



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

January 23, 2017

Dear Tax Tribunal Practitioner:

Filing Dates for Petitions

The Tribunal would like to remind property owners and/or their representatives that Wednesday, May 31, 2017, is the deadline for filing valuation appeals involving commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property valuation appeals.

Further, Monday, July 31, 2017, is the statutory deadline for filing 2017 petitions with the Tribunal for property classified as agricultural real property, residential real property, timber-cutover real property, or agricultural personal property.

Adding 2017 Tax Year to Pending Appeals

The Tribunal reminds you that pursuant to TTR 271(3), tax years subsequent to the tax year initially under appeal are automatically included for small claims appeals and exemption appeals (including those pending in the ET division). Consistent with past practice, beginning with small claims hearings and exemption appeals held on or after **April 1, 2017**, the Tribunal will automatically include the 2017 tax year. Therefore, if you are participating in a small claims hearing or an exemption hearing to be held on or after April 3, 2017 (April 1 and 2 are on a Saturday and Sunday, respectively), that was initiated during 2016, you must submit to the opposing party and the Tribunal any valuation evidence (if a valuation appeal) or other evidence relating to the 2017 tax year at least 21 days prior to the date of the hearing.

Scheduling of Cases

For Entire Tribunal cases, the Tribunal expects to have all appeals filed during 2016 scheduled on a Prehearing General Call by mid-April, 2017. Consistent with a change in policy during 2016, all ET cases are now assigned to a Tribunal Judge at the time the Prehearing General Call is issued.

As discussed in our September 6, 2016 GovDelivery, the decline in Small Claims appeals filed during 2016 will allow the Tribunal to again refrain from scheduling hearings during the period February 27, 2017 through March 31, 2017. It is expected that hearings for essentially all Small Claims appeals filed during 2016 will have been completed by the end of April 2017.



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Court of Appeals Decisions

Sales and Use Tax

*Brunt Associates, Inc v Department of Treasury*, \_\_\_ Mich App; \_\_\_ NW2d\_\_\_ (2017).

Petitioner appealed the Tribunal's order denying his motion for reconsideration of its Final Opinion and Judgment, which affirmed the Department's use tax assessment. Petitioner argued that the Tribunal erred by (1) concluding that it was a construction contractor engaged in the business of constructing, altering, repairing, or improving the real estate of others, (2) not applying the "3-part fixture test", and (3) denying its claim to an industrial processing exemption. Petitioner claimed that it was a retailer and industrial processor liable only for sales tax. The Court of Appeals held that the Tribunal's determination was supported by competent, material, and substantial evidence on the whole record. The Court vacated its November 17, 2016 decision. In the amended opinion, the Court addressed whether Petitioner affixed its products to their customer's real estate. The Court reasoned that given the nature of Petitioner's products, the fact that the products fulfilled an essential function within the customer's business, and the actual or constructive attachment to the buildings, that the products were intended to be permanent accessions to the realty. Further, Petitioner did not qualify as an industrial processor because it did not manufacture products for ultimate sale at retail, and there was no evidence that it manufactured "products for 'use in the manufacturing of a product to be ultimately sold at retail or affixed to and made a structural part of real estate located in another state.'"

*MJR Group, LLC v Department of Treasury*, unpublished opinion per curiam of the Court of Appeals issued December 29, 2016 (Docket No. 329119)

Respondent appealed the Tribunal's determination that Petitioner was entitled to a refund of sales tax erroneously collected on certain nontaxable concession stand items. It argued that the Tribunal erred in concluding that Petitioner did not collect sales tax from its customers. The Court of Appeals held that the Tribunal's determination was supported by competent, material, and substantial evidence because a reasonable mind could accept as true the statements made by Petitioner's representatives relative to the non-inclusion of sales tax in the menu prices and Petitioner's status as the party responsible for paying taxes on all items sold. Further, Petitioner's financial records did not establish that its customers paid sales tax as contended by the dissent. Taken as a whole, the evidence suggested that Petitioner charged round prices for concession items and then separated out the sales tax it was required to remit to the Department from its net profit. The dissent argued that the Tribunal should have placed more emphasis on Petitioner's actions as opposed to its intentions, and the majority on the manner in which Petitioner calculated the amount of tax owed.



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Tribunal Jurisdiction

*Gaylord Development West v Township of Livingston*, unpublished per curiam of the Court of Appeals issued January 10, 2017 (Docket Nos. 329506, 329509, 329510).

Petitioner appealed the Tribunal's orders denying its motions for reconsideration, which concluded that it had not erred in dismissing Petitioner's appeals because its appeal letters were not petitions sufficient to invoke the Tribunal's jurisdiction. Petitioner argued that its filings qualified as petitions because they constituted "a formal written request presented to a court or other official body," as provided by Black's Law Dictionary. The Court of Appeals held that the Tribunal did not abuse its discretion by refusing to accept the documents because under the Tax Tribunal Act, its jurisdiction is invoked by the filing of a petition, and petition requirements are outlined in the Tribunal's rules of practice and procedure. Petitioner's single-sentence claims of appeal did not conform to these rules, and the Tribunal's discretionary decision to enforce those standards did not fall outside the range of principle outcomes. As such, and inasmuch as Petitioner's subsequent conforming petitions were filed beyond the statutory deadline, the Tribunal did not err in dismissing them.