STATE OF MICHIGAN
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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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Dear Tax Tribunal Practitioner:

Motions Filed Where a Party is in Default

Michigan Court Rules (MCR 2.603(A)(3)) provide that "once a default of a party has been entered, that party may not proceed with the action until the default has been set aside . . . ." Therefore, effective immediately, the Tribunal will not act on any Motions (including Stipulations and Withdrawals), other than motions to set aside default, filed where one of the parties has been placed in default by the Tribunal. Specifically, the default must be cured by the defaulted party before the Tribunal will take any further action in the case.

Incomplete Stipulations

As has been discussed by the Tribunal previously, the Tribunal carefully reviews all stipulations for completeness. Of particular concern to the Tribunal is the stipulated Taxable Value. Therefore, when filing a stipulation with the Tribunal, please be sure that you have provided an appropriate explanation of your determination of Taxable Value where the Assessed Value and Taxable Value differ. For example, if the Taxable Value is impacted by a transfer of ownership (e.g., the stipulated Taxable Value for 2014 increased by more than the rate of inflation), there has been a change in percentage of completion, or omitted property is involved, please include as a provision of the stipulation an explanation of the calculation of Taxable Value.

Caseload/E-Filing/E-Service

The Tribunal continues to have issues with e-mail addresses of parties. As a reminder, if the Tribunal has a record of a party's e-mail address, the Tribunal *will electronically serve all correspondence*. Parties cannot opt out of electronic service. As such, changes to your e-mail address should be treated the same as if your mailing address changed. Please notify the Tribunal, via e-filing or mailing a letter, of any address changes as soon as possible. Further, the Tribunal continues to have problems with spam filters and full email accounts on email addresses, particularly addresses utilized by assessors. The Tribunal believes that it is the responsibility of each party, including assessors, to set an appropriate spam filter and clean out their email accounts on a regular basis to receive orders and decisions rendered by the Tribunal. The Tribunal will *not* resend notices, orders, decisions, etc. where such correspondence from the Tribunal is rejected as spam or is returned because an e-mail account is full.

Recent Cases

a. *Gretchen L. Mikelonis v Alabaster Twp,* ___Mich ___; ___NW2d ___(2014) (Docket No. 315512)

In 1993, Petitioner's parents created a joint tenancy with rights of survivorship in one-half of the property between themselves and petitioner, subject to a life estate for her parents. In 2000, Petitioner created a similar joint tenancy in an additional one-quarter, retaining a life estate in that quarter. In 2001, Petitioner's parents conveyed all of their interest to petitioner, extinguishing the joint tenancy and releasing the life estate. As a result, Respondent uncapped the taxable value of the property beginning in 2002. In 2010, Petitioner challenged the uncapping and sought to correct the 2007 through 2010 tax bills. Respondent agreed with Petitioner that the taxable value of the property should not have been uncapped in 2002 and the parties filed a stipulation for the years 2007 through 2012. The Tribunal denied the stipulation for the 2007 through 2010 tax years because it lacked jurisdiction under MCL 205.735a and MCL 211.53a. In this published opinion, the Court of Appeals reversed the Tribunal concluding that the actions taken by Respondent constitute a qualified error under MCL 211.53b(10)(a). The Court of Appeals further held that although MCL 211.53b(1) allows recovery for a qualified error only for the current year and the immediately preceding year, MCL 211.27a(4) provides that where there was not a transfer of ownership allowing for the uncapping of taxable value, the board of review (to which Petitioner had appealed in 2010) could adjust the taxable value for the current year and three prior years. Thus, the Court of Appeals held that the stipulation filed by the parties for the 2007 through 2010 tax years complied with applicable statute.

b. *Spartan Stores, Inc and Family Fare, LLC v City of Grand Rapids,* ___Mich ___; ___NW2d ___ (2014) (Docket No. 314669)

Petitioners appealed the Tribunal's grant of summary disposition to Respondent pursuant to MCR 3.116(C)(4). Family Fare, a wholly owned subsidiary of Spartan Stores, operates a grocery store that leases space in a shopping center. Under the lease, Family Fare is responsible for 78.71 percent of the shopping center's taxes, and Spartan Stores is not responsible for any of the taxes. Spartan filed an appeal of the shopping center's assessed values with the Tribunal in 2010 and Respondent moved for summary disposition claiming that Spartan was not a "party in interest." In response to the Motion, Family Fare filed a Motion to intervene, which the Tribunal granted and then later denied after concluding that Family Fare had not shown that it was a "party in interest" under MCL 205.735a. After denying the Motion to Intervene, the Tribunal granted Respondent's Motion for Summary Disposition. The Court of Appeals reversed the Tribunal's grant of summary disposition and held that Family Fare was a party in interest, and Spartan was not, and defined "party in interest" as used in MCL 205.735a(6) to "refer[] to a person or entity with a property interest in the property being assessed. There is no dispute that the shopping center in the case is commercial property as contemplated by MCL 211.34c; however, "neither MCL 205.735a, nor the TTA, of which MCL 205.735a is a part, define the phrase 'party in interest[,]'" and the court has not defined the phrase since the passage of MCL 205.735a. The Court used *Blacks Legal Dictionary* and Michigan case law to conclude that "leaseholds manifestly are 'interests'" and "the word 'interest' as applied to land embraces and includes leasehold interests and rights derived therefrom." The court then states that "as used in MCL

205.735a(6), 'party in interest' refers to a person or entity with a property interest [defined as 'a legal share in something; all or part of a legal or equitable claim to or right in property'] in the property being assessed." Respondent pointed to the "GPTA's strict requirements on which parties may appear before the board of review" as the appropriate approach to take when interpreting MCL 205.735a, but the court dismissed this argument as it contradicted the legislative history of the statute "which stated an intent to remove procedural and formalistic obstacles from appeals on tax-assessment of commercial property." The court concluded that Family Fare is a "party in interest" as it has a leasehold, but that Spartan only "has a *financial* interest in the tax assessment of the shopping center, it does not have a *property* interest in the assessment of the shopping center" and, as such, is not a party in interest.

c. *Daniel Hallman and Robbie Hallman v City of Warren*, unpublished opinion per curiam of the Court of Appeals, issued October 16, 2014 (Docket No. 317612).

In this unpublished opinion affirming the Tribunal's denial of a poverty exemption, the Court of Appeals also held that pursuant to statute and Tribunal rules, Petitioners do not have the right, constitutional or otherwise, to counsel or other representation at a Tribunal hearing. Further, the Court held that the Tribunal did not abuse its authority by failing to grant a postponement of a small claims hearing (which are scheduled in half-hour increments) when Petitioners' counsel informed the Tribunal that he was delayed in traffic.

d. *Michael Brown and Elizabeth Brown v Sherman Twp*, unpublished opinion per curiam of the Court of Appeals, issued October 21, 2014 (Docket No. 316652).

Petitioners owned property subject to federal tax liens which they transferred to their son by quit claim deed. The federal government sued seeking enforcement of the tax liens and ultimately the parties resolved the suit by consent judgment, whereby the federal government recognized the quit claim deed. Respondent uncapped the property's taxable value given the transfer of ownership of the property. Petitioners argued that because the transfer of the property subject to the liens to their son was fraudulent under the Uniform Fraudulent Transfer Act, the fraudulent transfer was void. The Court of Appeals concluded that Petitioners could not avail themselves of protections granted to *creditors* by the Act and affirmed the Tribunal's uncapping of the taxable value of the property.