STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

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DIRECTOR

December 12, 2017

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 U.S. 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 2018 calendar year, the Tribunal designates DHL Express (DHL), Federal Express (FedEx) and United Parcel Service (UPS) as its designated delivery services.

Small Claim Threshold for filing non-property tax and special assessment appeals

MCL 205.762 provides that the Small Claims division of the Tribunal has jurisdiction over non-property tax appeals and special assessment appeals so long as the amount in dispute is $20,000 or less, adjusted for inflation. The threshold for filing a non-property tax appeal or a special assessment appeal with the Small Claims division of the Tribunal during the 2018 tax year is $23,747.

Court of Appeals Decisions

Principal Residence Exemption

Rentschler v Melrose Twp, __Mich App__;__NW2d__(2017)

Petitioner appealed the Tribunal's determination that he was not entitled to a principal residence exemption ("PRE") because he rented the property out to third parties more than 14 days each year. Noting that the Tribunal accepted his factual claims and concluded that he was an owner of the property and had occupied it for the majority of the tax years at issue, Petitioner argued that the PRE guideline relied on by the Tribunal in denying his exemption was contrary to the clear and unambiguous language of the GPTA. The Court of Appeals agreed and held that "renting one's home for more than 14 days does not disqualify a homeowner from receiving a PRE." It reasoned that the controlling statutes, which set forth a number of disqualification scenarios, do not disqualify a property that is rented for 15 days or more. Further, comparison to federal tax law is unavailing because it treats a property that is rented out for 15 days or more as having a dual purpose, intended for both personal and rental use; it does not cause the property to lose its status as a residence.

Exemption

Northport Creek Golf Course LLC v Leelanau Twp, unpublished opinion per curiam of the Court of Appeals, issued November 28, 2017 (Docket No. 337374).

Petitioner appealed an order granting summary disposition in favor of Respondent on Petitioner's claim that a golf course owned by the Village of Northport and operated by Petitioner under a five-year management agreement was exempt under MCL 211.7m. The Court of Appeals held that the Tribunal erred in finding both that it lacked jurisdiction over the appeal because petitioner was not a party-in- interest, and that Petitioner's claim for exemption lacked merit. It reasoned that MCL 205.735a(6) provides a mechanism by which an assessment may be appealed directly to the tribunal without a protest before the board of review, and that it does not apply to appeals that follow a protest before the board of review. Even accepting that appeals protested before the board of review must be brought by a party-in-interest, the Court concluded that Petitioner was a party-in-interest by virtue of Respondent's reliance on MCL 211.181(1), as this statute provides a basis to impose tax on the lessee or user of property, and there must be a basis for the purported lessee or user, i.e., Petitioner, to challenge that tax. The Tribunal also erred in concluding that the property was not exempt under MCL 211.7m because MCL 205.181(1) does not affect the tax exempt status of the property. Further, the burden was on Respondent, not Petitioner, to establish that the property was being used by Petitioner in connection with a for-profit business so as to make MCL 205.181(1) applicable: "In sum, we conclude that a governmental entity may contract with a private, for-profit business to manage property owned by the governmental entity without the private business necessarily becoming a 'user' under MCL 211.181. Because neither respondent nor the tax tribunal has presented any analysis that petitioner is a 'user' under MCL 211.181 beyond petitioner's being a for-profit business, the Tribunal erred in denying summary disposition to petitioner. Petitioner was entitled to summary disposition and an order from the tax tribunal directing respondent to recognize that exemption under MCL 211.7m and recognizing that Petitioner is not subject to tax under MCL 211.181."

Consent Judgment-Mutual Mistake of Fact

Forest Hills Cooperative v City of Ann Arbor, unpublished opinion per curiam of the Court of Appeals, issued December 5, 2017 (Docket No. 334315).

Petitioner appealed an order denying its motion for reconsideration and motion to set aside a consent judgment that was entered following remand by the Court of Appeals. Petitioner argued that the Tribunal's denial of its motions was erroneous because the consent judgment was premised on a mutual mistake of fact. Specifically, Petitioner argued that the "original" values set forth in the stipulation reflected the values in effect at the commencement of the appeal, and not the values currently on the roll pursuant to the final opinion and judgement that was entered prior to the first appeal to the Court of Appeals, because the parties were not aware of the revised

values at the time the stipulation was entered into. The Court of Appeals held that the Tribunal did not err in denying Petitioner's motions because it failed to establish that the consent judgment was the result of mistake or fraud. The Court found that Petitioner could not have been unaware of the revised values because they were based on a judgment that it had previously appealed and it had cashed the refund check issued pursuant to that judgment. Further, there was no ambiguity in the consent judgment—the values were seen and agreed upon by both parties, and the evidence showed that there was mutual assent to enter into the agreement.

Omitted Property

Sunnybrook Golf Bowl & Motel, Inc., v City of Sterling Heights, unpublished opinion per curiam of the Court of Appeals, issued December 7, 2017 (Docket No. 332357).

Petitioner appealed the Tribunal's Final Opinion and Judgment, which concluded that 130.52 acres of land had been omitted from the assessor's valuation and increased the true cash and taxable values accordingly. Petitioner argued that the Tribunal erred in adding the "omitted property" to the roll because MCL 211.154 authorizes only the STC to add omitted property. The Court of Appeals held that the statute does not prohibit the Tribunal from adding omitted property to an assessment, and that the Tribunal has a duty to address omitted property when calculating a property's taxable value. Petitioner also argued that the Tribunal violated its due process rights because it failed to notify it that it was considering the issue of omitted property. The Court held that due process safeguards were satisfied because Petitioner had notice of and actively participated in the hearing, and also had the opportunity to file for reconsideration. Further, the issue before the Tribunal was the correct TCV and TV of the property, and it was not limited to determining whether the assessment was too high. Petitioner further argued that Respondent never asserted or attempted to prove there was omitted property, and it challenged the Tribunal's reliance on the STC Cost Manual and Guide to Basic Assessing because they were not admitted into evidence or disclosed until after the parties rested their cases. The Court held that while Respondent did not affirmatively state that it was attempting to establish that omitted property was not included in the prior assessment, it did in fact do so, and the Tribunal did not err in relying on the STC materials because there is no constitutional right to

discovery and assessors are required to use them in preparing assessments. Petitioner also challenged the Tribunal's value determination, but the Court held that "there was a reasonable basis and credible evidence for the Tribunal's TCV assessment and its independent determination of TCV was supported by substantial evidence in the record."

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