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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHAEL ZIMMER
EXECUTIVE DIRECTOR

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Dear Tax Tribunal Practitioner:

As you probably know, Tribunal rules (TTR 231) state that after an Answer to a Petition or a response to an initial motion is filed, a petition may be withdrawn only if the other party does not object to the withdrawal. Admittedly, the Tribunal has, on occasion, accepted withdrawal requests and dismissed cases without securing approval of the opposing party, especially in small claims cases. Such actions taken by the Tribunal in the past were simply wrong, as Respondents clearly have the right to object to a withdrawal request from Petitioner. The Tribunal discussed this issue in its prior two GovDelivery messages and, as a result, the Tribunal has received several inquiries regarding the following two issues:

1. Requests to Withdraw a Petition.

TTR 231(3) provides that once the answer or first responsive motion has been filed, "a petition may be withdrawn upon MOTION filed by petitioner only if the other party or parties do not object to the withdrawal." [Emphasis added]

Consistent with its rules, the Tribunal will require that if Petitioner wishes to withdraw its Petition after the answer or first responsive motion has been filed and DOES NOT have the consent of Respondent, Petitioner MUST file a Motion to Withdraw on or before 21 days prior to a hearing or prehearing conference. This allows a Respondent sufficient time to object to the withdrawal. HOWEVER, if Petitioner has obtained the consent of Respondent to its withdrawal request, the Tribunal will allow a letter of withdrawal (RATHER THAN A FORMAL MOTION) with an attached fax or email from Respondent stating their concurrence with the withdrawal. Of course, a more formal Motion with written concurrence, or a Joint Motion, will be acceptable to the Tribunal as well.

2. Is a Filing Fee required with a Motion to Withdraw or some other form of written request to Withdraw?

NO. TTR 217(h) (Entire Tribunal cases) and TTR 267(3)(i) (Small Claims cases) both provide that no fee is required for filing a motion to withdraw a petition.

The Tribunal welcomes your comments and questions on this issue or on any other issue of interest to you. Please email the Tribunal at www.michigan.gov/taxtrib or call the Tribunal at (517) 636-7551.

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