STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
CHRIS SEPPANEN
EXECUTIVE DIRECTOR

MICHAEL ZIMMER
DIRECTOR

October 1, 2015

Dear Tax Tribunal Practitioner:

Personnel Changes

Tom Halick has been an Administrative Law Judge with the Tribunal since 2002, hearing both property and non-property tax appeals. Effective immediately, Tom will be leaving the Tribunal to take a position with the General Adjudication section of the Michigan Administrative Hearing System.

Replacing Tom as an Administrative Law Judge with the Tribunal is Peter Kopke. For over 20 years, Peter has been the Chief Clerk of the Tribunal, performing numerous functions on behalf of the Tribunal. Peter will now be a hearing officer for both property and non-property tax appeals.

Jill Andreau, currently Office Supervisor at the Tribunal, will assume the administrative duties as Chief Clerk of the Tribunal in addition to her current duties. Effective immediately, please address all Tribunal correspondence and direct all inquiries to Jill Andreau, Chief Clerk, Michigan Tax Tribunal.

Finally, Samantha Snow, Administrative Law Specialist Manager, will assume responsibility for the remainder of Mr. Kopke's former duties, including, but not limited to, responding to email correspondence, including legislative issues, reviewing Motions for Reconsideration, rule promulgation, and will act as chief administrator of the Tribunal.

Prehearing General Call ("PHGC")

The Tribunal will be instituting new procedures for the PHGC beginning October 1, 2015. Specifically, the PHGC will now reflect the specific cases docket information as part of the PHGC and will no longer include a list of all cases included in the PHGC. The Tribunal believes this will lessen confusion in instances where there are multiple cases filed involving the same parties. However, the Tribunal will publish a list of all cases assigned to that PHGC on its website, as it has historically done.

Handicap Parking at the Tribunal

This is a reminder that if you need handicap parking because you are attending a Tribunal hearing or other matter at the Tribunal's Lansing offices, please submit your request for handicap parking at least two days prior to the date of the hearing, etc. Requests for handicap parking should be made telephonically or in writing, including e-mail, to the Tribunal and addressed to Jill Andreau.

Using Out-of-Date Notice Forms

The Tribunal has recently noticed an increase in the number of taxing jurisdictions using out-of-date forms or forms containing incorrect information, particularly with respect to providing notice to property owners of their appeal rights to the Tax Tribunal. For example, we recently discovered a jurisdiction using a 2003 version of Form 4075 (Notice of Denial of PRE) that does not specify the time in which an appeal of this decision can be made to the Tribunal. The current version of Form 4075 (May 2013) specifically informs the property owner that they have 35 days from the date of the denial notice in which to appeal. Similarly, we discovered another jurisdiction issuing a December Board of Review Change Notice informing the property owner they could appeal the Board of Review decision to the Tribunal within 30 days of the date of the decision, although the statute provides for 35 days. The Tribunal asks all jurisdictions to ensure that current notice type forms, such as Board of Review determinations, **and** PRE, Poverty and Veteran's exemption denials, provide correct information to property owners regarding their appeal rights to the Tribunal.

Stipulations for Consent Judgment

As we have discussed in the past, the Tribunal carefully reviews all Stipulations for accuracy, with particular attention paid to Taxable Values. The Tribunal reiterates that it will not accept Stipulations where the Taxable Value has been rounded (e.g., where the TV calculation results in a TV of $248,379 and it is rounded on the Stipulation to $248,400). Taxable Value is generally a simple mathematical calculation and the only rounding acceptable to the Tribunal will be a rounding of cents to the lowest dollar (e.g., a calculated TV of $248,378.77 will be rounded to $248,378).

Court of Appeals Decisions

Mercedes Johnson v City of Detroit, unpublished opinion per curiam of the Court of Appeals, issued September 10, 2015 (Docket No. 321479).

Petitioner appealed as of right the Tribunal's order dismissing her case, arguing that it erred in determining that it lacked authority to hear the same. Petitioner had filed a petition indicating that she was seeking poverty exemption for two parcels of property for the 2013 tax year. The Court of Appeals noted that taxpayers are required to file a claim with the supervisor or board of review, on a form provided by the local assessing unit, prior to the last day of the board of review in order to be eligible for a poverty exemption under MCL 211.7u. Petitioner admitted in her petition that she missed the deadline for filing a claim of exemption for the 2013 tax year, and did not attend the Board of Review, but after the appeal was dismissed for failure to make the required protest, argued that she did file an appeal with the Board. Petitioner indicated that she used a 2011 application form to submit a request for exemption after speaking with someone

in Respondent's office in January 2014. Petitioner was told at that time that applications for 2013 had to be received by December 31, 2013, that the December Board of Review had closed, and that all decisions on property exemptions had been made. Absent any authority establishing that a phone conversation or the filing of a prior year's form after the closing of the Board of Review constituted a protest, the Court held that the Tribunal correctly dismissed the case for lack of jurisdiction pursuant to MCL 211.7u and MCL 205.735a. The Court also held that the Tribunal correctly concluded it lacked jurisdiction under MCL 211.53a, which applies when a taxpayer has paid taxes in excess of the correct and lawful amount. Petitioner did not establish that she paid the taxes at issue, and her claim that she did not receive an exemption application despite being told that one would be sent did not constitute a clerical error or mutual mistake of fact. Further, Respondent's failure to send an application would not excuse Petitioner's obligation to file a claim before expiration of the December 2013 Board of Review session, as Petitioner could have attempted to obtain the application by other means.

Shoeneckers, Inc v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued September 15, 2015 (Docket No. 321033).

Petitioner, an administrator of business performance improvement programs, appealed an order denying its motion for summary disposition under MCR 2.116(C)(10) and granting Respondent's cross-motion under the same rule. In holding for Respondent, the Tribunal concluded that the transfer of tangible personal property to program participants was a separate transaction from the service provided to Petitioner's clients; thus the incidental-to-service test set forth by the Michigan Supreme Court in *Catalina Marketing* did not apply and Petitioner was engaged in the business of making sales at retail. Petitioner argued that the incidental-to-service test applies when two distinct transactions are involved, and that the Tribunal erred in restricting the test to single, indivisible transactions; thus, Petitioner was not liable for sales tax on the value of reward points redeemed. The Court of Appeals held that application of the incidental-to-service test was not required because Petitioner completed a transaction with its client (implementation of a performance improvement program, issuance of award points to program participants, and client payment to Petitioner for the points issued) in its entirety before engaging in a separate second transaction with the program participants (redemption of points for merchandise) that did not involve any service. Each of the transactions was supported by its own consideration, and the client had no interest or participation in the second transaction.