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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
CHRIS SEPPANEN
EXECUTIVE DIRECTOR

MICHAEL ZIMMER
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January 14, 2016

Dear Tax Tribunal Practitioner:

Happy New Year! Throughout 2015, the Tribunal received much positive feedback about our e-filing system. New users indicated they appreciated the peace of mind when electronically filing pleadings and documents due to the system's near-immediate notification that the filing was accepted. Although it seems we just finalized the 2015 filing season, the 2016 filing season will be here before we know it. Please remember that you have the option to electronically file your pleadings and documents. Only 23% of new appeals filed during 2015 were filed electronically; please take advantage of this new, efficient process. As always, if you have not registered for an e-filing account and would like assistance feel free to call the Tribunal and a staffer will walk you through the process.

Small Claims Threshold for filing non-property tax and special assessment appeals

MCL 205.762 provides that the Small Claims division of the Tribunal has jurisdiction over non-property tax appeals and special assessment appeals so long as the amount in dispute is \$20,000 or less, adjusted for inflation. The threshold for filing a non-property tax appeal or a special assessment appeal with the Tribunal during the 2016 tax year is \$23,052.

Electronic Filing of Motions to Withhold Valuation Disclosure

In our March 3, 2015 GovDelivery, we discussed the procedure for filing Motions to Withhold and Motions for Protective Order. Because there seems to still be some confusion regarding these topics, the Tribunal restates its earlier direction:

Motions to Withhold:

If you intend to electronically file your valuation disclosure with a Motion to Withhold, you must do as follows:

- Electronically file the Motion to Withhold via the Tribunal's e-filing system. [Do NOT submit the valuation disclosure via electronic filing – it will be published to the Tribunal's docket lookup.]
- Submit your valuation disclosure by e-mailing it to taxtrib@michigan.gov. Please reference the docket number and the term "valuation disclosure" in the subject line of the e-mail. Do NOT send a hard copy of your valuation disclosure to the Tribunal.



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Motions for Protective Order

If you intend to electronically file a Motion for Protective order, you must do as follows:

- Electronically file the Motion for Protective Order via the Tribunal's e-filing system.
- Do NOT submit the purportedly confidential documentation via electronic filing or by e-mail.

Court of Appeals Decisions

Use Tax

Ford Motor Co v Dep't of Treasury, __Mich App__; __NW2d__ (2015).

The Department appealed the Court of Claims order granting Ford summary disposition with respect to the assessment of use tax on its test vehicles. It argued that the Court of Claims erred in concluding that the test vehicles were not licensed for use on public highways, and therefore were exempt from use tax under former MCL 205.94(g)(i). Citing the Motor Vehicle Code, the Court of Appeals held that manufacturer's license plates specifically authorize manufacturers to "operate or move the vehicle upon a street or highway," thus they are licensed for use. The Court also held that the 1999 amendment to the Use Tax Act, which excluded from the industrial processing exemption vehicles requiring permits or license plates to operate on public highways, *except* those bearing a manufacturer's plate, was not intended to apply retroactively. As for interest accrual on the test vehicle refund claim, Treasury argued that Ford's January 1999 letters to the Department were not claims or petitions that triggered the 45-day period after which interest would accrue under MCL 205.30. The Court of Appeals held that Ford's first letter asserted a right to a refund, and inasmuch as the letters were submitted to the Department and gave notice of a claim for refund, they were "filed" within the meaning of the statute. The Department also challenged four separate awards of costs and attorney's fees, all of which were upheld, except that awarded for time spent on the amended complaint, because the fees were supposed to go toward whatever was expended in relation to the motion for partial summary disposition and not on the whole case.

CSB Inv'rs v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued December 22, 2015 (Docket No. 322897).

Petitioners appealed the Tribunal's Final Opinion and Judgment, which affirmed the Department's revised use tax assessment. Petitioner's argued that the Tribunal should have applied the "double taxation" exemption, which prohibits imposition of use tax on property that is already taxed by another state, instead of the "resale" exemption, which prohibits use tax on property purchased for resale. The Court of Appeals held that the Tribunal did not apply the



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wrong exemption because it did not need to address that question; it rejected Petitioner's challenge on the basis that there was insufficient evidence to establish that the sales occurred, and "[t]he exemption statute unambiguously requires payment of the sales tax before it exempts the taxpayer from the use tax." The Court also held that Petitioners failed to shift the burden of proof to the Department because their evidence, which merely listed vehicles, with no exact date of sale and no cancelled checks or bank statements, was not credible. "Petitioners simply did not maintain proper records from which treasury could confirm the purported sales to Buck Truck." Further, the Tribunal did not err in excluding certain exemption certificates that were offered after the close of discovery or documents that were submitted with Petitioner's exceptions to the Proposed Opinion and Judgment, as the certificates did not cure Petitioners' evidentiary problem and the Michigan Administrative Code specifically states that exceptions are limited to the evidence submitted prior to or at the hearing. As for Petitioners challenge to the Tribunal's order granting the Department's motion to strike Petitioners' amended petition, which was filed after the close of discovery, Petitioners did not seek leave to file their amended petition as required by the Michigan Administrative Code, and justice did not require that the amendment be granted given Petitioners' delay in responding to the audit and lack of detailed records.

Due Process/Notice

Neumann v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued December 15, 2015 (Docket No. 323513).

Petitioner appealed the Tribunal's order dismissing his appeal. Petitioner argued that his procedural due process right to a fair and impartial tribunal was violated when a representative of the Michigan Department of Treasury sent an email to the presiding hearing referee, as this constituted an improper ex-parte communication. The Court of Appeals held that the record did not show the existence of an error because there was no evidence indicating that the Treasury representative was "engaged in investigating or prosecuting functions in connection with the case . . . or a factually related case." Petitioner, having failed to provide the recommendation claimed to be affected or quote the affected parts, also failed to demonstrate that the email affected his substantial rights. Finally, Petitioner argued that Treasury failed to provide him with adequate notice of its decision, and as a result, he was unable to file a timely appeal with Tribunal. The Court held that the order was sent to Petitioner's last known address in compliance with MCL 205.28(1)(a) and R 205.1011(4) and (5), and therefore, plain error was not shown.