



STATE OF MICHIGAN

RICK SNYDER  
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON  
DIRECTOR

October 30, 2017

Dear Tax Tribunal Practitioner:

### A “Paperless” Tribunal

Past GovDelivery messages have discussed the Tribunal’s move to a “paperless” world. Essentially, beginning with the 2017 tax year, all Entire Tribunal cases are saved electronically, and beginning in 2018, all Small Claims will be electronically saved. Thus, there will no longer be paper files established and retained by the Tribunal. This change to a “paperless” file system has caused some parties to question whether this means that all documents must be filed electronically with the Tribunal. Clearly, this is not the case. Simply, parties can continue to file paper documents with the Tribunal, which the Tribunal will then scan electronically, and then destroy.

### Tribunal Calendar

Beginning with November 2017, the Tribunal will begin posting its monthly schedule of Small Claims and Entire Tribunal hearings on its website. The Tribunal plans to publish the subsequent month’s schedule two weeks before the start of the month. Also, the calendar will be updated weekly. You are strongly encouraged to cross-check the Tribunal’s calendar with the docket lookup website for up-to-date information.

### Court of Appeals Decisions

#### Dismissal of Appeal

*Pampa Lanes Inc v City of Warren*, unpublished opinion per curiam of the Court of Appeals, issued October 19, 2017 (Docket No. 334152).

Petitioner appealed the dismissal of its valuation appeal for failure to pay back taxes. Petitioner argued that the Tribunal acted outside of its authority because MCL 205.743 only allows it to withhold a final decision for failure to pay taxes. The Court of Appeals held that this statute must be read *in pari materia* with the general authority set forth in MCL 205.732, and “if a party fails to pay owed taxes and the Tribunal refuses to waive the issue, then the Tribunal has the power to withhold a final decision on the entire proceeding until the taxes are paid or grant other relief that it deems necessary or appropriate, including dismissal of the case as a sanction.” Petitioner also argued that the Tribunal failed to sufficiently consider the factors enumerated in *Grimm*, and that it wrongly analyzed these factors because Petitioner’s failure to pay back taxes was due to financial inability and not wrongful intent. The Court of Appeals held that the Tribunal complied with *Grimm*, and that willful violations do not require wrongful intent. Petitioner’s failure to comply with the Tribunal’s orders was a conscious decision, not accidental or involuntary, and given the reasonable probability of a judgment that would not be



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paid or rendered moot by foreclosure, allowing it to continue to litigate with no proof of its ability to pay would have prejudiced Respondent. Further, a lesser sanction would not have addressed this ultimate issue. The Court also held that the Tribunal did not violate Petitioner's due process rights by requiring it to pay its taxes before having its case heard because the United States Supreme Court has held that states are not required to "provide predeprivation process for the exaction of taxes," i.e., allow taxpayers to litigate their tax liabilities prior to payment. There likewise was no equal protection violation, as the government has a legitimate interest in financial security, and though the Tribunal has discretion in requiring taxpayers to pay their taxes before hearing the case, its application exhibited this exact purpose.

### Tribunal Jurisdiction

*Effie Ellen Mulcrone and Mary Theresa Mulcrone Trust v City of St Ignace*, unpublished opinion per curiam of the Court of Appeals, issued October 24, 2017 (Docket No. 336773).

Petitioner appealed the dismissal of its uncapping appeal for untimely filing. Petitioner argued that Respondent's notice of uncapping deprived it of due process because it did not advise Petitioner of the 35-day deadline to appeal, as required by STC Bulletin No. 8 of 1996. The Court of Appeals held that the notice satisfied the minimum requirements of due process because it identified which properties were being uncapped, the years for which they were being uncapped, the reason for uncapping, and Petitioner's right to appeal to the Tribunal. The absence of information pertaining to the filing deadline did not rise to the level of a constitutional violation because all that is required is notice reasonably calculated to alert Petitioner to the pending action and the avenues available for challenging that action. Further, unfamiliarity with property tax proceedings cannot serve as the basis of a viable constitutional claim.

*Arbor Crossings Apt LLC v Muskegon Twp*, unpublished opinion per curiam of the Court of Appeals, issued October 26, 2017 (Docket No. 334318).

Petitioners appealed the dismissal of their valuation appeal for untimely filing. Petitioners argued that the Tribunal erred in finding that the USPS postmark, and not Petitioners' metered postmark, established the date of the filing of their petition. The Court of Appeals held that the Tribunal did not err or abuse its discretion in making that determination because MCL 205.735a unambiguously requires the postmark to have been applied "by the United States postal service." The Court also held that this interpretation does not violate the Equal Protection Clauses of the United States and Michigan Constitutions as contended by Petitioner because the government has a legitimate interest in regulating the Tribunal's jurisdiction, and USPS postmarks are inherently more reliable than meter postmarks. Further, a person that uses metered mail is different from a person that does not, and "those things which are different in fact or opinion [are not required] to be treated in law as though they were the same."



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Exemption

*Trinity Health-Warde Lab, LLC v Pittsfield Twp*, 317 Mich App 629; 895 NW2d 226 (2016), Supreme Court Docket No. 154952.

On October 24, 2017, the Michigan Supreme Court entered an order directing the Clerk to schedule oral argument on whether to grant the application for leave to appeal the November 3, 2016 judgment of the Court of Appeals. The Court ordered the parties to file supplemental briefs addressing “whether the Court of Appeals erred when it held that the petitioner for-profit limited liability company—a wholly owned subsidiary of tax-exempt Trinity Health Michigan—was not entitled to a property tax exemption under MCL 211.7o and MCL 211.7r.”

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