



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR

October 19, 2017

Dear Tax Tribunal Practitioner:

Tribunal Office Hours

Effective immediately, Tribunal office hours will be from 8:00 a.m. – 5:00 p.m., Monday through Friday, exclusive of holidays. The Tribunal's office will be closed during the hours of Noon – 1:00 p.m. No telephone service, document delivery service, or escort to Tribunal courtrooms will be available during the noon hour.

PRE Legislation

PA 121, which amends MCL 211.7cc, was signed into law by Governor Snyder and became effective immediately. Provisions of the Act include:

- The principal residence exemption (PRE) affidavit must state that the owner had not claimed a substantially similar exemption, deduction, or credit on property in another state. (MCL 211.7cc(2))
- Upon request by certain entities, a person who claimed a PRE must file, within 30 days, an affidavit stating that he or she had not claimed a substantially similar exemption, deduction, or credit on property in another state. (MCL 211.7cc(3)(a))
- Specifies that a claim for a substantially similar exemption, deduction, or credit on property in another state occurs at the time of the filing or granting of the substantially similar exemption, deduction, or credit in that state. (MCL 211.7cc(3)(a))
- Prohibit a person from rescinding a substantially similar exemption, deduction, or credit claimed in another state in order to qualify for the Michigan PRE for any years denied, if the assessor of a local tax collecting unit, the Department of Treasury, or a county denied an existing claim for a PRE. (MCL 211.7cc(3)(a))
- Prescribe a penalty of \$500 for a person who claimed a PRE under the Act and a substantially similar exemption, deduction, or credit in another state.
- Require a local tax collecting unit to retain a rescission form and forward a copy of it to the Department upon request.

In addition, PA 122, which amends MCL 211.120(1)(e), is also effective immediately, and extends a misdemeanor penalty to a person who claimed a substantially similar exemption, deduction, or credit on property in another state with the intent to obtain a PRE under the Act.



STATE OF MICHIGAN

RICK SNYDER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR

Default of Petitioner or Respondent

Of the approximately 3,000 small claims appeals filed this year, more than 800 of them have been defaulted by the Tribunal, primarily because one or both parties have failed to submit a copy of the notice or action giving rise to the appeal, or have failed to furnish a proof of service that documents filed with the Tribunal have been served on the opposing party. Because neither the Tribunal nor the parties benefit from a party or parties being held in default, the Tribunal strongly encourages parties appearing before the Tribunal to carefully review the Tribunal rules and FAQ's displayed on the Tribunal website before filing a Petition or Answer with the Tribunal.

Court of Appeals Decisions

Principal Residence Exemption

Alli v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued October 10, 2017 (Docket No. 333915).

Petitioners appealed the Tribunal's determination that they were not entitled to a principal residence exemption. Petitioners argued that the Tribunal erred in concluding that they were not owners of the property. The Court of Appeals held that the Tribunal properly determined that Petitioners were not owners because they transferred their ownership interest in the property to the BASA Family LP in March 2012, without reserving any of the rights conveyed in the 1999 land contract or the 2006 quit claim deed that transferred the property to them. As such, Petitioners were not eligible for the exemption. The Court further held that the BASA Family LP was not entitled to a principal residence exemption because the definition of an owner for purposes of MCL 211.7cc does not include business entities.

Charitable Exemption

Chelsea Health & Wellness Foundation v Scio Twp, unpublished opinion per curiam of the Court of Appeals, issued October 12, 2017 (Docket No. 332483).

Petitioner appealed the Tribunal's determination that it was not entitled to a charitable institution exemption under MCL 211.o. Petitioner argued that the Tribunal erred in concluding that it did not satisfy the third factor of the *Wexford* test, i.e., "serves any person who needs the particular type of charity being offered." The Court of Appeals held that the Tribunal erred in focusing on Petitioner's scholarship policies in making this determination because "the institution's activities as a whole must be examined; it is improper to focus on one particular facet or activity." Further, the Supreme Court recently clarified that this factor only bans restrictions on charity that do not bear a reasonable relationship to an organization's charitable goals, and the evidence presented at trial established that Petitioner's restrictions were reasonably related to its charitable goals. On cross-appeal, intervening Respondents City of Dexter and Department of Treasury conceded that Petitioner was organized as a nonprofit institution, but challenged the



STATE OF MICHIGAN

RICK SNYDER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR

Tribunal's findings as they related to the remaining *Wexford* factors. The Court of Appeals found no errors warranting reversal. It held that the Tribunal correctly determined that (1) Petitioner is organized chiefly, if not solely for charity because its stated purposes are charitable and its activities are consistent with those purposes; (2) Petitioner's activities lessen the burdens of government because while not obligated to provide a fitness facility, the government is required to take steps to promote and improve public health; (3) Petitioner did not charge more than what was needed when a fee was charged for its services and it was not required to operate at a loss, and (4) Petitioner's overall nature was charitable, and the fact that no one took advantage of the scholarship program during the tax years at issue was irrelevant. Respondents also argued that the property was not occupied by Petitioner, but by the unrelated for-profit company that managed the day-to-day operations of its fitness centers. The Court of Appeals held that Petitioner did not forfeit its occupancy rights, and though the other company's presence exceeded that of Petitioner's employees, the Tribunal correctly noted that there is no exclusivity requirement. Further, the statute requires only a regular physical presence. The City also argued that Petitioner did not occupy the property for the charitable purpose for which it was incorporated because its members are charged market rates for access to the facility and therefore no charity is provided there. The Court of Appeals held that use only has to further charitable purpose: "Although the petitioner must be incorporated chiefly, if not solely for charity to constitute a charitable organization under *Wexford*, it does not necessarily follow, as Dexter contends, that charity must be provided at the subject property. By the same token, an exemption would not be warranted for property owned and occupied by a charitable organization merely because charity was provided on that property if the charity was inconsistent with the organization's purpose for incorporation." As such, and inasmuch as Petitioner's use of the property "as a fitness facility furthers its purpose by enabling healthy exercising habits and providing opportunities to participate in health-related educational programming," the Tribunal correctly concluded that it met this requirement.

Taxable Value

Bienz v Clarence Twp, unpublished opinion per curiam of the Court of Appeals, issued October 12, 2017 (Docket No. 333530).

Petitioners appealed the Tribunal's determination that they failed to demonstrate that the subject property's taxable value was established in error. The Court of Appeals noted that Petitioners' brief was confusing and unclear, and that they appeared to be arguing that the 2015 taxable value was improper because the true cash value for that year was improperly calculated. The Court held that Petitioners could not raise this issue on appeal because it was never before the Tribunal; Petitioners clearly indicated in their petition that they agreed with the true cash value established by the board of review and that they were only contesting the property's taxable value. The Court further held that if Petitioners intended to challenge the taxable value based on an



STATE OF MICHIGAN

RICK SNYDER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR

improper true cash value from 2003, an argument the Court was able to glean only after careful review of the procedural posture of the case, it was without merit. The Tribunal's determination that the 2003 assessed value was proper was sufficiently supported on the record and Petitioners failed to establish a different true cash value.