



STATE OF MICHIGAN

RICK SNYDER  
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON  
DIRECTOR

September 29, 2017

Dear Tax Tribunal Practitioner:

### Ottawa Building Parking

For those of you with business at the Tribunal during the period October 16, 2017 to November 1, 2017, please be advised that the visitor parking lot located on Allegan east of the Hall of Justice will be closed. Alternative visitor parking will be available in the Michigan Library Visitor Lot. We apologize for any inconvenience that this closing of the visitor parking lot closest to the Ottawa Building will cause.

### Small Claims Opinions

Given the nature of most Small Claims appeals to the Tribunal, virtually all opinions issued by the Tribunal are unfavorably received by at least one of the parties. Far too often, displeasure with a Tribunal opinion in a small claims case is expressed by an email or a telephone call to the Tribunal. Unfortunately, the Tribunal will not respond to complaints regarding a Tribunal opinion made in this manner. Instead, parties should pay careful attention to the "Appeal Rights" section of that Proposed or Final Opinion, which specifically directs parties to file Exceptions to Proposed Opinions (those issued by a Hearing Referee or Administrative Law Judge) or Motions for Reconsideration of a Final Opinion (those issued by a Tribunal Member). The Tribunal encourages parties who believe that the Tribunal has incorrectly resolved their appeal to file Exceptions or Motions for Reconsideration. No fee is required for the filing of Exceptions and a fee of \$25 is required for Motions for Reconsideration, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50%, or the decisions relates to the grant or denial of a poverty exemption. All Exceptions and Motions for Reconsideration are reviewed independently by Tribunal legal staff and by the Tribunal Chair.

### Court of Appeals Decisions

#### Tribunal Jurisdiction

*MorningSide Cmty Org v Wayne Cty Treasurer*, unpublished opinion per curiam of the Court of Appeals, issued September 21, 2017 (Docket No. 336430).

In an action alleging violations of the Fair Housing Act ("FHA"), plaintiffs appealed the circuit court's determination that the MTT had exclusive jurisdiction over their claims. Plaintiffs had alleged in their complaint that defendants' practice of foreclosing on homes for unpaid taxes had an unjustified disproportionate impact on African-Americans because they knew that the properties were over-assessed and the underlying tax debt inaccurate. Noting that there could be no claims against the defendants unless the properties were actually over-assessed, the Court of



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Appeals affirmed. “It would only be after determining whether defendants, with knowledge of Detroit’s errors, failed to properly equalize the properties, and then chose to foreclose upon and sell properties anyway, that the trial court would then be required to consider whether the foreclosure policy had a disparate effect on African-American homeowners in violation of the FHA.” The Court reasoned that such factual determinations regarding improper assessments are issues that fall within the exclusive jurisdiction of the MTT, and as such, the circuit court did not err in granting defendants’ summary disposition.

### Tobacco Products Tax

*Vulic v Dep’t of Treasury*, \_\_Mich App\_\_; \_\_NW2d \_\_ (2017).

In an action arising under the Tobacco Products Tax Act (“TPTA”), Petitioner appealed the Tribunal’s grant of summary disposition in favor of the Department. The Court of Appeals held that Petitioner was subject to tax under the TPTA, and that summary disposition was properly granted, but for different reasons than those cited by the Tribunal. Although the Tribunal properly determined that Petitioner was liable under that portion of the TPTA that taxes an unlicensed person in “control or possession of an individual package of cigarettes without a stamp,” it erred in finding that he was not liable as one who sells or offers tobacco products for purposes of resale because there was no consideration, and therefore no sale. The Court reasoned that Petitioner’s failure to open the cartons that were in his possession and control did not negate possession or control of their individual contents. Further, Petitioner agreed to purchase cigarettes and ship them to his friend in Bosnia, and the friend agreed to reimburse or pay him upfront for his costs. The fact that Petitioner did not make a profit was irrelevant because courts generally do not inquire into the sufficiency of consideration. Moreover, consideration is not a factor in the case of gifts, which are included in the TPTA’s definition of “sale.” Petitioner was also in “control or in possession of a tobacco product contrary to [the] act,” which in and of itself was sufficient to impose liability under the same.