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LANSING

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MICHIGAN TAX TRIBUNAL PERSONNEL CHANGES
INDEPENDENCE DAY OFFICE CLOSURE
RECENT CASE LAW OF INTEREST

In this issue of the MTT Newsletter, we first want to bid adieu and offer our gratitude to Judge Preeti Gadola and Legal Secretary Cindy Mauer, both of whom have left the Tribunal effective Friday, June 11, 2021.

Tribunal Personnel Changes

Judge Preeti Gadola has transferred into another division of MOAHR starting June 14, 2021. Cases currently assigned to Judge Gadola have been reassigned to other judges within the Tribunal.

Judge Gadola was originally appointed to the MTT in 2011, initially for a partial term, then subsequently reappointed in 2013. Judge Gadola was one of the Tribunal's longest serving members, and a truly valued colleague. We wish her well and good luck in her new endeavor.

We also want to wish Cindy Mauer a happy retirement as she leaves the Tribunal. Cindy has been with the Tribunal since July 1998 and has been a familiar face and friendly voice of the Tribunal for those visiting or calling our offices – and certainly for those who had the pleasure of working with her. Happy retirement Cindy!

We thank them for their long-time expertise and public service. If anyone would like to send messages of congratulations or good wishes to either Preeti or Cindy, emails can be sent to the Tribunal and will be forwarded.

Independence Day Office Closure July 5, 2021

Please be advised that the Michigan Tax Tribunal will be closed in observance of the Independence Day holiday on Monday July 5, 2021.

Case Briefs of Interest

Below are the case briefs for the most recent cases to come out of the Court of Appeals.
Riviera Resources, Inc v Mancelona Twp, unpublished per curiam opinion of the Court of Appeals, issued April 15, 2021 (Docket No. 352608).

Petitioner appealed the Tribunal's order requiring additional filing fees after a consent judgment. It owned interconnected gas wells, pipelines, and other facilities that various townships assessed personal property tax, and each individual gas well was assigned a tax parcel number. Petitioner filed a petition in five separate townships, each challenging many parcels and contending that the parcels were contiguous in each township. Petitioner also paid the filing fees according to the Tribunal's contiguous-parcel fee rule. The Tribunal defaulted and required Petitioner to either indicate whether the parcels were located on the same real property or to file separate petitions. In response, Petitioner filed an amended petition, which stated that the parcels were integrated within a single unit area. The Tribunal extended the default, explaining that the parcels were required to be located on the same real property parcel, and required Petitioner to pay a separate fee for each parcel. Petitioner argued on reconsideration that the properties were contiguous and that the filing fee for each township should not have exceeded $2,000. The Tribunal required Petitioner to provide information showing the real property parcel numbers on which the personal property was located, and in response Petitioner stated that it did not have the real property parcel numbers. The Tribunal denied the motions for reconsideration because Petitioner failed to provide the information. Petitioner argued that the Tribunal erred when it interpreted its rules and required Petitioner to pay additional filing fees. The Court explained that, despite Petitioner's contention, TTR 227(2) applies to personal property parcels. Specifically, the rule's plain language makes it applicable because subparagraphs (b) and (c) allow for a single petition covering multiple personal property parcels. The Tribunal also did not err when it concluded that Petitioner was not entitled to a single fee under TTR 227(2)(b) because Petitioner provided no evidence that the personal property was located on one real property parcel. Nothing in the Tribunal rules codifies the statute referenced by Petitioner that the integrated system is a single property interest. TTR 227(2)(c) also did not apply because the parcels were not assessed under one assessment at the time the Petitions were filed. However, the Tribunal erred when it focused its analysis on whether Petitioner could file a single Petition in each case. Petitioner was entitled to a calculation of fees under the contiguous parcel provision, and the Court remanded to the Tribunal for a determination of contiguity. The Court vacated and remanded.

McLaren Health Care Corp v Grand Blanc Twp, unpublished per curiam opinion of the Court of Appeals, issued April 22, 2021 (Docket No. 353804).

Petitioner appealed from an order dismissing its case. Petitioner requested a property tax exemption in 2018, and on February 14, 2018, Respondent denied the request. Petitioner also requested an exemption for the 2019 tax year, which was denied on October 1, 2019. On November 5, 2019, Petitioner filed a petition with the Tribunal contesting the exemption for 2018 and 2019. The Tribunal dismissed the 2018 portion of the case. Petitioner thereafter requested that the 2019 December Board of Review grant the exemption, which the Board denied because there was a pending Tribunal appeal. Petitioner filed an appeal following that decision. The Tribunal dismissed the petition, stating that the Board of Review had no authority over 2018

because the Tribunal's jurisdiction was exclusive, and 2019 was already under appeal in a separate case. The Tribunal denied Petitioner's motion for reconsideration as untimely. The Court first explained that Petitioner had failed to timely file an appeal as of right from the order of dismissal, and that the order denying reconsideration did not extend the time period for the filing of the appeal. However, it granted leave to appeal. Petitioner argued that the Tribunal erred by dismissing the 2018 tax year because it was not required to protest to the Board of Review. Although statute allowed Petitioner to appeal directly to the Tribunal without first protesting to the Board of Review, Petitioner was still required to file within 35 days of a final decision or ruling. Statute did not permit protesting the 2018 decision to the Board of Review after the Tribunal's dismissal because doing so would make the 35-day requirement meaningless. As such the final order or determination was the February 2018 denial. Respondent's res judicata claim failed because the prior year was not adjudicated on the merits, it was dismissed for failing to invoke the Tribunal's jurisdiction. The Tribunal did not err by dismissing the 2019 claim because it was already pending in another action. Petitioner also argued that the Tribunal erred when it denied the motion for reconsideration as untimely. Despite Petitioner's contention that its motion was timely filed, it was not given to a commercial delivery service until after the 21-day deadline and there was no evidence showing that it was timely filed. The Tribunal also had not extended deadlines as a result of the COVID-19 pandemic, the Tribunal merely allowed parties to file pleadings during the "stay home, stay safe" order. The Court affirmed.

Petersen Fin LLC v City of Kentwood, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 350208)

Plaintiff appealed from the circuit court's order granting summary disposition to defendant. Defendant had created a voluntary special assessment district while the property was owned by its previous owner. The previous owner failed to pay the special assessments, and plaintiff purchased the subject in a tax foreclosure sale. The trial court granted summary disposition to defendant, concluding that the special assessment was valid, future installments remained owing because of an extension of payment terms, and that the obligation survived foreclosure. Plaintiff argued that there was never a special assessment, only a contract, and that efforts to extend the due date for payments were invalid. The Court explained that the judgment of foreclosure extinguished all liens on the property. The voluntary special assessment agreement was a contract, not a special assessment levied under applicable statute, and thus any future payments did not survive foreclosure. The contract was also not a private deed restriction that survived foreclosure because it was not connected with the subject's deed. A subsequent resolution by defendant did create a special assessment. However, once a special assessment has been created, it is final and conclusive. Defendant did not follow the applicable special assessment procedures when it attempted to extend the due date for payment of the assessment, and there was no authority to amend the special assessment. The agreement creating the voluntary special assessment district also did not allow defendant to extend the due date. Thus, all payments of the special assessment were due at the time of foreclosure, and there

were no future installments to survive that foreclosure. The amended voluntary special assessment agreement, entered into by the city and the treasurer while the treasurer held title to the property was also void as against public policy and because it lacked consideration. Defendant's argument that waiver provisions in the voluntary special assessment agreement applied to plaintiff were also void as against public policy. The Court reversed and remanded for the trial court to determine whether plaintiff was entitled to a refund.

Livingston Co Hockey Ass'n, Inc v Genoa Twp, unpublished per curiam opinion of the Court of Appeals, issued May 6, 2021 (Docket No. 352715).

Petitioner appealed from the Tribunal's decision denying a request for a charitable institution exemption. Petitioner owned an ice arena used for figure skating and ice hockey, among other activities. Its articles of incorporation stated that its purposes were related to ice hockey and its promotion. Petitioner argued that the ice rink should have been determined to be exempt for taxation. The Court explained that Petitioner's articles of incorporation supported the conclusion that it was not organized chiefly for charity. In fact, nothing stated what gift Petitioner provided. In addition, the articles and bylaws showed that Petitioner was organized for recreational purposes. Although Petitioner argued that it was similar to a health and wellness facility that received an exemption, no record evidence showed that Petitioner was organized to promote health and wellness, as that facility was. Rather, record evidence shows that any health benefits were incidental to Petitioner's purposes. The Court affirmed.

Andrie Inc v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued May 27, 2021 (Docket No. 351707).

Plaintiff appealed from the decision of the Court of Claims granting summary disposition to defendant, which concluded that plaintiff was liable for use tax. Plaintiff managed tug barges owned by other entities. Under the agreements with the barge owners, plaintiff purchased materials for use on the barges, and was reimbursed by the owners. Plaintiff argued that it did not have control over the materials. The Court explained that plaintiff purchased the goods in its own name and controlled "the nature and quantity of the goods it purchased." These actions were consistent with the applicable statute. Although plaintiff argued that it was merely a conduit for the goods because it was an agent of the barge owners, the Court stated that no such agency existed. The owners did not control plaintiff's activities and plaintiff had discretion what to purchase and obtained possession of it. Finally, plaintiff consumed the goods, an activity consistent with liability for use tax under the statute. The Court affirmed.

Sincerely,

Steven M. Bieda
Chairperson, Michigan Tax Tribunal