



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**"MUTUAL MISTAKES OF FACT"**

**House Bill 5519 (Substitute H-1)  
First Analysis (1-30-96)**

**Sponsor: Rep. Willis Bullard, Jr.  
Committee: Tax Policy**

***THE APPARENT PROBLEM:***

Under the General Property Tax Act, any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer can recover the excess taxes paid, without interest, if the suit is commenced within three years from the date of payment, even if the payment was not made under protest. Tax specialists say that some taxpayers rely on the phrase to seek a refund of past taxes for underground pollution that the property owner and assessor had not been aware of. The Michigan Tax Tribunal seeks a definition to prevent such claims.

***THE CONTENT OF THE BILL:***

The bill would amend the General Property Tax Act to define the expression "mutual mistake of fact" to mean a mistake that was physically observable to both the assessing officer and the taxpayer and that both the assessing officer and the taxpayer reasonably should have discovered on or before December 31 in the year immediately preceding the year for which recovery of excess taxes paid is sought.

The bill also would say that a suit for excess taxes paid due to a clerical error or mutual mistake of fact is to be commenced within three years from the date the taxes were due rather than three years from the date of payment.

MCL 211.53a

***FISCAL IMPLICATIONS:***

The bill would have no impact on state or local revenues, according to the House Fiscal Agency. (Fiscal Note dated 1-22-96)

***ARGUMENTS:***

***For:***

The bill would add clarity to the expression "mutual mistakes of fact" so that local tax officials and taxpayers will better be able to determine what kind of errors in assessing property justify a refund of past taxes to a

taxpayer. Tax officials say the expression should apply to physically observable factors, such as a burnt-out garage, rather than factors an assessor cannot observe and will not know about without notification from the property owner, such as a collapsed basement wall. Once underground pollution is discovered, for example, its presence can affect the value of property, but taxpayers should not be able to seek a refund of taxes paid in previous years when the pollution remained undetected (and thus market value was unaffected).

***Against:***

Perhaps this issue, particularly as it regards environmental pollution, should be left to litigation, where the particular facts in each case can be weighed.

***POSITIONS:***

The chair of the Michigan Tax Tribunal testified in support of the bill. (1-25-96)

The Michigan Townships Association has no position at present. (1-29-96)

House Bill 5519 (1-30-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.