August 6, 2021 MTT 2021-11

PAGE LIMITATIONS ON MOTIONS AND RESPONSES
TRIBUNAL TIP: MOTIONS TO EXTEND VS MOTIONS TO ADJOURN
RECENT CASE LAW OF INTEREST

Page Limitations for Motions and Responses to Motions

Please note that effective for filings made on or after August 13, 2021, the Michigan Tax Tribunal will, as provided by TTR 215, be enforcing the limitations on motions and responses to motions provided in Michigan Court Rule 2.119(A)(3)(a) and (c) relating to the drafting and combined length of any motion and brief or response and brief, (i.e., may not exceed 20 pages double-spaced with one-inch margins and 12-point type, exclusive of attachments and exhibits). However, case quotes and footnotes in a brief may, as indicated in the referenced court rule, be single-spaced.

Filing Motions to Extend vs Motions to Adjourn

Tribunal tip, the Tribunal has noticed that many parties are filing **Motions to Adjourn** when they are seeking an extension of filing deadlines for valuation disclosures. Please note that Motions to Adjourn are for adjourning scheduled proceedings (i.e. hearings, prehearing conferences, etc.) and if you are seeking to *extend deadlines* or *want a case placed on a different PHGC,* one should be filing a **Motion to Extend**.

Recent Case Briefs of Interest

Empire Iron Mining Partnership v Tilden Twp, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 353098).

Respondents appealed from the Tribunal's Final Opinion and Judgment that concluded that the low grade iron ore tax, which is levied in lieu of an ad valorem tax, did not apply to the subject property. Petitioner's mine existed in two townships and operated until August 2016. For the tax years at issue, neither mining nor production occurred at the subject. The Tribunal concluded that the low grade iron ore tax did not apply to the subject because the tax applied to property that "is mined." Respondents argued that the Tribunal erred when it concluded that the property must be actively mined in order for the tax to apply because the term "is mined" was adjectival in nature, which meant that the tax applied to property from which low grade iron ore is, was, could be, or has been mined. The Court explained that if the Legislature intended the tax to apply in the way Respondents argued, it would have written the statute to say so. Instead, the Legislature's use of the present tense must be considered. As such, only property that is presently mined is subject to the tax. Although Respondents argued that other parts of the statute would be rendered nugatory by this interpretation, the Court explained that the sections referenced spoke to production, not mining, and as such would not be affected. "Mining" and "production" have different meanings, and because their precise definitions were not necessary for resolving the case, the Court did not address whether the Tribunal should have referenced a technical dictionary. Respondents also argued that the interpretation was over-reliant on the present tense form of the verb "is mined." The case Respondents relied upon, however, did not apply because it addressed a different issue. The Court rejected Respondents' argument that the interpretation would cause absurd results, explaining that the absurd results doctrine only applies when a statute is ambiguous, but that the statute at issue was plain and unambiguous. Finally, Respondents argued that the Tribunal should have allowed discovery concerning valuation. However, the Court stated, Respondents did not raise this issue until a motion for reconsideration before the Tribunal. The issue was thus not preserved, and the Court declined to consider it.

ML Chartier Excavating, Inc v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued June 24, 2021 (Docket No. 353163).

Plaintiff appealed from an order of the Court of Claims affirming Defendant's assessment of use tax. Plaintiff's customers were utility companies, and Plaintiff transported materials to and from sites owned by its customers. During the tax years at issue, Plaintiff claimed the rolling-stock exemption, which Defendant rejected because Plaintiff did not qualify as an "interstate fleet motor carrier." After a trial, the Court of Claims concluded that Plaintiff did not qualify for the rolling-stock exemption, concluding that Plaintiffs "plaintiff's primary business is providing excavation services." Plaintiff argued that Defendant engaged in impermissible rulemaking when it issued a Revenue Administrative Bulletin (RAB) concerning the rolling-stock exemption and then relied on the RAB in denying the exemption. The Court explained that no authority supported Plaintiff's position that relying on an RAB transforms it into a rule, and that the rule's validity rests on whether it conflicts with statute. Plaintiff also argued that the case the Court of Claims relied upon for the proposition that a taxpayer must be primarily engaged in transportation for hire across state lines was incorrectly decided. In the alternative, Plaintiff contended that the case was factually distinguishable. The Court explained that, regardless of whether the case was correctly decided, the Court of Claims correctly ruled in Defendant's favor. As the Court stated, "of the portion of the fleet used for interstate transportation-for-hire, 10% of the mileage must be driven out-of-state," and Plaintiff's evidence did not establish how much of Plaintiff's rolling stock that engaged in interstate transportation-for-hire satisfied the 10% requirement. And the parties' stipulation that Plaintiff's fleet satisfied the 10% requirement was insufficient because it addressed different facts. The Court affirmed.

Bed Bath & Beyond Inc v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued July 8, 2021 (Docket Nos. 352088 & 352667).

Defendant appealed from a stipulated amended final judgment that concluded that plaintiff did not "use" advertising materials such that use tax applied. Plaintiff designed advertising materials outside Michigan, printed them outside Michigan, and had the printer send them to a mail vendor. The mail vendor, located outside Michigan, prepared the materials and then gave them to the United States Postal Service (USPS) for delivery. The Court of Claims concluded that plaintiff did not retain sufficient control over the distribution of the advertisements such that it "used" them. Defendant argued that Plaintiff controlled delivery of the advertisements and imposed requirements concerning how and when the materials could be used after delivery. The Court explained that the mail vendor prepared and delivered the advertisements according to its own methods, and controlled packaging and determined where they would be handed off to USPS. Concluding that an absence of control over the advertisements made them non-taxable, and that any control makes them taxable, the Court explained that Plaintiff retained no power or control over distribution. Rather, the process of delivery rested solely with the mail vendor. If simply providing a list of addresses was sufficient control, then the outcome would be in direct opposition to published caselaw. The Court also rejected the argument that Plaintiff used the advertisements because its customers were required to present them by a specific date, stating that the customers became the owners and could do with them what they wished. The Court affirmed.

Harmon v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued July 22, 2021 (Docket No. 353641).

Petitioner appealed from the Tribunal's Final Opinion and Judgment upholding Respondent's denial of a Principal Residence Exemption (PRE). Petitioner purchased the subject in 2013 and filed an affidavit for PRE, listing his parents' address as his mailing address. According to Petitioner, this was done out of concern that he would not receive important mail at the subject. In late 2015, Petitioner became seriously ill, and recovered at his parents' home after multiple surgeries in 2016. Petitioner's voter registration, vehicle registration, driver license, and tax returns all showed an address other than the subject. Petitioner argued that the Tribunal erred when it determined that he did not occupy the subject and that he did not satisfy the requirements for a PRE. The Court explained that documentary evidence linked Petitioner to his parents' address, and it would not disturb the weight the Tribunal gave that evidence. Petitioner had also failed to establish that he occupied the subject as his principal residence prior to becoming ill. As such, Petitioner did not qualify for the exception allowing one to convalesce at a property other than the subject and still retain a PRE. The Court affirmed.

Terry Family Ltd Partnership v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued July 22, 2021 (Docket No. 353797).

Petitioner appealed from the Tribunal's Final Opinion and Judgment, which upheld Respondent's denial of a Principal Residence Exemption (PRE). Alice Terry had owned an occupied the subject property. In 2013, Terry and her four children created the Family Limited Partnership Agreement of the Terry Family (the Partnership), naming Terry as the only general partner. The four children were limited partners. In 2017, Terry quitclaimed the subject to the Partnership. Terry continued to occupy the subject as her principal residence. Petitioner argued that the partnership agreement operated as a revocable trust. The Court stated that, even if this were true, Petitioner was not the grantor creating a trust such that it was the owner. In addition, the Court stated, there was no authority that the partnership agreement created a trust. The Court affirmed.

AEP Charter Genesee LLC v Flint Charter Twp, unpublished per curiam opinion of the Court of Appeals, issued July 22, 2021 (Docket No. 353893).

Petitioner appealed from the Tribunal's order dismissing the case and denying the joint stipulation for entry of a consent judgment. The parties initiated the case in the Tribunal by filing a joint stipulation for entry of consent judgment in April 2020, seeking to correct the 2017 tax roll. According to the stipulation, Petitioner, a charter school operator, was erroneously assessed state education and school operating taxes. The Tribunal denied the stipulation and dismissed the case because the purported error was not a clerical error or mutual mistake of fact such that the Tribunal had jurisdiction under MCL 211.53a. Petitioner argued that this conclusion was erroneous. The Court explained that MCL 211.53a allowed correction of clerical errors if suit is commenced within three years of the taxes being paid, and that Respondent's Board of Review had already granted relief under MCL 211.53b for the 2018 and 2019 tax years because the error was a "qualified error." Included in the definition of qualified error was MCL 211.53b(8)(f), which stated that a qualified error included "[a]n error regarding the correct taxable status of the real property being assessed." Petitioner asserted that Respondent must have determined that the error was a clerical error because it agreed to the stipulation. The Court stated that nothing in the record indicated that the Board of Review made that determination given that the Board of Review found a qualified error, not a clerical error. In addition, the determination is whether there was actually a clerical error. The Court stated that qualified error includes more than clerical errors, and thus the finding of a qualified error does not mean that the error was clerical. After concluding that the definition of clerical error applicable to MCL 211.53b also applied to MCL 211.53a, the Court explained that the error was not clerical. The error was whether the property should have been taxed, which is an error of law. The Court affirmed.

Reitan v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued July 22, 2021 (Docket No. 354425).

Petitioner appealed from the Tribunal's Final Opinion and Judgment upholding Respondent's denial of a Principal Residence Exemption (PRE). The land on which the subject dwelling was located was owned by Evergreen Shore and had been leased to individuals in Petitioner's family since 1932. Petitioner took over the lease in 2015 but continued to list her address on her driver license, voter registration, and vehicle registration as another address. In November 2018, Petitioner began spending a substantial amount of time at her father's house to take care of him. According to Petitioner, she still spent a significant amount of time at the subject property. The Court stated that the lease contract did not state that Petitioner owned the home on the leased property. Petitioner argued that she owned the dwelling, stating that the lease did not discuss buildings and that her parents built it. However, the Court explained, a published case was directly on point and in that case, the Court concluded that the claimant did not own the dwelling. Although Petitioner argued that she was an owner because she had to pay property taxes, property tax records do not establish ownership, and Petitioner had to pay the taxes as a condition of the lease. Further the lease did not provide an ownership interest in the building and simply having insurance does not establish ownership. Petitioner also cited the transfer of ownership statute for uncapping purposes, but the Court explained that definition of transfer of ownership did not apply in this context. Petitioner also argued that the occupied the home, stating that there was a lack of evidence that she abandoned it. The Court stated that the Tribunal's finding that Petitioner did not occupy the subject was supported by the fact that she listed another address on her driver license, tax returns, vehicle registration, and voter registration. Affidavits submitted by Petitioner were not conclusive, and the Tribunal was entitled to assign weight to the evidence. The Court affirmed.

Trugreen Ltd Partnership v Dep't of Treasury, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 344142).

Following a remand from the Supreme Court for reconsideration in light of *TOMRA of North America, Inc v Dep't of Treasury*, 505 Mich 333; 952 NW2d 384 (2020), the Court concluded that Plaintiff was not entitled to a use tax exemption. The complete text of the exemption applied to activities on farms, and plaintiff's activities related to decorative plants. The Court also explained that the entire text of the exemption was intended to benefit agricultural businesses. Although an amendment to the statute removed a requirement to provide a signed statement that the claimant was in the business connected to horticultural or agricultural products, that amendment did not alter the purpose of the exemption. The Court affirmed.

Moorings of Leelanau, LLC v Traverse City, unpublished per curiam opinion of the Court of Appeals, issued July 29, 2021 (Docket No. 353911).

Petitioner appealed from the Tribunal's order granting summary disposition in favor of Respondent, which concluded that the property's taxable value (TV) was properly uncapped. Mark Johnson and Jason Warren created MI Moorings, LLC (MIM) in 2014. MIM, Robert Brick, and Edward Lockwood subsequently established Petitioner. Brick and Lockwood each owned 29% of Petitioner, and MIM owned 42%. At some point, a dispute arose between Petitioner's members and MIM's members, the result of which was that Brick and Lockwood relinquished ownership in Petitioner in exchange for money. Petitioner argued that no transfer of ownership occurred. The Court explained that Brick and Lockwood transferred their collective 58%

ownership in Petitioner to MIM, and that MCL 211.27a(6)(h) provides that a transfer of more than 50% of an LLC is a transfer of ownership. For the same reasons, the Court rejected Petitioner's argument that applying the statute in this way violated the Constitution.

Vukich v St Clair Shores, unpublished per curiam opinion of the Court of Appeals, issued July 29, 2021 (Docket No. 354252).

Respondent appealed from the Tribunal's Final Opinion and Judgment, which granted Petitioner a Disabled Veteran's Exemption. The subject was owned by a qualifying disabled veteran from 2005 until his death in 2019. In 2017, Petitioner became a co-owner of the property. Respondent petitioned to the State Tax Commission (STC) to have the property added back to the tax roll for the portion of 2019 after the veteran had passed away. The STC did so, and also removed the exemption for 2017 and 2018. The Tribunal concluded that the property was entitled to an exemption because the statute did not require the veteran to be the sole owner. Respondent argued that the property did not qualify for a Disabled Veteran's Exemption for 2017, 2018, and 2019 because Petitioner was a co-owner of the property. The Court explained that an STC bulletin stating that a property owned by joint tenancy is not eligible for an exemption was not binding. Further, the plain and ordinary meaning of the statute does not provide that co-ownership is not ownership. Respondent also argued that the Tribunal erred in granting the exemption for the entire 2019 tax year. However, the Court stated, nothing in the Disabled Veteran's Exemption statute provided that it could be prorated, and the property was entitled to an exemption as of tax day. The Court affirmed.

I trust that this information is useful to you, and I hope that you and your families are enjoying a healthy and safe Michigan Summer.

Sincerely,

Steven M. Bieda
Chairperson, Michigan Tax Tribunal