STATE OF MICHIGAN
RICK SNYDER
GOVERNOR
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING
SHELLY EDGERTON
DIRECTOR

December 7, 2018

Dear Tax Tribunal Practitioner:

The Tribunal is pleased to resume sending out its GovDelivery notices to keep interested persons up to date as to developments at the Michigan Tax Tribunal and in Michigan tax law.

New Telephone Number

The Tribunal will be receiving new phones and a new phone system. Along with the new system, our long-time phone number will be changed. The new number is (517) 335-9760. The conversion is scheduled to take place on January 15, 2019. The old number will forward calls for a limited time thereafter. Our website and correspondence will reflect the new number early in 2019.

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 2019 calendar year, the Tribunal designates DHL Express (DHL), Federal Express (FedEx) and United Parcel Service (UPS) as its designated delivery services.

Tribunal Filings for 2018

For 2018, 1,654 Entire Tribunal Petitions were filed, along with 2,750 small claims petitions. As of last week, the Tribunal closed out 1,956 cases and 2,040 remain pending in ET. The Tribunal closed out 3,350 small claims cases, and 1,468 remain pending.

Jurisdictional limit for Small Claims Non-Property and Special Assessment under MCL 205.762

Year	Starting Value	CPI	SC Jurisdictional Limit
2019	$23,747	1.024	$24,316 or less

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Court of Appeals Decisions

Tomra of North America, Inc v Dep't of Treasury, ___ Mich App ___; ___ NW2d ___ (2018) (Docket Nos. 336871 and 337663)

Plaintiff appealed an order of the Court of Claims granting summary disposition to defendant. Plaintiff sold and leased beverage container recycling machines in addition to repair parts. Defendant denied plaintiff a refund of taxes collected under the General Sales Tax Act ("GSTA"), MCL 205.51 *et seq*., and the Use Tax Act ("UTA"), MCL 205.91 *et seq*., because machines did not qualify for the industrial processing exemption. Plaintiff argued that its machines were used in an industrial processing activity, and that therefore the Court of Claims erred by granting summary disposition to defendant. The Court disagreed with the Court of Claims' interpretation of MCL 205.54t(7)(a) that industrial processing cannot begin unless tangible personal property begins movement from raw materials storage. It explained that under 205.54t(3)(f), industrial processing includes "[d]esign, construction, or maintenance of production or other exempt machinery, equipment, and tooling," which predates property moving from raw materials storage. The Court therefore declined to read into the statute that "no activity qualifies as industrial processing unless it is predated by tangible personal property leaving raw material storage." In addition, the Legislature spelled out in the statute that storage of raw materials is not industrial processing, and therefore explained what activities with respect to storage qualify for the exemption; storage is not industrial processing, but when the material makes the transition from storage, that activity is industrial processing. The provision regarding storage "does not attempt to foreclose the possibility that industrial processing could occur without the initial step of moving raw materials from storage."

Total Armored Car Serv, Inc v Dep't of Treasury, ___ Mich App ___; ___ NW2d ___ (2018) (Docket No 340495)

Petitioner appealed the Tribunal's order granting summary disposition to Respondent. Respondent had conducted an audit and determined that Petitioner underpaid taxes in tax years 2009, 2010, and 2011. Petitioner was part of a Unitary Business Group ("UBG") along with seven other sister corporations. It had deducted costs "related to operating leases, contract labor and purchased transportation," which Respondent determined were improperly included as materials and supplies under the purchases-from-other-firms deduction contained in MCL 208.1113(6)(c). Respondent also determined that Petitioner had claimed an employee compensation credit based on the residencies of employees, and not on miles driven in Michigan under MCL 208.1403(2). On appeal to the Tribunal, the Tribunal declined to apply and treat Petitioner as a single tax entity, and instead treated it as a collective taxpayer. The Court held that the purchases-from-other-firms deduction set forth in MCL 208.1113(6)(c) applies to tangible property, and concluded, therefore, that the Tribunal did not err when it dismissed Petitioner's challenge to the audit. The phrase "compensation in this state" is not ambiguous, contrary to the Tribunal's order, and the Legislature intended that the credit under MCL 208.1403(2) is for work performed in the state of Michigan. The Court concluded that there was no plain error with respect to Petitioner's unpreserved challenge that the services rendered by an employee should be deemed performed at the place of formation of the employee's contract. Petitioner's argument was not based in Michigan law and it failed

to provided calculations to show that it suffered prejudice. According to the Court, the Tribunal considered Petitioner's claim that it should be deconstructed from its UBG pursuant to *LaBelle*, and thus did not deny it leave to amend the petition. The Tribunal also did not err when it declined to consider Petitioner separate from its UBG because the *LaBelle* plaintiff filed an individual tax return and the Department of Treasury determined that it should have filed as part of a UBG. In contrast, Petitioner argued on reconsideration that the Tribunal should have ordered it to file amended returns. Petitioner never requested that relief, and it was not the Tribunal's duty to direct Petitioner "on how to prove its case." Moreover, because Petitioner never filed an individual tax return, Respondent never determined whether it was an individual taxpayer; Petitioner was thus never aggrieved by Respondent on this issue and only aggrieved parties may appeal.

Bldg Corp of the Detroit Electrical Indus Apprentice and Journeyman Training Fund v City of Warren, unpublished per curiam opinion of the Court of Appeals, issued July 24, 2018 (Docket No. 339292)

Petitioner appealed the Tribunal's order granting reconsideration and summary disposition in favor of Respondent. The Apprentice and Journeyman Training Trust of the Electrical Industry ("Journeyman Trust") created Petitioner as a holding corporation to hold the title for the educational facility that the Journeyman Trust occupies as an educational facility. Respondent determined that Petitioner did not qualify for the educational institution exemption under MCL 211.7n. Although the Journeyman Trust was not a party, the Court determined that it was not eligible for the exemption because it was not incorporated under Michigan's laws as required by MCL 211.7n; in fact, it was not incorporated at all. Petitioner also did not qualify for the exemption because it was not an educational institution and does not occupy the property. Petitioner argued that it and the Journeyman Trust should be considered a single entity, and thus that combining the qualifying elements of it and the Journeyman Trust resulted in qualifying for the exemption. The Court rejected this argument, explaining that caselaw did not provide that traits of two entities could be combined to qualify for an exemption. It distinguished cases where an exemption was granted to entities with little practical distinction between them on the basis that, in those cases, one of the entities qualified for the exemption. In addition, although it accepted that tax-exempt status could "pass-through," because neither party could qualify for the exemption, there was nothing to pass from one entity to the other. Petitioner argued that it was entitled to federal tax exemptions, and thus it should be entitled to Michigan exemptions. The Court held that qualification under a federal statute is not a basis for qualification under Michigan statute.

Deward v City of Farmington Hills, unpublished per curiam opinion of the Court of Appeals, issued August 9, 2018 (Docket No. 337608).

Petitioner appealed the Tribunal's order affirming the formation of a Special Assessment District ("SAD"). Respondent approved the special assessment to pave the roadways in Petitioner's subdivision at a cost of $8,370,187.85, with 20% of the cost to be paid by Respondent and the remainder to paid by the subdivision's residents. Petitioner argued that Respondent failed to follow its own Ordinance and explain cost allocations at a public hearing. The Court held that neither the Ordinance nor the law requires such an explanation. The evidentiary burden is on Petitioner, and his argument attempts to shift the burden to Respondent. Petitioner also argued that the total costs of the project were not made public,

and Respondent should have justified the costs. The Court stated that Petitioner had not cited any authority that required Respondent to conduct a cost-benefit analysis. Moreover, Petitioner himself admitted that the information was available and that he obtained it through a Freedom of Information Act request. Petitioner argued that Respondent's charter did not limit its contribution to 20% because Respondent had funding available to it from a special millage for road improvements. The Court rejected this argument on the basis that Petitioner conflated an "assessment" with a "tax." Assessments benefit a specific area, where taxes benefit the community at large. Respondent's charter is consistent with this distinction and states that the community at large will not bear more than 20% of costs of local road construction. The Court also rejected Petitioner's argument that *Ahearn v Bloomfield Charter Twp*, 235 Mich App 486; 597 NW2d 858 (1999) did not apply in this case to determine whether a special assessment confers a benefit on the assessed properties. Petitioner offered no valid reason to disregard *Ahearn*. The Tribunal properly concluded that Petitioner had failed to rebut the presumption of validity because Petitioner only submitted evidence in support of his position on rebuttal. Petitioner argued that Respondent calculated the special assessment using a flawed method. The Court stated that the proper inquiry was on the proportionality of the amount assessed and value to the parcel. Petitioner also argued that the Tribunal was biased against him. Petitioner failed to provide a transcript of the proceedings and thus did not provide a way for the Court to evaluate bias. In addition, Petitioner failed to argue that the judge was biased against him, only that the entire process was biased. Last, Petitioner argued that the Court should direct the Tribunal to establish a complete set of guidelines for special assessments so that petitioners could meet the burden of proof. The Court explained that it is an error-correcting court and therefore it lacked the authority to direct either the Legislature or the Tribunal to establish such guidelines.

Capital One, NA v State Treasurer, unpublished per curiam opinion of the Court of Appeals, issued August 14, 2018 (Docket No. 340635).

Plaintiff appealed the Court of Claims' dismissal of the complaint. Plaintiff purchased a credit card portfolio that included uncollectable accounts. It sought a refund on the sales tax paid on this "bad debt." Defendant authorized only a small refund because the election forms submitted by plaintiff were insufficient, plaintiff had not provided documentation of actual tax paid, and repossessed property was excluded from the definition of bad debt under statute. Plaintiff argued that the election forms it submitted to defendant were valid and supported its request for a refund. The Court reasoned that the Supreme Court had considered the issue in *Ally Fin Inc v State Treasurer*, ___ Mich ___; ___ NW2d ___ (2018) (Docket Nos. 154668, 154669, and 154670) and concluded that, although the debts were deemed uncollectible years prior to the election forms being signed, the debts were still owing and thus maintained under MCL 205.54i(3). Plaintiff argued that the Court of Claims incorrectly determined that defendant correctly required plaintiff to produce documentation showing actual sales tax paid. The Court reasoned that, as stated in *Ally*, MCL 205.54i(4) grants defendant the discretion to determine the evidence required "if supported by a rational basis." Because plaintiff had the documentation requested available to it, the Court concluded that defendant did not act "outside their discretion." Plaintiff also argued that when it sold repossessed property, it could recoup sales tax on the deficiency still owed. The Court explained that the *Ally* Court addressed this issue finding in plaintiff's favor, reasoning that the

Legislature intended the uncollectible amount should be considered bad debt and thus refundable. Although the Court of Claims erred with respect to the repossessed property and election form issues, the Court of Appeals affirmed the decision because plaintiff failed to submit the evidence required by defendant.

Stilson v Clay Twp, unpublished per curiam opinion of the Court of Appeals, issued October 11, 2018 (Docket No. 341679).

Petitioner appealed the Tribunal's order dismissing the case for filing the petition untimely. Petitioner had applied for a Disabled Veteran's Exemption to Respondent's July Board of Review, which took place on July 18, 2017. Prior to the meeting of the Board of Review, Petitioner was sent a letter on July 5, 2017 informing him that his application would be heard on July 18, 2017. The Board of Review denied Petitioner's application on July 18, 2017 and sent Petitioner a letter dated July 18, 2017, along with a notice of denial of Principal Residence Exemption signed July 31, 2017 by the assessor. Petitioner argued that his petition, filed September 5, 2017, was timely filed. The Court disagreed, and reasoned that the Board of Review denied Petitioner's application on July 18, 2017 and had informed him prior to the meeting of the Board that it would be considered on that date. Despite the fact that the assessor sent a notice of Denial of Principal Residence Exemption dated July 31, 2017, it was the Board that denied the Disabled Veteran's Exemption on July 18, 2017. The Court recognized that Petitioner received the notice after July 31, 2017, but even with the delayed notice, Petitioner had until August 22, 2017 to file the petition, "which is sufficient time to complete the short Property Tax Appeal Petition Form required to initiate proceedings in the Tax Tribunal."

Pinnacle Greenbriar, LLC v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued October 16, 2018 (Docket No. 340646).

Petitioners appealed the Tribunal's Final Opinion and Judgment that affirmed Respondent's assessment of unpaid taxes and interest under the State Real Estate Transfer Tax Act ("SRETTA"), MCL 207.521 *et seq*. Petitioners were real estate developers that would buy land, then sell the land to buyers on a land contract. The land contracts were not recorded. Buyers also entered into a contract with a builder affiliated with Petitioners that agreed to construct a home. After construction was complete and the buyer tendered all amounts due, Petitioners conveyed title through a warranty deed. Petitioners paid the real estate transfer tax based on the value of the vacant land conveyed through the land contract. Petitioners argued that the amount of the tax should have been determined based on the value of the land contract. The Court stated that plain language of the SRETTA imposes a tax on the taxable instrument, which is the recorded instrument. The conclusion, explained the Court, is consistent with the Supreme Court's decision in *Lake Forest Partners 2, Inc v Dep't of Treasury*, 480 Mich 1046; 743 NW2d 881 (2008) ("*Lake Forest II*"). Because the only recorded instruments were warranty deeds, Respondent properly applied the tax to the value of the land with the buildings. Petitioners also argued the SRETTA's language requires the tax be imposed based on the value of the property transferred in the land contract because the act's definitions of "value" and "transfer" applied when the land contract transferred an equitable interest. The Court held that the definitions did not support Petitioners' argument because the argument ignores the interplay between sections 3 and 5 and the statute must be viewed as a whole.

Petitioners' position conflicts with the statute and *Lake Forest II*. In addition, the argument ignores the fact that the land contracts were not a taxable instrument because they were not recorded. Further, the SRETTA exempts land contracts where legal title does not pass until the total consideration has been paid. Petitioners last argued that the Tribunal erred when it concluded that the land contracts should be disregarded because construction contracts were entered into at the same time. According to Petitioners, the Court in *Eastbrook Homes, Inc v Dep't of Treasury*, 296 Mich App 336; 820 NW2d 242 (2012) rejected the Tribunal's conclusion. The Court stated that the Tribunal made no such conclusion. In addition, *Eastbrook Homes* did not address the same type of structured real estate transaction. It is therefore distinguishable and irrelevant.

Priority Health v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued October 30, 2018 (Docket Nos. 341120 and 341199).

Petitioners appealed the corrected Final Opinion and Judgment of the Tribunal granting Respondent's motions for reconsideration and summary judgment under MCR 2.116(C)(10). Petitioners provided prescription drug coverage, and contracted with several third parties to administer those programs. One function of the third parties was to examine pharmacy claims and determine if they qualified for a rebate. If they did, the manufacturer would pay the rebate to the third party, and it would pay the rebate to Petitioners. The Health Insurance Claims Assessment Act ("HICAA"), MCL 550.1731 *et seq*., imposes a 1% tax on "paid claims," which are "actual payments, net of recoveries." MCL 550.1732(s). Petitioner filed tax returns that included paid claims to pharmacies, and reduced that gross amount by an estimated amount of pharmacy rebates. Respondent audited Petitioners and determined that the rebates were not recoveries, and assessed additional taxes. In order for a rebate to be used as a "recovery," Respondent argued, Petitioners were required to link each rebate to a specific claim. Both parties moved for summary disposition in the Tribunal, and the Tribunal, in its first Final Opinion and Judgment, agreed with Respondent's assertion that Petitioners were required to link specific rebates to specific claims. The Tribunal denied summary disposition under MCR 2.116(C)(10), citing *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991), because it found that Petitioners had presented sufficient evidence to raise a genuine issue of material fact through the testimony of its vice president. Respondent filed a motion for reconsideration and argued that the Tribunal wrongly relied on *Arbelius*. The Tribunal agreed in the corrected Final Opinion and Judgment, concluding that the first Final Opinion and Judgment erred because it allowed Petitioners to only promise factual support instead of producing documentary evidence to raise a genuine issue of material fact. The Court held that the Tribunal erred by granting Respondent's motion for reconsideration and granting it summary disposition. The first order cited the proper standard for summary disposition under MCR 2.116(C)(10). Although "not overwhelming," Petitioners did present evidence, in the form of testimony, to establish a dispute of material fact that certain rebates could be tied directly to specific pharmacy claims. In addition, the Court stated that the accounting required to determine the specific setoff against paid claims is similar to damages in a civil case, which is generally an issue of fact. This computation is best done by a finder of fact that can analyze and vet "specific calculations."

Petersen Fin LLC v City of Kentwood, ___ Mich App ___; ___ NW2d ___ (2018) (Docket No. 339399)

Plaintiffs appealed the circuit court's order granting summary disposition to defendants on the basis that the Tax Tribunal had exclusive jurisdiction over four of the five counts. In 2004, the owner of a certain

parcel of land entered into special assessment agreements with defendant. The owner defaulted on these obligations and plaintiff purchased part of the parcel at a tax foreclosure sale. Defendant attempted to recoup these payments from plaintiff, and plaintiff brought a five-count complaint in circuit court. Counts I-III concerned a deferred assessment agreement, a voluntary special assessment/development agreement, and a landscape/irrigation agreement, respectively. Count IV alleged that defendants lacked authority to enter into the voluntary special assessment/development agreement. Count V alleged slander of title. The circuit court granted summary disposition to defendant for Counts I-IV because they involved the "nature and imposition" of special assessments and therefore fell into the Tribunal's exclusive jurisdiction. As to Count V, the circuit court granted summary disposition because slander of title is a tort covered by government immunity. The Court of Appeals held that Counts I-III presented issues of statutory construction of the General Property Tax Act and tax foreclosure law, not "the factual underpinnings of the special assessments." Because these counts did not challenge the amount or basis of a special assessment, they did not trigger the Tribunal's original and exclusive jurisdiction. Likewise, Count IV concerned contract law and the General Property Tax Act and did not fall within the Tribunal's jurisdiction because it "did not entail the factual underpinnings of taxes." The Court explained that the circuit court properly dismissed Count V on the basis of government immunity because defendant was engaged in a government function when it attempted to collect special assessments.