



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

June 4, 2018

Dear Tax Tribunal Practitioner:

E-Mails to the Tribunal

In view of the Tribunal's decision to no longer accept facsimiles, the Tribunal thought it important to advise the public on what may be filed by e-mail. The Tribunal **WILL** accept the following by e-mail submission:

1. Stipulated Withdrawals
2. Stipulation Notifications (include a statement that the fee, if required, is forthcoming)
3. Updates to Contact Information
4. Valuation Disclosures, if filed with a Motion to Withhold

No other filings can be accepted by e-mail; all other documents must be filed formally (i.e., by e-filing or by hard copy).

Court of Appeals Decisions

Valuation/Mathieu Gast

Patru v City of Wayne, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547).

Petitioner appealed the Final Opinion and Judgment of the Tribunal establishing the true cash value ("TCV") of his parcel. Petitioner purchased the property in substandard condition and made the repairs required to be granted a certificate of occupancy. The Hearing Referee concluded that the repairs were not "normal repairs" under MCL 211.27(2) because they were done to a property in substandard condition. Petitioner filed exceptions, which included a spreadsheet detailing the repairs made on the property, but the Tribunal refused to consider the spreadsheet because it was new evidence. The Tribunal concluded that Petitioner had failed to establish that the repairs he made were "normal repairs." Petitioner argued that the Tribunal erred when it concluded that the work done to the property was not "normal repairs." The Court held that the Tribunal, although it recognized that the Hearing Referee incorrectly read a requirement into the statute that repairs are not "normal" when performed on a substandard property, erred when it upheld the Hearing Referee's determination of TCV. Petitioner presented some evidence at the hearing to support his assertion that he performed "normal repairs." The Court could not determine the sufficiency of the evidence presented at the hearing, and remanded to the Tribunal for a rehearing, stating that the parties would have the opportunity to submit additional proofs.



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City of Detroit Income Tax

Apex Laboratories Int'l Inc v City of Detroit, unpublished per curiam opinion of the Court of Appeals, issued May 17, 2018 (Docket No. 338218)

Respondent appealed the Tribunal's order granting summary disposition to Petitioner. Petitioner was a company incorporated for the sole purpose of holding the shares of Labstat International, ULC ("Labstat"), a Canadian company. The shares of Labstat had been purchased by The Huron Fund II, LP ("the Fund"), which was created by Huron Capital Partners LLC ("Huron"). The Tribunal concluded that Petitioner did not "do business" in Detroit under the city income tax act, MCL 141.501 *et seq.* Respondent argued that the Tribunal erred when it determined that Petitioner lacked a sufficient nexus with Detroit to be subject to city income tax. The Court held the Tribunal correctly concluded that, although Detroit was Petitioner's "commercial domicile," that fact was unnecessary to the determination of whether Petitioner "did business" in Detroit. The Tribunal's approach, to determine if Petitioner either had a physical presence in or substantial connection with Detroit, was not based on an error of law. The Tribunal's conclusion that Petitioner lacked a physical presence in Detroit was supported by substantial, competent and material evidence because Petitioner's officers did not act on Petitioner's behalf, they acted on behalf of Huron or Labstat to increase the value of Labstat and then sell it for Huron's benefit. In addition, although Petitioner employed professional consultants, arguably establishing a physical presence, the consultants facilitated the sale of a Canadian company to a Canadian purchaser to benefit the Fund's investors. Therefore, the activities of the consultants fell under the exception to physical presence in MCL 206.621(2)(b) because they were not "significantly associated with the taxpayer's ability to establish and maintain a market." Moreover, Petitioner was not involved in the sale of goods and services in Detroit, or anywhere, and the use of a Detroit mailing address did not constitute physical presence or substantial nexus to Detroit. Petitioner's lack of physical presence therefore rendered Respondent's income tax against Petitioner violative of the Commerce Clause. The Court declined to find that the Tribunal erred in its factual findings.

Charitable Exemption

United Methodist Retirement Communities, Inc v City of Chelsea, unpublished per curiam opinion of the Court of Appeals, issued May 22, 2018 (Docket No. 337998).

Petitioner appealed the Tribunal's order granting Respondent's motion for summary disposition and denying Petitioner's cross-motion for summary disposition under MCR 2.116(C)(10) on the basis that Petitioner did not qualify for the charitable purpose exemption, MCL 211.7o(1), or the hospital or public health exemption, MCL 211.7r. Petitioner operates a facility for senior citizens requiring 24-hour physical care or assistance. Applicants must submit a personal health profile, a physician's report, and a financial disclosure form. Failure to submit a financial disclosure form makes a resident ineligible for financial assistance. Petitioner argued that the



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Tribunal erred by holding that Petitioner was not entitled to the charitable purpose exemption or the public health exemption. The Court held that the Tribunal's decision was not based on an error of law and was supported by competent, substantial, and material evidence. Because Petitioner required applicants to undergo financial and medical certification and may request that residents receiving financial assistance relocate to less expensive housing, it does not serve the elderly generally. Instead, it provides a retirement home for those who can afford it and are healthy enough to enjoy it. Thus, Petitioner did not occupy the property for charitable or benevolent objectives, and therefore did not occupy the property for the purposes for which it was incorporated. Petitioner also failed to show that it was being operated for public health purposes because it was a residential facility for those who could afford to live there. Although the Tribunal erred by making credibility determinations and findings of fact in its order in response to Petitioner's motion for reconsideration, Petitioner was nonetheless not entitled to tax exempt status as a matter of law.

Use Tax

Midwest Power Line, Inc v Dep't of Treasury, ___ Mich App ___; ___ NW2d ___ (2018) (Docket No. 336451).

Petitioner appealed the Tribunal's denial of a claim for a use-tax exemption for "rolling stock" under MCL 205.94k(4). Petitioner provides repair and maintenance services to electrical utilities, often across state lines. When requested, Petitioner's trucks leave its Battle Creek facility, stop at the customer's storage yard to pick up necessary supplies, and then proceed to the job site. Petitioner argued that it was entitled to the rolling stock exemption from the use-tax under MCL 205.94k(4) because it was an "interstate fleet motor carrier." The Court held that the Tribunal did not adopt a wrong principal or error of law. Petitioner was not hired by the utility companies to transport supplies across state lines and the transportation was incidental to Petitioner's primary task of repairing power systems. An "interstate fleet motor carrier" is a business that is particularly engaged in providing transportation for hire.

Treasury Audits-Statute of Limitations

Alticor, Inc v Dep't of Treasury, ___ Mich App ___; ___ NW2d ___ (2018) (Docket Nos. 337404, 337406, and 337463).

Plaintiffs appealed an order of the Court of Claims dismissing their cases because the assessments issued by defendant were not time-barred. Defendant was conducting audits of plaintiffs when 2014 PA 3 was enacted. 2014 PA 3 altered the effect that the commencement of an audit had on the statute of limitations. Prior to 2014 PA 3, the commencement of an audit suspended or tolled the four-year statute of limitations period for defendant to issue an assessment. 2014 PA 3 altered this, providing a minimal extension of the statute of limitations. The amended version of the statute was silent as to whether audits already in progress tolled the statute of limitations. Plaintiffs argued that the amended version of the statute



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controlled, and because the amended version was silent as to audits already in progress, the expired four-year statute of limitations governed, without any extension or tolling whatsoever. The Court held that the Legislature intended to eliminate the tolling provision applicable to defendant's audits and to replace it with an extension provision, but only with respect to audits that commenced after September 30, 2014. It could not be ascertained from 2014 PA 3 that the Legislature instantly repealed all tolling connected to defendant's audits, only that eventually all tolling would be disallowed. Moreover, the Legislature did not express that pending or earlier audits did not toll the statute of limitations.

Michigan Tax Tribunal
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