STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

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

MICHAEL ZIMMER
DIRECTOR

November 2, 2015

Dear Tax Tribunal Practitioner:

Designated Delivery Service

MCL 205.735a(7) provides that a petition is considered filed on or before the statutory filing period if: (a) the petition is postmarked by the US Postal Service on or before the expiration of the applicable time period, (b) the petition is delivered in person on or before the expiration of the applicable time period, or (c) the petition is given to a designated delivery service for delivery on or before the applicable time period. MCL 205.735a(11) provides that a "designated delivery service" means a delivery service provided by a trade or business that is designated by the Tribunal no later than December 31 in each calendar year. For the 2016 calendar year, the Tribunal designates DHL Express (DHL), Federal Express (FedEx) and United Parcel Service (UPS) as its designated delivery services.

FOIA Updates:

Effective October 1, 2015, Freedom of Information Act (FOIA) requests should be submitted in writing to the **Department of Licensing and Regulatory Affairs (LARA) FOIA Office** and **not** directly to the Tribunal. The new FOIA record request process, procedures, and forms may be found on the LARA FOIA Office homepage. You may submit FOIA requests to the following e-mail address, U.S. mailing address, or fax number:

Email: LARAFOIAInfo@michigan.gov

U.S. Mail: State of Michigan
Department of Licensing and Regulatory Affairs
c/o FOIA Coordinator
Ottawa Bldg., 4th Floor
P.O. Box 30004
Lansing, MI 48909

Fax: 517-335-4037

If you have any questions, please contact the LARA FOIA Office at 517-335-3327; however, requests for documents will not be accepted by phone.

E-Mail Notifications of Submissions:

As you would imagine, the Tribunal receives a large number of e-mails at our general e-mail, taxtrib@michigan.gov. To cut down on the volume, the Tribunal requests that you do not e-mail the Tribunal notification (i.e. a courtesy copy) that a filing or payment is forth coming via hard copy.

Small Claims Hearing Referee

The Tribunal annually contracts with qualified individuals to conduct small claims hearings throughout the State of Michigan. The Tribunal currently has a contract referee position available for an attorney with some tax experience located in northern Michigan. The individual selected by the Tribunal would be responsible for conducting small claims property tax hearings in northern Michigan one or two days per month. If interested, please submit a letter of interest, resume, and three letters of recommendation to Samantha M. Snow, on or before December 1, 2015.

Court of Appeals Decisions

1. Principal Residence Exemption

Swiss Farms, Inc. v Department of Treasury, unpublished opinion per curiam of the Court of Appeals, issued October 13, 2015 (Docket No. 322217).

Respondent appealed as of right the Tribunal's Final Opinion and Judgment, which granted Petitioner a principal residence exemption for the 2008-2011 tax years. Respondent argued that the Tribunal erred in concluding that Petitioner constituted a cooperative housing corporation under 26 USC 216(b)(1)(B) because it issues membership certificates rather than stock and does not provide homes to its members to occupy for dwelling purposes. The Court of Appeals held that the Tribunal properly concluded that all that is required under the plain language of the statute is that stockholders are entitled to occupy a house or apartment for dwelling purposes by reason of their ownership. Further, "for purposes of 26 USC 216(b)(1)(A), a nonstock corporation may constitute a cooperative housing corporation provided that the members possess 'the normal and usual rights of stockholders, namely, a pro rata distribution of assets upon liquidation, participation in management by reason of electing the board of directors, and transferability of their interest.'" The Tribunal's findings on these issues were supported by competent and substantial evidence, therefore the Court upheld its determination that petitioner was an owner entitled to a PRE under MCL 211.7cc.

Stacy R. Walsh v Berrien County, unpublished opinion per curiam of the Court of Appeals, issued October 13, 2015 (Docket No. 322205).

Petitioner appealed as of right the Tribunal's Final Opinion and Judgment, which denied her a principal residence exemption for the 2010-2013 tax years. Petitioner argued that she provided overwhelming evidence that the subject property was her principal residence, and that the Tribunal failed to give proper weight to her Michigan voter registration and her filing of separate Michigan income tax returns for the years at issue. Having been granted an exemption in 2009 under the same facts, Petitioner also argued that she was entitled to a PRE on the basis of equitable estoppel. The Court of Appeals held that the disputed items were merely evidence to be considered and the weight to be accorded to that evidence was within the Tribunal's discretion. Further, the Tribunal did not commit an error of law or adopt a wrong legal principal in declining to grant Petitioner an exemption on the basis of equitable estoppel, as the Tribunal's powers are limited to those authorized by statute and it has no powers of equity.

2. Poverty Exemption

Selva v City of Warren, unpublished opinion per curiam of the Court of Appeals, issued October 22, 2015 (Docket No. 322140).

The City of Warren appealed the Tribunal's Final Opinion and Judgment, which granted Ms. Selva a poverty exemption for the 2013 tax year. The issue was whether Ms. Selva occupied the subject property within the meaning of MCL 211.7u(2)(a). Noting that the word "occupy" was not defined in the statute, the Court of Appeals observed that "[a] successor to the dictionary cited to in *Liberty Hill Housing* specifically identifies the link between ownership and occupation in defining 'occupy' to mean, in part, 'to reside in as an owner or tenant.'" Further, "[t]o 'reside' somewhere means 'to dwell permanently or continuously: to occupy a place as one's legal domicile.' And a 'domicile' is defined in the legal vernacular as 'a person's true, fixed, principal, and permanent home, to which that persons [sic] intends to return and remain even though currently residing elsewhere.'" Several statements on record supported the Tribunal's finding that the subject property was Ms. Selma's true, fixed, and permanent home, and that she intended to return there once her physical rehabilitation was completed. Therefore, she occupied the property during the relevant tax year.

3. Special Assessment

Hartland Glen Dev, LLC v Twp of Hartland, unpublished opinion per curiam of the Court of Appeals, issued October 20, 2015 (Docket No. 321347).

Hartland appealed the Tribunal's Final Opinion and Judgment, which affirmed the Township's corrected and supplemental special assessments. In the corrected and supplemental assessments levied in 2011, REUs were reallocated based on acreage, and the subject property was assigned an additional 459 REUs. The issues were (1) whether the Township had authority to levy the assessments, and (2) whether the valuation used to determine proportionality was proper. The Court of Appeals held that MCL 41.732 and MCL 41.733 specifically granted the Township authority to correct invalid assessments and levy supplemental assessments to cover any resulting deficiencies, and Hartland failed to show that the Township did not have authority to act under these statutes. Further, while Petitioner asserted an error in the accepted valuation date, it did not claim that the alleged error caused any prejudice. Petitioner also failed to demonstrate that the Tribunal erred in finding that assessments were proportionate to the benefit conferred. Finally, Petitioner was not entitled to relief on the basis of collateral or judicial estoppel because (1) the county was the party involved in the prior proceedings involving the subject property and it was not in privity with the Township, and (2) the Township's position was not wholly inconsistent with its former position regarding the special assessment.

4. Multistate Tax Compact

Gillette Commercial Operations N Am & Subsidiaries v Dep't Of Treasury, __Mich App__; __NW2d__ (2015).

Numerous foreign corporations appealed the Court of Claims order granting summary disposition to the Michigan Department of Treasury, alleging numerous state and federal constitutional challenges to 2014 PA 282, which retroactively rescinded Michigan's membership in the Multistate Tax Compact and effectively precluded Plaintiffs from utilizing the three-factor apportionment formula previously available under the Compact. The Court of Appeals held that the Act did not violate any state or federal constitutional provisions. The Compact contained no features of a binding interstate compact and no contractual obligation was created by Michigan's adoption of its provisions. As such, and inasmuch as taxpayers have no vested interest in the continuation of a tax law, there was no violation of the Contract Clause. For this same reason, retroactive repeal of the Compact did not violate the Due Process Clause or Michigan's rules regarding retrospective legislation. Courts have uniformly held that the retroactive modification of tax statutes does not offend due process considerations so long as there is a legitimate

legislative purpose that is furthered by rational means, and correcting a perceived misinterpretation of a statute and eliminating significant revenue loss are both legitimate legislative actions. Further, the Legislature acted promptly to correct its error and the retroactive time period was sufficiently modest relative to time frames of other retroactive legislation that have been upheld by various courts. There similarly was no violation of the separation of powers clause because retroactive repeal of the Compact did not reverse a judicial decision or repeal a final judgment; it merely enacted a new law to further the Legislature's original intent as to the prior statutory amendment. The Court of Appeals noted that the Act may have rendered moot the effect of the judicial interpretation in *IBM*, but it did not overturn that Court's judgment. Further, the taxpayers were not entitled to the benefit of the *IBM* Court's ruling as to the effect of the prior amendment because their cases were pending when the statute was enacted. As to the Commerce Clause, the Act puts local and foreign taxpayers in the same position relative to Michigan tax calculations, requiring use of a single-factor formula for both. As such, it does not discriminate against or unduly burden interstate commerce. The Court also held that the taxpayers were not denied the right to petition the government under the First Amendment or the analogous Michigan provision; they had ample opportunity to present their arguments to the courts, and there was no obstructive actions by state actors (i.e., concealing or destroying evidence). Legislative retraction of an available remedy, even the sole remedy, is different from interference with the ability to express one's views to the decision-maker. Finally, the Court held that the Act did not violate the Title-Object Clause, the Five-Day Rule, or the Distinct-Statement Clause of the Michigan Constitution. The single object of the Act, i.e., amending the MBTA, is reflected in its title, and there is nothing deceptive about the legislation. The bill was before each house for at least five days, and there was no change, only an extension of its original purpose.

5. Single Business Tax

Alticor Investments, Inc v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued October 27, 2015 (Docket No. 322000).

The Michigan Department of Treasury appealed an order of the Court of Claims granting Alticor summary disposition pursuant to MCR 2.116(C)(10). The issue was whether payments received under certain licensing agreements were royalties for computer software subject to taxation under the Michigan Single Business Tax Act. The Department argued that the Court of Claims erred in finding the language of the agreements unambiguous because certain undefined terms could encompass software. The Court of Appeals noted that "[a] latent ambiguity exists when the language in a contract appears to be clear and intelligible and suggest a single meaning, but

other facts create the necessity for interpretation or a choice among two or more possible meanings." Further, "[t]o verify the existence of a latent ambiguity, a court must examine the extrinsic evidence presented and determine if in fact that evidence supports an argument that the contract language at issue, under the circumstances of its formation, is susceptible to more than one interpretation. The Court held that the evidence presented by the parties supported no such argument. Thus, the Court of Claims did not err in finding the agreements unambiguous: "As the trial court noted, the license agreements lack any reference to licenses of software and there is no language in either agreement that provides any basis to treat the royalties at issue as derived from the licensing of software. The terms contain no latent ambiguity when read in context of and harmonized with the entire licensing agreement."

6. Use Tax

Auto-Owners Ins Co v Dep't of Treasury, __Mich App__; __NW2d__ (2015).

The Michigan Department of Treasury appealed an order of the Court of Claims granting Auto Owners summary disposition pursuant to MCR 2.116(C)(10). The issue was whether transactions occurring under various contracts involving complex computing arrangements were subject to taxation under the Use Tax Act. Noting that the disputed transactions were taxable if Auto-Owners "exercised control over a set of coded instructions that was conveyed or handed over by any means and was not designed and developed by the author or other creator to the specifications of a specific purchaser," the Court of Appeals held that delivery could be electronic: "By using the word 'any,' the Legislature made plain that the means by which the software is delivered is immaterial." Nevertheless, the majority of the disputed transactions were not taxable because Auto-Owners had no access to the codes that enabled the various systems. And though Auto-Owners did receive prewritten computer software in several of the transactions, the transfer of tangible personal property in those transactions was incidental to the rendering of nontaxable professional services.