

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

TRIBUNAL NOTICE 2009-2

(Replacing Tribunal Notice 2009-1)

Issued: May 12, 2009

PREHEARING GENERAL CALLS; SCHEDULING ORDERS

Based upon responses to Tribunal Notice 2009-1, the Tribunal is replacing that Notice in recognition of the different versions of scheduling orders entered by the Tribunal and the need for consistent treatment of cases in which such scheduling orders have been entered. As such, the Tribunal will, during its transition from a scheduling order practice to a prehearing general call practice, be processing cases as follows:

(1) Cases in which a Scheduling Order has been entered:

These cases will be processed in accordance with the dates provided in the Scheduling Orders. However:

- A. Parties may extend the dates in the Scheduling Orders by agreement of the parties. Written notification of the parties' agreement must be submitted to the Tribunal prior to the date or dates being revised. This notification need not be in the form of a motion and no filing fee is required. Further, the stipulated amended scheduling orders are self-executing; the cases will be processed in accordance with the dates provided in those orders unless otherwise provided by the Tribunal.
- B. If the parties do not agree to amend a Scheduling Order, a party may file a motion to extend the dates in the Scheduling Orders. Such motions will be liberally granted provided the motion is filed prior to the date or dates to be revised and demonstrate good cause.

(2) Cases in which a Scheduling Order has not been entered:

Cases in which a Proposed Scheduling Order has been submitted, but not entered, and cases in which no Proposed Scheduling Order has been filed, will be placed on a Prehearing General Call.

(3) Prehearing General Call:

The dates established in a Prehearing General Call for a property valuation appeal will include:

- (i) the date by which the parties' valuation experts must be named;
- (ii) the date by which "pre-valuation disclosure" discovery must be completed. "Pre-valuation disclosure" discovery does not include discovery involving the opposing party's valuation disclosure and valuation expert;
- (iii) the date by which valuation disclosures must be filed and served; and
- (iv) the date by which "post-valuation disclosure" discovery must be completed. "Post-valuation disclosure" discovery is limited to the opposing party's valuation disclosure and the valuation expert who prepared that valuation disclosure.

There will be no automatic extensions; however, parties may extend the dates in a Prehearing General Call by motion. The motion must be filed prior to the date or dates to be extended and demonstrate good cause.

(4) Good cause cannot be demonstrated by:

- (i) conflicting engagements of counsel;
- (ii) a change of counsel;
- (iii) on-going settlement negotiations absent a showing that the parties have, in fact, already engaged in meaningful settlement negotiations;
- (iv) the need for further discovery; and
- (v) a failure to timely engage a valuation expert.

In addition to the above, the Tribunal will, as previously indicated, no longer be placing parties in default for failing to file and exchange their valuation disclosures, as required by scheduling or prehearing general call orders. Instead, the Tribunal will conduct show cause hearings to determine whether a party will be permitted to offer an untimely valuation disclosure into evidence. See also Tribunal Notice 2008-5.

Further, the Tribunal will no longer be placing parties in default for failing to file and exchange their prehearing statements, as required by an order scheduling a date certain prehearing conference. Instead, the parties will be required to complete and then file and exchange their prehearing statements prior to their departure from the Tribunal on the date of the prehearing conference.

This Tribunal Notice replaces Tribunal Notice 2009-1 and will take effect immediately.