STATE OF MICHIGAN
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GOVERNOR

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

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Dear Tax Tribunal Practitioner:

Happy Holidays from all of us at the Tribunal.

2015 Recap

The Tribunal began 2015 with approximately 6,800 open cases. During the year, approximately 6,600 new tax appeals were filed with the Tribunal. Through the efforts of all Tribunal staff, which has been reduced substantially over the past two years, we were able to close approximately 6,900 cases during 2015, leaving us with approximately 6,500 open cases at year-end. For the year, 99% of small claims cases filed during 2014 were closed within 14 months of their filing and 100% of ET appeals were closed within 36 months of their filing.

The Tribunal continues to devote time and resources to improving communications and its work product. To that end, the Tribunal issued 15 GovDelivery messages during 2015 in an attempt to keep all of you with an interest in the Tribunal informed with respect to changes in all aspects of the processing of appeals, and relevant decisions of the Tribunal and the appellate courts. Further, the Tribunal continues to improve and update its website, and has given in excess of 15 presentations to groups interested in the Tribunal.

As always, we welcome your feedback and suggestions as we strive to improve communications and deliver a quality work product to all of you who practice before, or are interested in, the Michigan Tax Tribunal.

Court of Appeals Decisions

MTT Jurisdiction

Bouis v City of Lansing, unpublished opinion per curiam of the Court of Appeals, issued November 17, 2015 (Docket No. 322465).

Petitioner argued that the Tribunal erred in dismissing his appeal for failure to appear at a hearing because he never received the notice of hearing. The Court of Appeals noted that "[w]hile a presumption arises that a letter with a proper address and postage will, when placed in the mail, be delivered by the postal service, this presumption can be rebutted with evidence that the letter was not received. If such evidence is presented . . . then a question of fact arises regarding whether the letter was received." The Court held, however, that Petitioner failed to present any evidence regarding non-receipt to the Tribunal, as while this

argument was raised in a motion for reconsideration, Petitioner did not pay the filing fee for the motion or request a waiver of the fee, and as a result, the Tribunal took no action on the motion. The Court declined to address Petitioner's argument that he was deprived of due process of law because the Tribunal would not grant a waiver of fees because it appeared that the waiver request was filed in conjunction with a separate appeal.

Valuation

Chand Professional Properties, Inc v City of Southfield, unpublished opinion per curiam of the Court of Appeals, issued November 17, 2015 (Docket No. 323268).

Petitioner appealed the Tribunal's Final Opinion and Judgment. Petitioner argued that the Tribunal erred in (1) disallowing its motion to amend the petition to include the 2013 tax year and its request to depose Respondent's assessor, (2) refusing to admit a bank appraisal, and (3) rejecting Petitioner's contention of value for the 2012 tax year. The Court of Appeals held that the Tribunal did not abuse its discretion in denying Petitioner's motion to amend or request for deposition because Petitioner was not a party to the case when it attempted to amend the petition, and it failed to submit documentation demonstrating its interest at that time. Further, Petitioner's deposition request was filed three days before closure of post-valuation disclosure discovery, and it offered no good cause for its late request. The Court also held that the Tribunal did not err in failing to admit the disputed bank appraisal given that the author was not available as a witness and Petitioner's own expert expressed concerns about the document. Finally, the Court held that the Tribunal's analysis was based on competent, material and substantial evidence. It identified specific and multiple flaws in Petitioner's valuation methods and then set forth various reasons for its conclusion that purchase price was commensurate with market value.

Gatt v Twp of Marion, unpublished opinion per curiam of the Court of Appeals, issued December 8, 2015 (Docket No. 323473).

Petitioner appealed the Tribunal's Final Opinion and Judgment on Remand, contending that: (1) the decision was not supported by competent, material, and substantial evidence because the property's taxable value drastically increased from 2010 to 2011, (2) the Tribunal erroneously found that Petitioner engaged in additional construction in the 2011 or 2012 tax years, and (3) the Tribunal improperly disregarded Petitioner's appraisals and used incomparable sales to arrive at its value determination. The Court of Appeals held that the Tribunal did not err in failing to consider the property's 2010 true cash value because the transfer of ownership that occurred in that year permitted reassessment of the property's value in 2011. Further, the record indicated that the Tribunal's 2010 value determination did not consider construction that was completed in 2009 and 2010. "Regardless of whether the additions were completed in 2009 or 2010, it is undisputed that those additions were

completed by the 2011 tax year. At that point, the property's true cash value was uncapped, and the trial court was entitled to consider the value of the additions." Finally, the Tribunal gave cogent reasons for disregarding Petitioner's appraisals, and the record did not support a finding that it considered incomparable sales. It refused to consider two of Respondent's proposed comparables and rejected some of its adjustments for the third. It did not blindly adopt Respondent's proposed value, but made an independent determination of true cash value. "Though there was a drastic increase in the property's taxable value from the 2010 to 2011 tax year, the reasons for the increase included the uncapping of the property's true cash value, the additional construction that was not previously considered, and the comparable sale."

PRE/Equitable Estoppel

Lewis R. Hardenbergh, John T. Hardenbergh, Thomas R. Hardenbergh and Dorothy R. Williamson v County of Manistee, unpublished opinion per curiam of the Court of Appeals, issued November 24, 2015 (Docket No. 322605)

Petitioners appealed the Tribunal's Final Opinion and Judgment, which denied their request for a principal residence exemption for a parcel of property that was contiguous to a qualifying principal residence. The disputed parcel contained a cottage occupied by a caretaker, a house occupied by family members between May and November, and several other structures. Petitioners argued that: (1) MCL 211.7cc(16) allows a partial PRE to be applied to the portion of the property that is not occupied, (2) the Tribunal erred in failing to address their claim that Respondent should be estopped from asserting an interpretation different than that of the Township assessor, who advised Petitioners that they could claim an 85% exemption for the unoccupied portion of the land, and (3) the property was "unoccupied" because human inhabitance of the parcel was incidental. The Court of Appeals held that "under MCL 211.7cc(16), the exemption only applies where a portion of a parcel is actually 'used as a princip[al] residence' by 'that owner claiming the PRE. It follows that, with respect to contiguous parcels, the owner must 'use' the contiguous parcel . . . as 'unoccupied property,' pursuant to MCL 211.7dd(c)." "As a result, where contiguous, but separate, parcels are at issue, the apportionment provision under MCL 211.7cc(16) will not apply such that there will be possible 'partial PREs' based on occupied and unoccupied portions of the contiguous parcel." The Court also held that the Tribunal, which has no equitable powers, correctly concluded that it lacked authority to entertain Petitioners' equitable estoppel claim, and it found their attempt to inject an "incidental use" exception into MCL 211.7dd(c) was unsupported and without merit.

Johnson v Twp of Brownstown, unpublished opinion per curiam of the Court of Appeals, issued December 8, 2015 (Docket No. 322709).

Petitioner appealed the Tribunal's Final Opinion and Judgment, which granted the subject property a principal residence exemption, but prorated it to 3% of the value of the structures on the property. Petitioner argued that the Tribunal erred in prorating the exemption because the subject property was zoned residential, the house and other structures on the property in which Petitioner had an apartment were part of the same contiguous parcel, and the house was "unoccupied" within the meaning of MCL 211.7dd(c). The Court of Appeals agreed and held that the Tribunal committed a legal error by limiting the exemption to the apartment itself. "There was no claim or evidence that Petitioner had tenants or occupants on any portion of the property during the tax years at issue. There were no findings regarding how the hobby shop was used aside from the fact that Petitioner lived in the office portion of the structure that he converted into an apartment. The Tribunal's findings satisfy the requirements of MCL 211.7dd(c) for determining that the unoccupied portion of the property is included as part of Petitioner's principal residence." Further, "Petitioner's principal residence is not confined to the apartment in the hobby shop, thereby making the limitation on the exemption contained in MCL 211.7cc(16) cited by respondent inapplicable."

Non-Property – Industrial Processing Exemption

Central Michigan Cementing Services, LLC v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued December 8, 2015 (Docket No. 323405).

The Michigan Department of Treasury appealed the Court of Claims order granting summary disposition to Central Michigan Cementing Services, LLC ("CMCS"). The issue was whether the industrial processing exemption to the Use Tax Act applied to CMCS's cement pumping service. The Court of Appeals held that CMCS, which provided custom acid and cement, as well as pumping services, to oil and gas well companies throughout the state, was both an industrial processor and performed industrial processing services for other industrial processors. As such, its products and the equipment that was used to provide materials and maintenance services for industrial processors were entitled to a use tax exemption. MCL 205.94o(5)(a) did not apply to exclude the cement from exemption because while actually annexed to the real estate, the property owners did not necessarily intend it to be a permanent accession to the realty. Further, its purpose was to assist in the safe production of oil and natural gas, not to improve the land or make it more valuable. Nevertheless, the Court of Claims erred in finding that CMCS was entitled to a full refund, because plugging inactive wells was not an industrial processing activity and "when property is simultaneously used for both exempt and nonexempt activities, defendant must give some recognition to both exempt and nonexempt activity in calculating 'total use' under MCL 205.94o(2)."