

MICHIGAN TAX TRIBUNAL COMMITTEE REPORT

BACKGROUND

On February 22, 1991, State Treasurer Douglas Roberts appointed Lawrence W. Morgan, Francis Moss and Howard Ledbetter, (designee of the state Chamber of Commerce), as a committee to review the operations of the Michigan Tax Tribunal (MTT).

The charge to the committee was to review the MTT and to make recommendations as to necessary revisions that would improve operations. The committee was also advised to be mindful that fiscal conditions in the state necessitate significant cost reductions in all departments.

The committee met 5 times between March 7, 1991 and May 1, 1991. In addition, the committee interviewed or corresponded with persons or groups knowledgeable of matters within the jurisdiction of the committee. (See Appendix A for a list of persons contacted.)

The MTT is a quasi judicial agency created by the Michigan Legislature in 1973 (86 PA 1973), charged with the responsibility of hearing and deciding contested tax cases. The MTT has exclusive jurisdiction over property tax cases, and share jurisdiction with the Court of Claims over state (non-property) taxes.

The Committee has made certain Findings of Facts which are attached to this report as Appendix B.

PROBLEMS WITH THE TRIBUNAL

Our review of the MTT indicates that poor internal structure and lack of aggressive caseload management are its major operational deficiencies. More specifically:

- Lack of administrative control and management.
- No clear administrative structure or responsibility; no one in charge.
- Lack of trial and pretrial management in Entire Tribunal Cases.
- Failure to manage the volume of appeals in Small Claims.
- Unnecessary delays caused by MTT's failure to set and meet deadlines.
- Election of Chief Judge by other judges weakens internal structure; leave the MTT without a strong manager.

- Too slow to get to trial and to render opinions.
- Lack of adequate resources, funds, staff and support services.
- Transcription of the record is slow.
- Failure to manage paperwork and computerization.
- Failure to coordinate Detroit and Lansing offices.
- Perception of conflict of interest since the MTT is under the authority of the State Treasurer, who also has supervision over the Revenue Department and the Tax Commission.
- Internal dispute over how discovery should be carried out.
- Compensation is inadequate and inconsistent, relative to responsibilities.
- Performance of judges leaves much to be desired.
- The qualification of the judges set forth in the statute limits the flexibility to obtain competent people.
- Judges who are lawyers intimidate members who are not lawyers by virtue of their knowledge of the law and judicial procedures.
- Judges who are not lawyers lack understanding of the legal and judicial procedures, resulting in delays and confusion.
- Lack of tax expertise on the part of some judges and hearing officers.
- Lack of legal expertise on the part of some judges.
- Perception that some judges and hearing officers are not knowledgeable and are uncomfortable in handling non-property tax cases.
- Failure of the judges and the staff to work together as a team (the staff is permanent, while the judges are temporary).
- Morale of professional staff is low.
- Petty internal politics destroy unity and morale.
- Political pressures imposed to influence decisions.

CONCLUSION

The State of Michigan has an obligation to provide taxpayers with a “plain, speedy and efficient” mechanism to contest tax matters. It is a constitutional dimension. Article I, Section 17 of the Michigan Constitution of 1963 provides:

“No person shall . . . be deprived of life, liberty or property, without due process of law.”

Due process of law certainly requires that the state will refund a system to the extent those charged with adjudicating tax matters will be supplied with the human and physical resources to give tax paying citizens a “plain, speedy and efficient remedy.” Conversely, this committee cannot recommend a tax mechanism that fails to meet that standard.

This committee is convinced that the state needs an independent specialized body to perform the tax adjudication function. Indeed, no person contacted recommended a return to the pre-MTT Circuit Court of State Tax Commission system of tax adjudication. The Circuit Courts lack the expertise that a specialized court system can bring to complex valuation issues and the State Tax Commission, because of its supervision position over assessors, lacks the objectivity expected of an independent trier of fact.

RECOMMENDATIONS

- **Create a Michigan Tax Court**

The Committee recommends the creation of an independent Tax Court as part of the judicial system of Michigan. This Tax Court would function as any other Court with the exception that the judges of the Court would be appointed by the Governor for a staggered term of 10 years, with an appointed Chief Judge. The Committee felt that the New Jersey Tax Court was the model for a Michigan Tax Court (See Appendix E). The chief advantages of a Tax Court are the independence and the impartiality that comes from being in the Judicial Branch of government, rather than the Executive, and the imposition of tax expertise as well as traditional judicial prestige, rules, and procedures to tax matters.

We recognize that this proposal would involve long term planning, statutory drafting, and perhaps even constitutional changes. In the meantime, we recommend the following changes to the Michigan Tax Tribunal.

- **Appoint a Chief Judge with overall authority to administer and manage the MTT.**

Shall be appointed by the Governor; lawyer with 10 years experience in tax matters.

- **Create the position of Tribunal Judges.**

Shall be lawyers with 10 years experience; selected from the Classified Executive Service; shall report to and be responsible to the Chief Judge.

- **Create the position of Hearing Referees.**

Shall be persons with valuation experience; shall hear small claims cases only and be selected through the Civil Service process; shall report to and be responsible to the Chief Judge.

- **Appoint sufficient Tribunal Judges and Hearing Referees.**

We make no recommendation as to number of professionals needed to carry out our recommendation on case load. We attach as Appendix D the report of the State Court Administrative Office on the Circuit Court as an indication of the workload and output of Circuit Court Judges. (See particularly pp 20-29 on Case Disposition). We assume a well organized MTT can match those figures.

- **Chief Clerk shall be responsible to the Chief Judge.**

- **New Organizational Chart.**

Attached as Appendix C is a suggested organizational chart for the MTT.

- **Require substantial annual reports** on caseload management technique and output. Judges and referees should be accountable for case output.

- **Establish a management plan** to reduce all MTT backlogs to 18 months from filing to trial.

- **Consolidate all MTT operations into one main office in Lansing, Michigan.**

- **Increase Small Claims jurisdiction to \$10,000 for state taxes and \$200,000 of SEV in dispute for property taxes.**

- **Compensation for Tribunal Judges, Hearing Referees, and Chief Clerk** should be sufficient to attract competent tax lawyers and other professionals.

- **Compensation for Chief Judge** should be commensurate with that of a Circuit Court Judge.

- **Filing fees should be no more than those imposed in Circuit Court matters.**

The concept that the MTT should “finance itself” through fees should be abandoned.

- **All MTT Judges and Referees** should be provided with formal judicial training.

- **Provide funds to allow the State Court Administrative Office to provide one time only consulting services to the MTT in caseload management and control techniques.**

- **Create a MTT Advisory Committee.**

Composed of Circuit Court Judges, State Bar Representatives, State and Local Government Tax Administrators, and Taxpayers Group Representatives; annually review the Administration and Operation of the MTT and recommend legislative changes.

- **Assign cases, monitor progress, coordinate decisions, hold judges individually accountable for cases and workload.**
- **Computerized inventory of cases and decisions.**
- **Recall retired judges to assist with overload.**
- **Provide for oral argument, depositions, mediation process, manage relevancy of discovery, impose and enforce time limits, manage cases and encourage resolutions and settlements.**
- **Gather statistics, set standards, assign cases, keep track of dockets, require accountability.**