STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

January 19, 2018

Dear Tax Tribunal Practitioner:

A Paperless Tribunal

As we have previously discussed, the Tribunal began the process of moving toward becoming completely paperless by no longer initiating and maintaining paper files for ET cases filed during 2017. Commencing January 1, 2018, the Tribunal will no longer maintain paper files for Small Claims cases filed. The Tribunal will continue to retain paper files consistent with our records retention plan (5 years for ET files, 3 years for SC files). Further, all documents (motions, orders, exhibits, etc.) not filed electronically will continue to be scanned and saved to our case management system.

Personnel Issues

Jill Andreau, formerly our Manager of Administrative Staff and Tribunal Chief Clerk, has resigned to accept a position at the Michigan Department of Treasury. It is likely that a replacement for Mrs. Andreau will not be in place until early May. In the interim, please address all mail and other correspondence previously addressed to Mrs. Andreau as Chief Clerk of the Tribunal to "Samantha M. Snow, Chief Clerk." Any telephone calls or other communications previously directed to Mrs. Andreau as the Tribunal's Chief Clerk should be made to the Tribunal's main telephone number (517) 373-4400 or email (taxtrib@michigan.gov).

Janelle Campbell, the Tribunal's Small Claims scheduler has also recently resigned. The Tribunal anticipates revising its process for scheduling small claims cases within the next couple of months. In the interim, communications regarding Small Claims scheduling issues (requests for adjournment, withdrawals, etc.) should be made to the Tribunal's main telephone number (517) 373-4400 or email (taxtrib@michigan.gov).

Petitioner Failure to Appear

It has been the practice of the Tribunal for many years to dismiss cases where Petitioner fails to appear for a hearing or prehearing conference. A series of decisions from the Court of Appeals (most recently, *Betty D. Mercer v Muskegon Township*, discussed below) have reversed Tribunal decisions to dismiss cases under those circumstances. The Court of Appeals has essentially concluded that the Tribunal must apply and consider the factors detailed in *Grimm* before dismissing a case where a Petitioner fails to appear for a hearing or prehearing. As a result, effective immediately, the Tribunal will no longer dismiss a case where Petitioner fails to appear; instead, Petitioner will be given an opportunity to provide an explanation for the failure to appear (to be provided within 14 days of the Tribunal Order) which the Tribunal will then consider before either allowing the case to proceed or dismissing the case.

Internet Speed Requirements

For potential or current e-filing users who may be concerned about their internet speed impacting submissions, please use this link to www.speedtest.net, which can provide you with information on how fast your connection is. Please note that a minimum upload speed of 4-8 Mbps is recommended to successfully submit forms.

Tribunal Decisions

Alexandru & Cornelia Derecichei, MTT Docket No. 17-000143, issued December 28, 2017

Petitioner appealed the denial of a PRE for the 2017 tax year. The subject property is a licensed adult foster care family home, which is statutorily defined (MCL 400.703(5)) as "a private residence with the approved capacity to receive 6 or fewer adults to be provided with foster care for 5 or more days a week and for 2 or more consecutive weeks." Relying on *City of Livonia v Dep't of Social Services,* 423 Mich 466; 378 NW2d 402 (1985), where the Michigan Supreme Court held that the operation of a group home is not a business or commercial use of the property, the Tribunal concluded that the subject property satisfies the requirements of MCL 400.703(5) and is not a multi-purpose structure and, therefore, qualifies for a 100% PRE.

Court of Appeals Decisions

Poverty Exemption

Maria Carroll v Spring Lake Twp, unpublished opinion per curiam of the Court of Appeals, issued December 12, 2017 (Docket No. 336636).

Petitioner appealed the Tribunal's determination that she was not entitled to a poverty exemption. Petitioner argued that the Tribunal erred in denying her a partial exemption and by not recognizing and applying the provisions of MCL 211.7u(4) and (5). The Court of Appeals held that Petitioner failed to meet her burden of proving that she was entitled to the exemption. The undisputed facts established that Petitioner did not meet the guidelines adopted by Respondent, and its determination that she had not provided substantial and compelling reasons for deviating from those guidelines was supported by competent, material, and substantial evidence on the whole record. Further, nothing in the record established that Respondent offered the possibility of a partial exemption.

Principal Residence Exemption

Anderson v Leelanau Twp, unpublished opinion per curiam of the Court of Appeals, issued December 21, 2017 (Docket No. 335016).

Petitioner appealed the Tribunal's determination that she was not entitled to a principal residence exemption for the 2015 tax year. The Court of appeals held that the Tribunal did not err in this

determination because a property must be used as a principal residence in order for an owner to continue to claim the exemption, and there was no home on the subject property for Petitioner to use as her principal residence. The house had been demolished, and therefore it could no longer be "the 1 place where an owner of the property has his or her true, fixed, and permanent home," or the home "to which, whenever absent, [the owner] intends to return."

Estate of Marguerite Schubert v Dep't of Treasury, __Mich App__; __NW2d__ (2017)

Petitioner appealed the Tribunal's determination that Ms. Schubert was not entitled to a principal residence exemption for the 2010-2013 tax years. Petitioner argued that the Tribunal erred in this determination because there is no occupancy requirement in the definition of "principal residence," and Ms. Schubert only had to occupy the property on the date that she filed the affidavit claiming the PRE. The Court of Appeals held that a person must own and occupy a property as a principal residence each year that the exemption is claimed pursuant to the plain language of the statute. It reasoned that there would be no need "to distinguish between times when unoccupied property qualifies as a principal residence and times when it does not if there were not an underlying requirement that the property must be both owned and occupied as a principal residence." Petitioner also argued that the Tribunal erred in finding that Ms. Schubert used her Midland apartment as her principal residence. Petitioner noted that a principal residence "shall continue . . . until another principal residence is established," and argued that in order to establish a new principal residence the taxpayer must own the new property. The Court of appeals held that "an owner claiming the exemption has a continuing requirement to use the property as his or her principal residence," and "if a person stops using the exempted property in that fashion and starts using a rented apartment as his or her true fixed, and permanent home, then that person, by definition, is no longer using the exempted property as his or her principal residence and must rescind the PRE." The Court also found that the Tribunal's finding was supported by competent, material, and substantial evidence on the whole record. Petitioner attacked the credibility of the evidence provided by Respondent, but "the weight to be accorded to the evidence is within the Tax Tribunal's discretion."

Holcomb v Grand Traverse County, unpublished order of the Court of Appeals, entered December 26, 2017 (Docket No. 340261).

In a PRE appeal that was dismissed because the petition was not filed within 35 days of the issuance of the notice of denial as required by MCL 205.735a, the Court of Appeals entered an order peremptorily reversing and vacating the Tribunal's dismissal order in lieu of granting Petitioner's application for leave to appeal. The Court remanded the matter to the Tribunal for entry of a consent judgment consistent with the stipulation reached by the parties.

<u>Dismissal -Failure to Appear at a Scheduled Hearing</u>

Mercer v Muskegon Twp, unpublished opinion per curiam of the Court of Appeals, issued December 26, 2017 (Docket No. 336382).

Petitioner appealed dismissal of her appeal for failure to appear for a duly-noticed hearing. Petitioner argued that the Tribunal deprived her of her constitutional right to due process by not affording her an opportunity to present her case at a hearing. She acknowledged receipt of the notice of docket number and order of dismissal via email, but claimed that the notice of hearing was never received in any form or fashion. The Court of Appeals expressed concern on the notice issue because the Tribunal's proof of service did not state how service was made, but reversed and remanded for a substantive ruling on Petitioner's claim because the Tribunal failed to examine the *Grimm* factors, and there was nothing in the record to indicate that Petitioner willfully ignored the hearing notice or had a history of deliberate delay or refusing to comply with Tribunal orders; that Respondent was prejudiced; that Petitioner did not attempt to cure the failure to appear, or that the sanction of dismissal served the interests of justice.

Dismissal – Failure to Timely File a Valuation Disclosure

618 South Main LLC v City of Ann Arbor, unpublished opinion per curiam of the Court of Appeals, issued January 11, 2018 (Docket No. 336862).

Petitioner appealed dismissal of its appeal for failure to timely file a valuation disclosure. Petitioner argued that a valuation disclosure was not necessary because it decided to challenge taxable value only and Respondent had the evidence it intended to rely on to prove its case. The Court of Appeals found that Petitioner had waived this argument because it was not made to the Tribunal and Petitioner did eventually file a valuation disclosure. The Court also found that the Tribunal did not abuse its discretion in dismissing the appeal because there was no evidence that Petitioner's untimely filing was accidental and its attempt to cure the defect was inadequate. The Court reasoned that Petitioner filed a valuation disclosure only when it faced dismissal, with no attempt to show good cause or explain why it did not do so before the filing deadline, and the inadequacy of the disclosure demonstrated its reluctance to file until dismissal was imminent. Petitioner's late filing was prejudicial to Respondent because it deprived it of the opportunity to test the evidence in discovery, and clarification of the legal argument after the prehearing was not sufficient to put Respondent on notice and give it an opportunity to prepare its defense. As such, and inasmuch as the procedural history showed repeated noncompliance, the Tribunal acted within its discretion in determining that a lesser sanction would not better serve the interests of justice.

Special Assessment

Speicher v Columbia Twp, unpublished opinion per curiam of the Court of Appeals, issued January 11, 2018 (Docket No. 335265).

Petitioner appealed the Tribunal's Final Opinion and Judgment, which granted summary disposition in favor of Respondent and affirmed its special assessment for aquatic management and control in Saddle Lake. Petitioner argued that the Tribunal erred in (1) failing to make findings of fact, (2) concluding that Const 1963, art 6, §28 was not applicable, and (3) not

requiring a finding of necessity. Petitioner also argued that the benefit to his property was not proportionate to the special assessment and that the chosen method of weed control exceeded the scope of the special assessment. The Court of Appeals held that the Tribunal did not err by not making findings of fact because a "court may not make factual findings when deciding a motion for summary disposition." Further, the Tribunal correctly determined that Const 1963, art 6, §28 did not apply because Respondent was not acting in a judicial or quasi-judicial capacity when it established the special assessment. Petitioner failed to support his contention that a finding of necessity was required, and the Court concluded that the Tribunal correctly held that there was no such requirement. The Court also agreed that Petitioner failed to overcome the presumption of validity because he did not present any evidence of disproportionality or the value of his property. With respect to the chosen method of weed control, the Court held that water aeration fell within the defined purpose of controlling aquatic plants and weeds, and therefore, Petitioner's argument was without merit.

Exemption – MCL 211.7g

Bay City Yacht Club Inc v Bangor Twp, unpublished opinion per curiam of the Court of Appeals, issued January 11, 2018 (Docket No. 335551).

Petitioner appealed the Tribunal's Final Opinion and Judgment, which denied it an exemption under MCL 211.7g for the 2015 and 2016 tax years. The Court of Appeals held that Tribunal's findings were not supported by competent, material, and substantial evidence because it erroneously declined to consider a March 2016 letter reflecting the DNR's determination that the primary purpose of Petitioner's seawalls was the prevention or control of erosion. The Court reasoned that the letter was relevant because such determinations can apply both prospectively and retroactively under the statute, and the DNR's reference to historic documents as the basis of its decision suggested that it applied retroactively. The Court also found an August 24, 2016 letter amending the determination to include only those seawalls with no boat docking relevant, but deemed its admission a violation of due process because it was provided after proofs had closed and Petitioner was not given an opportunity to rebut it. The Court vacated the Tribunal's decision and remanded for further proceedings and consideration of the March 2016 letter, and reconsideration of Respondent's request to reopen proofs.

Sales and Use Tax

Farnell Contracting Inc v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued December 19, 2017 (Docket No. 334667).

Petitioner appealed the Tribunal's determination that it was a contractor subject to use tax. Petitioner argued that the Tribunal erred in concluding that it was a contractor because an examination of its activities showed that it did not meet the fixture test. The Court of Appeals held that Petitioner abandoned this argument because it failed to develop it beyond a single conclusory sentence. Further, substantial evidence supported the Tribunal's finding that certain

property was actually or constructively attached to the real property such that they became part of the realty, i.e., fixtures. Petitioner also argued that it was entitled to sales tax treatment because it (1) consistently applied sales tax and (2) obtained valid sales tax exemption certificates. The Court of Appeals held that Petitioner's reliance on Respondent's internal policy directives was misplaced because the policy of allowing contractors who consistently hold themselves out as retailers to treat themselves as such does not apply where the sales tax due to the state is not at least as much as would otherwise be due. The Court also held that the sales tax exemptions were irrelevant because Petitioner failed to show that the Tribunal erred in finding that it was a contractor liable for use tax, as opposed to a retailer liable for sales tax.

Michigan Business Tax

D'Agostini Land Company LLC v Dep't of Treasury, __Mich App__; __NW2d__ (2018)

Petitioner appealed the Tribunal's determination that its unitary business group ("UBG") was disqualified from claiming a small business alternative credit under the MBT because the share of business income allocated to the shareholder of one of its members exceeded the maximum allowable under the statutory disqualifiers. Petitioner argued that it should be able to claim the credit because a UBG is not identified as a taxpayer subject to the disqualifications. The Court of Appeals agreed, reasoning that "the plain logical way to read the statute is that the main provision applies at the "any taxpayer"-level, and the disqualifying provisions that follow . . . apply at the taxpayer-level—i.e., the entities listed in the disqualifying provisions are the types of taxpayers which may be disqualified from claiming the credit." The Court found the statute unambiguous, but reasoned that the Legislature undercut any reasonable support for the argument that the MBT's disqualifying provisions should be read to include UBGs when it added them to the CIT's disqualifying provisions. The Court reversed the Tribunal's grant of summary disposition and remanded for entry of judgment consistent with its opinion.

Michigan Tax Tribunal
P.O. Box 30232 • Lansing, MI 48909
www.michigan.gov/taxtrib
Phone: (517) 373-4400 • Fax: (517) 373-4493