



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

December 5, 2016

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 2017 calendar year, the Tribunal designates DHL Express (DHL), Federal Express (FedEx) and United Parcel Service (UPS) as its designated delivery services.

Poverty Exemptions

MCL 211.7u(2)(e) provides that to be eligible for the poverty exemption, a party must meet the federal poverty guidelines updated annually in the federal register by the U.S. Department of Health and Human Services (or alternative guidelines adopted by the local unit so long as those alternative guidelines are not less than the federal guidelines). These federal poverty guidelines are annually issued in January, and reflect price changes relating to the prior year. For example, guidelines issued in January 2017 will reflect Consumer Price Index changes from 2015 to 2016.

In this regard, the STC issues a Bulletin in the 4<sup>th</sup> quarter of each calendar year informing assessors of the federal poverty guidelines for the upcoming calendar year. For example, the STC issued Bulletin 12 of 2016 on October 18, 2016, publishing the federal poverty guidelines for the 2017 calendar year. However, in reviewing those guidelines, the Tribunal has discovered that they are the guidelines issued by the federal government in January 2016, and therefore reflect price changes from 2014 to 2015. The Tribunal concludes that this one-year lag in applying the federal poverty guidelines is not consistent with the plain meaning of the statute. Therefore, effective immediately, the Tribunal will determine whether a party qualifies for the poverty exemption by applying the federal poverty guidelines issued by the federal government in January of the year for which the exemption is claimed. For example, for the 2016 calendar year, STC Bulletin 14 of 2015 indicated that for a one person household, the income guideline was \$11,770 (based on guidelines issued in January 2015). However, the guideline issued in January 2016 established a poverty guideline of \$11,880 for a one person household. The Tribunal believes that the income threshold in this instance should be \$11,880 rather than \$11,770.



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## Court of Appeals Decisions

### Charitable Exemption

*Trinity Health-Warde Lab, LLC v Pittsfield Twp*, \_\_Mich App\_\_; \_\_NW2d\_\_(2016).

Respondent appealed the Tribunal's Final Opinion and Judgment, which granted Petitioner a charitable institution exemption under MCL 211.7o. Respondent argued that Petitioner was not entitled to the exemption because it was a for-profit entity. The Court of Appeals held that the Tribunal adopted a wrong principal when it concluded Petitioner was entitled to an exemption because it was owned by a charitable institution. The Court reasoned that the plain language of the statute requires the property to be owned by the nonprofit organization seeking exemption, and the Tribunal erred as a matter of law when it concluded that case law permitted a for-profit entity to use a nonprofit parent-corporation's tax exempt status.

### Valuation - Miscellaneous

*Froling v City of Bloomfield Hills*, unpublished opinion per curiam of the Court of Appeals, issued November 8, 2016 (Docket No. 327941).

Petitioner appealed the Tribunal's Final Opinion and Judgment, arguing that it erred by (1) allowing a witness called by Respondent to testify, despite not being identified in the prehearing summary, (2) limiting the scope of the continued hearing to cross-examination and rebuttal testimony, (3) accepting Respondent's cost to cure determination, (4) refusing to allow Petitioners to ask Respondent's expert witness whether he disliked Mr. Froling, and (5) denying Petitioners' motions to compel discovery and disqualify the presiding tribunal member. The Court of Appeals found no errors warranting reversal. Respondent had identified its witness on its prehearing statement, as required by the Michigan Administrative Code, and the Tribunal's failure to include him in its prehearing summary did not preclude him from testifying. Petitioners' inability to present direct testimony from their engineers was a result of their own inadequate preparation, thus the Tribunal did not err in limiting the scope of the continued hearing. Respondent's cost to cure determination was viable and supported by competent, material and substantial evidence. More importantly, the Tribunal's task was to determine the value of the property, and Respondent's grading plan served only as a representation of the negative value of the water problems. The issue of whether Respondent's witness liked Mr. Froling was only marginally probative, and in any event, would not have affected the outcome of the case. Petitioners' motion to compel was filed two months after the close of discovery, and there was no explanation as to the timing of the filing. Petitioners themselves had objected to any extensions for further discovery. Finally, the several rulings against Petitioners did not, standing alone, warrant disqualification, and Petitioners' allegations of intentional factual misstatements stemmed from their own misunderstandings. Petitioners were not entitled to have their motion to disqualify heard en banc; such motions are initially decided by the presiding judge, and if challenged, referred to the Chair for a determination.



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### Use Tax

*Brunt Associates, Inc. v Department of Treasury*, , \_\_Mich App\_\_; \_\_NW2d\_\_(2016).

Petitioner appealed the Tribunal's order denying his motion for reconsideration of its Final Opinion and Judgment, which affirmed the Department's use tax assessment. Petitioner argued that the Tribunal erred by (1) concluding that it was a construction contractor engaged in the business of constructing, altering, repairing, or improving the real estate of others and (2) denying its claim to an industrial processing exemption. Petitioner claimed that it was a retailer and industrial processor liable only for sales tax. The Court of Appeals held that the Tribunal's determination was supported by competent, material, and substantial evidence on the whole record. The issue was whether Petitioner affixed its product to the realty of its customers, and the removability of the products, and whether they became fixtures once installed was irrelevant to that determination. Further, Petitioner did not qualify as an industrial processor because it did not manufacture products for ultimate sale at retail, and there was no evidence that it manufactured "products for 'use in the manufacturing of a product to be ultimately sold at retail or affixed to and made a structural part of real estate located in another state.'"

### Sales Tax

*Thumb Motorsports, LLC v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued November 17, 2016 (Docket No. 329121).

Petitioner appealed the Tribunal's Final Opinion and Judgment, which granted summary disposition in favor of the Department. Petitioner argued that the Tribunal erred in concluding that it could not seek reassessment of its sales tax liability for the 2011 and 2012 tax years. The Court of Appeals held that the Tribunal properly dismissed Petitioner's challenge to the final assessments issued by the Department for the period October 2011 through December 2012 because it failed to appeal within the timeframe provided by MCL 205.22, and its attempt to circumvent that requirement under general refund statutes was without merit. Further, the Department was not required to issue the last five assessments to Petitioner's attorney, because it had specifically limited his authorization to the October 2011 through June 2012 assessments. The assessments were not final with respect to Petitioner's tax liability for any other time period, however, including the first nine months of 2011. Petitioner made a proper demand for a refund and credit carryforward for those months, and timely appealed Respondent's denial of that demand to the Tribunal; and, Petitioner's attempt to have its 2010 credit applied to its 2012 tax liability was not a collateral attack on the assessments because it was a valid credit for overpayment and would not change Petitioner's tax liability.



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Poverty Exemption

*Baublis v City of Ann Arbor*, unpublished opinion per curiam of the Court of Appeals, issued November 29, 2016 (Docket No. 328320).

Petitioner appealed the Tribunal's Final Opinion and Judgment, which denied his request for a hardship exemption. Petitioner argued that the City's exemption guidelines violated MCL 211.7u, and that it had no discretion to deny his request because his reported income and asset levels fell below the guidelines. The Court of Appeals held that the Tribunal's findings were supported by substantial, competent, and material evidence. The City's guidelines, which excluded from the definition of poverty, "the inability to afford one's property taxes due to a self-imposed situation," was consistent with the statute and fell within the commonly understood meaning of poverty: "We think it obvious that 'poverty does not mean lacking in any money, nor does it necessarily require a person to prioritize payment of taxes over purchasing very basic necessities for survival. However, the equally obvious corollary is that 'poverty' is a meaningfully involuntary state; an *inability* logically precludes having *chosen* such a state." The Court found that the evidence, which reflected significant discrepancies between Petitioners' reported income and expenditures, suggested that the reported income was not correct and that he was not as impoverished as he claimed.