process protection to owners of severed oil and gas interests.[6]

Under the GPTA, as amended, the FGU must determine the owners of interests in the property by searching the records of the Office of the County Register of Deeds, tax records of the Office of the County Treasurer and records of the office of the local assessor and treasurer. MCL 211.78i(6). It is impossible for the FGU to identify all of the severed oil and gas interest owners from these records alone. For example, it would be impossible for the FGU to determine whether there is a unitization agreement in effect for a producing oil and gas well. Even visits to the property as required by MCL 211.78(3) would not necessarily disclose the existence of a producing oil and gas well, as the location of such a well is not recorded with the Register of Deeds and may not be upon the parcel being foreclosed. As the Plaintiff correctly points out, it would be "an enormous herculean, if not impossible, task" to search the records of the Register of Deeds for all parcels within a 40- or 80-acre production unit in order to determine the identity of all of the persons who

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[6]This is further support for the conclusion that severed oil and gas interests are exempt from taxation under the GPTA.

might have a fractional interest in the underlying oil and gas.[7] Further, there is no relationship between the costs of title searches and notice provisions or the labor of the county employees to the relatively modest sums that are often delinquent.

Thus, even though the Legislature intended to satisfy due process requirements, the GPTA, if interpreted to extinguish severed subsurface oil and gas interests, does not provide adequate notice to the owners of such interests.

1.

Notice Provision

The State Defendant argues that MCL 211.78a(4) protects the owner of severed oil and gas interests by providing that for the annual cost of $5 per parcel, those with an interest in a parcel may file a request to receive notice from the county treasurer if the parcel becomes subject to forfeiture. As a practical matter, however, this provision is unworkable.

For illustration purposes, assume that Farmer Brown owns a 40-acre tract. He sells 20 of his 40 acres to a developer, reserving the oil and gas. The developer then subdivides the 20 acres into numerous individual lots. According to the State Defendant, Farmer Brown would be required to keep track of the development, pay an annual fee of $5 per parcel and request notice on each parcel if it should become subject to forfeiture. Once he leases the entire 40 acres to an oil and gas exploration company ("Company"), the Company would also have to pay an annual fee of $5 per parcel and request notice even though it is only interested in the subsurface oil and gas estate and has historically worked exclusively with the owner thereof.

Suppose further that Farmer Brown's oil and gas interest is included in a drilling unit with several other oil and gas interest owners. Each one of them would be required to track the development on every parcel of land within the unit, pay an annual fee of $5 per parcel created and request notice if any of the parcels within the unit became subject to forfeiture in order to protect their interest. Since a production unit may consist of any number of acres of land with any number

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[7]Plaintiff caused a complete title search for a single lot within Lakes of the North that was foreclosed upon to be conducted. It consisted of 400 entries; over 300 of these entries dealt with the underlying oil and gas interests, covering approximately 1,345 pages of documents. Lakes of the North development consists of approximately 7,083 individual lots, as well as roads, open area, an airport, golf course and lakes.

of oil and gas interest holders and the surface can be split into any number of parcels, it would be unreasonable to burden every one of those interest holders with the responsibility for tracking development and requesting notice as to each parcel someone else may create upon the surface of the land.

It is inconceivable that the Legislature, if it had thought about it, would have burdened the owners of the severed subsurface oil and gas interests with the responsibility and expense of tracking the development of the surface estate in which they have no interest.

2.

Remedy Provision

Some parties argue that the GPTA, as amended, provides an adequate remedy for any unconstitutional denial of due process. MCL 211.78l provides:

> (1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.
>
> * * *
>
> (4) Any monetary damages recoverable under this section shall be determined as of the date a judgment for foreclosure is entered under section 78k and shall not exceed the fair market value of the property on that date.

However, the fair market value of oil and gas interests is nearly impossible to ascertain unless and until oil and gas are actually produced.[8] Once production figures are available, experts

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[8]In *Miller Brothers v Dep't of Natural Resources*, 203 Mich App 674; 513 NW2d 217; 128 Oil & Gas Rep 518 (1994), the owners and developers of oil and gas interests brought an inverse condemnation suit against the Department of Natural Resources and the Director in his capacity as supervisor of wells, seeking just compensation for the director's decision to prohibit oil and gas drilling and exploration in a 4,500-acre area. The court approved the plaintiffs' proposed method for determining the cash market value of the rights taken by referring to the property's potential for oil and gas production. The court said:

can extrapolate a value. In the oil and gas industry in the Antrim Formation, this remedy could mean multimillion dollar judgments against the FGU.[9]

> Although it is impossible to know whether there is oil and gas under the protected area without drilling wells, plaintiffs persuasively demonstrated that they almost certainly would have discovered some oil and gas had they been allowed to drill in the protected area.
>
> Plaintiffs used regional data to support the expert opinions of the number of oil and gas strikes they would have had in the protected area. They used incomplete geological surveys suggesting a sufficient number of "anomalies" and their own drilling data showing how often anomalies they drill produce oil and gas to show that these opinions were reasonable. They used regional data to establish the average amount of oil and gas that is discovered by a successful well. They used industry and regional data to estimate the costs of development, the prices they would receive for oil and gas extracted, and likely production schedules. To determine the property's worth, they multiplied the likely number of strikes by the projected average strike size, subtracted estimated exploration and production costs, and then took projected production schedules into account to determine the present value of the income stream that would likely have been produced had they been allowed to continue development of the area.
>
> This approach is basically sound. Before the director's order, plaintiffs owned property of uncertain cash value. The order made it impossible to eliminate that uncertainty and determine the property's cash value. Under the circumstances, we cannot say that the trial court erred in determining that an appropriate way to estimate the value of the property is to consider the full range of possible values, assessing each by the relative likelihood that the property has that value. Plaintiffs' approach accomplishes this end. We affirm the trial court's findings regarding the pretaking cash value of plaintiffs' property.

Id at 684-685.

[9]There are approximately 764 producing oil and gas wells in Antrim County. Development of the Antrim Formation requires pooling of lands, covering large areas, some exceeding 3,000 acres.

B.

Taking

Both the Michigan and United States Constitutions prohibit the taking of private property for public use without just compensation. US Const, Am V; Const 1963, art 10, § 2. The taking clause of the state constitution is substantially similar to that of the federal constitution. *Kentwood v Sommerdyke Estate*, 458 Mich 642, 656; 581 NW2d 670 (1998). Const 1963, art 10, § 2 provides:

> [P]rivate property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record.

"Just compensation" is nothing less than that which puts the injured party in as good a condition as it would have been had the injury not occurred. *In re Widening of Gratiot Ave*, 294 Mich 569; 293 NW 755 (1940), citing *In re Widening of Bagley Ave*, 248 Mich 1, 5; 226 NW 688 (1929).

The Michigan Supreme Court has construed the "taking" clause of the Michigan Constitution to protect property rights. One of the early cases addressing the "taking" question observed:

> 'The constitutional provision is adopted for the protection of and security to the rights of the individual as against the government,' and the term 'taking' should not be used in an unreasonable or narrow sense. It should not be limited to the absolute conversion of property, and applied to land only; but it should include cases where the value is destroyed by the action of the government, or serious injury is inflicted to the property itself, or exclusion of the owner from its enjoyment, or from any of the appurtenances thereto. *Pearsall v Eaton County Supervisors*, 74 Mich 558, 561; 42 NW 77 (1889).

Thus, property may be taken only when an essential nexus exists between a legitimate state interest and the taking. If the nexus exists, then there must be a "rough proportionality" between the manner of the taking and the actual state interest involved. *Dolan v Tigard*, 512 US 374, 114 S Ct 2309; 129 L Ed 2d 304 (1994); *Peterman v Dep't of Natural Resources*, 446 Mich 177, 201, n 10; 521 NW2d 499 (1994).

The parties do not dispute that the state has a legitimate interest in the redevelopment of property returned for taxes. They have not addressed, however, whether it is necessary for severed subsurface oil and gas interests to be extinguished in order to accomplish this purpose. The

"productive use of property" contemplates redevelopment of the surface which does not have any impact on the subsurface estate. There is no essential nexus between the legitimate state interest (the redevelopment of the surface estate) and the taking (extinguishing severed oil and gas interests). Thus, if the GPTA, as amended, is construed to extinguish severed oil and gas interests, it would constitute an unconstitutional taking of severed oil and gas interests without just compensation.

Returning to the Farmer Brown illustration, assume that Farmer Brown subdivides 20 acres of his 40-acre tract into one-acre lots and sells some of them, each time reserving all oil and gas to himself. He leases his interest to the Company that drills and completes a successful gas well. The well is located on the 20 acres that Farmer Brown still owns, but his entire 40 acres are included in the drilling unit. The Company retains legal counsel and obtains a title opinion stating that Farmer Brown owns all of the oil and gas interests underlying the entire 40-acre tract. Production division orders are drafted and signed setting forth the split of the proceeds from the production between the various interest holders. In the meantime, one of the subdivision lot owners fails to pay his property taxes. He receives a delinquency notice. His property is forfeited and foreclosed and he does not redeem. Title vests in the FGU.

If the foreclosure extinguishes Farmer Brown's interest in the oil and gas underlying that one subdivision lot, one acre of the 40-acre tract has been taken by the FGU, without notice or compensation to Farmer Brown or the Company. The FGU sells the lot without reservation. The new owner becomes either a working interest owner responsible for a pro rata share of production expenses and subject to liability or the new owner is force pooled and has a royalty interest.[10] In either event, the new owner has obtained a fractional interest in the oil and gas.

The Company and Farmer Brown could file suit against the FGU for the fair market value of the oil and gas attributable to that one acre that will be produced over the anticipated life of the

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[10]MCL § 324.61513 (formerly MCL § 319.13) is the statutory authority which vests in the Supervisor of Wells the power to force pooling of oil and gas interests for the harvesting of energy resources. Pooling of interests is designed to prevent waste by preventing the drilling of unnecessary wells. Compulsory pooling is appropriate in any case where the size or shape of separately owned tracts, because of well-spacing requirements, tends to deprive the owners of such tract of the opportunity to recover or receive their just and equitable shares of the oil or gas. See, *Traverse Oil Co v Chairman, Natural Resources Com'n,* 153 Mich App 679; 396 NW2d 498 (1986).

well. They could obtain a judgment against the FGU.[11] In all likelihood, the FGU would not be able to pay the judgment except by borrowing. If the FGU has resold the lot and not reserved the oil and gas, the FGU will have recouped the delinquent taxes, but will be facing suit by Farmer Brown and the Company to recoup the fair market value of their oil and gas interests. If the FGU has not resold the property or has sold but reserved the oil and gas, the FGU has the oil and gas interest, but owes Farmer Brown and the Company for its fair market value determined at the time the judgment of foreclosure was entered. If the well produces more than anticipated or the price of gas goes up, the FGU may make a profit. If the well does not produce as much as anticipated or the price of gas goes down, the FGU may end up bankrupt. In either event, to collect a year's worth of delinquent taxes on a one-acre parcel, a very convoluted process has been created through which the Company and Farmer Brown purportedly receive what they would have had if the foreclosure had not extinguished Farmer Brown's severed subsurface oil and gas interest in the first place.

It is inconceivable that the Legislature intended to put the FGU, the severed subsurface oil and gas interest holder and, in some cases, the purchaser of a subdivision lot that has been forfeited and foreclosed for delinquent taxes in such risky and untenable positions.

C.

Equal Protection

Equal protection of the law is guaranteed by both the federal and state constitutions. US Const, Am XIV, § 1; Const 1963, art 1, § 2; *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 716; 575 NW2d 68 (1997). The doctrine mandates that persons in similar circumstances be treated similarly. *Id.*

The Michigan Supreme Court recently recognized that there is no discernible difference between the Equal Protection Clause and the Uniformity of Taxation Clause when considering the constitutionality of a property tax statute. *TIG Ins Co Inc v Dep't of Treasury*, 464 Mich 548, 563; 629 NW2d 402 (2001); see also *Taylor Commons v Taylor*, 249 Mich App 619; 644 NW2d 773

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[11]In *Miller Bros v Dep't of Natural Resources*, 203 Mich App 674; 513 NW2d 217 (1994) app den 447 Mich 1038; 527 NW2d 513, for example, the State of Michigan was held liable at trial for over $71,000,000 for a taking claim of undeveloped mineral interests.

(2002); *Syntex Laboratories v Dep't of Treasury*, 233 Mich App 286, 290; 590 NW2d 612 (1998); *Ann Arbor v Nat'l Center for Mfg Sciences Inc*, 204 Mich App 303, 306; 514 NW2d 224 (1994).

In *Ann Arbor*, the court upheld the constitutionality of a statute that granted exemptions from ad valorem property taxes to certain research facilities. *Ann Arbor* applied equal protection considerations to determine whether a statute, which treated certain classes of real property differently for purposes of assessing ad valorem property taxes, violated the uniformity provision of Const 1963, art 9, § 3. Thus, an equal protection analysis is appropriate to determine the uniformity of ad valorem property tax assessments.

This concept was reaffirmed in *Syntex*. While not specifically concerned with ad valorem property taxes, the court in *Syntex, supra* at 290, supported the conclusion that Const 1963, art 9, § 3 has only one standard to determine uniformity:

> As a practical matter, there is no discernible difference between the equal protection guarantee and the Uniform Taxation Clause, Const 1963, art 9, § 3, which requires uniformity in the general ad valorem taxation of real and personal property and requires all other taxes to be uniform upon the class or classes on which they operate. Both require that some rational basis for a disputed classification must be shown to exist. A rational basis shall be found to exist if any set of facts reasonably can be conceived to justify the alleged discrimination.

The court in *Syntex* also agreed that a rational basis must be shown for disputed classifications in the ad valorem taxation of property and in the assessment of all other taxes. "Rational basis review does not test the wisdom, need, or appropriateness of the legislation, or whether the classification is made with 'mathematical nicety,' or even whether it results in some inequity when put into practice." *Crego v Coleman*, 463 Mich 248, 260; 615 NW2d 218 (2000). Rather, it tests only whether the legislation is reasonably related to a legitimate governmental purpose. The legislation will pass "constitutional muster if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable." *Id* at 259-260. To prevail under this standard, a party challenging a statute must overcome the presumption that the statute is constitutional. *Thoman v Lansing*, 315 Mich 566, 576; 24 NW2d 213 (1946). Thus, to have the legislation stricken, the challenger would have to show that the legislation is based "solely on reasons totally unrelated to the pursuit of the State's goals,"

Clements v Fashing, 457 US 957, 963; 102 S Ct 2836; 73 L Ed 2d 508 (1982), or, in other words, the challenger must "negative every conceivable basis which might support" the legislation. *Lehnhausen v Lake Shore Auto Parts Co*, 410 US 356, 364; 93 S Ct 1001; 35 L Ed 2d 351 (1973).

In *WPW Acquisition Co v City of Troy*, 250 Mich App 287; 646 NW2d 487 (2002), the Court of Appeals discussed equal protection and uniform taxation, saying:

> In one of the earlier pronouncements discussing the purpose of Michigan's Uniformity of Taxation Clause, Chief Justice Martin, considering Const1850, art 14, opined in *People ex rel St Mary's Falls Ship Canal Co v Auditor General*, 7 Mich 84, 90 (1859):
>
> > This provision of the constitution has no reference to the power to exempt, or to remit taxes; which is, and necessarily must be, to a great extent, left to the discretion of the legislature. Its design was to secure, to every portion of the state, and to every class of property taxed, a uniform rate,-- to secure equality, so that property in one quarter should not be taxed at a higher rate than in another, or the same kind taxed unequally. The legislature has the power of prescribing the subjects of taxation, and of exemption, but it cannot arbitrarily tax property according to locality, kind, or quality, without regard to value, but in this respect it must act by uniform rules. [Citation omitted.]

The purpose of the uniform taxation clause is to prevent unjust discriminations; to prevent property from being classified and taxed as classed, by different rules. All kinds of property must be taxed uniformly, or be entirely exempt. *Pine Grove Twp v Talcott*, 86 US (19 Wall) 666, 675; 22 L Ed 227 (1873).

The Legislature obviously recognized the unique nature of oil and gas and the need to tax oil and gas by different rules when it enacted the Severance Tax Act. This different treatment of oil and gas does not violate the uniform taxation or equal protection clauses because it is an "alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation." Const 1963, art 9, §3. A different taxation scheme for oil and gas does not affect the State's legitimate interest in revitalizing our inner cities.

CONCLUSION

Our Supreme Court observed in *In re Dodge Brothers*, 241 Mich 665, 669; 217 NW 777 (1928):

> Tax exactions, property or excise, must rest upon legislative enactment, and collecting officers can only act within express authority conferred by law. Tax collectors must be able to point to such express authority so that it may be read when it is questioned in court. The scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, is not resolved against the taxpayer.

Given that the Legislature has enacted a separate and distinct scheme for the taxation of oil and gas and has declared oil and gas exempt from all other taxes, this Court declares that the GPTA, as amended, if properly followed, does not extinguish severed subsurface oil and gas interests. The State's legitimate concern over the redevelopment of vacant and abandoned property can be realized without extinguishing severed subsurface oil and gas interests.

The Defendants' Pure Resources, Dominion and Wolverine's motions for summary disposition are granted. These Defendants shall prepare and file judgments consistent with this opinion. No costs shall be taxed since a matter of significant public interest has been raised.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 4/10/03