STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

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Dear Tax Tribunal Practitioner:

Greetings, I trust that this email finds you enjoying our wonderful Michigan Winter. This issue of GovDelivery includes a synopsis of recent cases which may be of interest, including a reminder that there are no Small Claims hearings held in March. Additionally, while we are working to resolve some outstanding issues that some have experienced with e-filing, included is some information on what to do if you experience difficulties with using the system.

Small Claims Hearings

This is a reminder that no Small Claims hearings will be held during the month of March. Also, for hearings held on April 1, 2020, and thereafter, pursuant to TTR 271(3), tax years subsequent to the tax year initially under appeal are automatically included for small claims appeals and exemption appeals (including those pending in the ET division). Consistent with past practice, beginning with small claims hearings and exemption appeals held on or after April 1, 2020, the Tribunal will automatically include the 2020 tax year. Therefore, if you are participating in a small claims hearing or an exemption hearing to be held on or after April 1, 2020, that was initiated during 2019, you must submit to the opposing party and the Tribunal any valuation evidence (if a valuation appeal) or other evidence relating to both the 2019 and 2020 tax years at least 21 days prior to the date of the hearing.

E-Filing System Support

If you are experiencing issues with the Tribunal's e-filing system, please report your issues by calling our main line at (517) 335-9760 or emailing us at taxtrib@michigan.gov. To better troubleshoot the error, please provide the following information:

1. Date and time of the issue/error
2. An explanation of what you were attempting to e-file (e.g. log on, file petition/answer, file subsequent document, make credit card payment . . .)
3. Identify which internet browser was being used (e.g. Edge, Chrome, Internet Explorer . . .)
4. What type of internet connection was being used (e.g. high-speed internet, DSL, satellite, dial-up, cell phone)

Recent Appellate Opinions

The Michigan Court of Appeals has issued several recent opinions. Following is a synopsis of a number of cases which a tax practitioner may find useful and relevant.

TCF Nat'l Bank v Dep't of Treasury, ___ Mich App ___; ___ NW2d ___ (2019) (Docket Nos. 344892 & 344906).
Petitioners appealed by right the decision of the Court of Claims granting the Department of Treasury summary disposition under MCR 2.116(C)(10) and affirming its franchise tax assessments. Petitioners argue that the Court of Claims' conclusion that franchise tax should be applied at the member level because Unitary Business Groups (UBG) are not entities is in error. Petitioners contend that this creates double taxation within the UBG because elimination entries for inter-company investments are ignored. The Court reversed and remanded the Court of Claims' decision. The Court analyzed this issue of statutory interpretation using plain language definitions, emphasizing that the related statutes must be read together in harmony. Read together, it is clear that the Legislature intended the term "financial institution" to include a UBG when the UBG's franchise tax liability is at issue. To avoid double-counting net capital, the UBG's net capital calculation does not include any investment of a UBG member in another member of the UBG. Had the Legislature intended the provision to apply to each individual member, it could have stated so. The Department misinterpreted the statutory scheme and erred by applying the averaging formula to individual members. Michigan, like other states, has adopted the unitary-business-group concept in an effort to measure more accurately the related group's taxable activities in the state. Therefore, the Court of Claims' declaration that UBGs do not exist and its conclusion that the MCL 208.1265(2) averaging provision must be applied at the member level run contrary to the Legislature's intent that UBGs must be recognized and treated as a single taxpayer, subject to taxation under the MBTA.

Oak Park Crown Pointe, LLC v. City of Oak Park, unpublished per curiam opinion of the Court of Appeals, issued December 12, 2019 (Docket No. 345819).
Petitioner appealed as of right the Tribunal's opinion and order granting Respondent summary disposition. Petitioner contended that the TCV of its commercial property was increased over 150% for the tax year, and that the valuation method used differed from the valuation method used for all other commercial properties within the city. Petitioner states that it never received the 2018 notice of assessment and didn't learn of the increase until it received the summer tax bill after July 1, 2018. Petitioner contends its appeal was timely because it was filed within 35 days of the receipt of the summer tax bill. Petitioner argues that MCL 205.735a is not a jurisdictional statute, and even if it is, due process required Respondent to provide proper notice. Respondent denied allegations regarding the valuation method and asserted that it sent Petitioner notice of the 2018 assessment on February 18, 2018. As such, Respondent contended Petitioner's appeal is untimely. Respondent filed a motion for summary disposition based on MCR 2.116(C)(4) and 2.116(C)(10). Respondent contends Petitioner failed to submit documentation to MTT showing it did not receive notice of the 2018 assessment, Respondent has proof the notice was mailed by a bulk-mail service, and the Tribunal's jurisdiction was not properly invoked. The Tribunal treated Respondent's MCR 2.116(C)(4) motion as one brought under MCR 2.116(C)(7), stating a statute of limitations defense, and granted the motion. The Court agreed with Petitioner's

contention that a genuine issue of material fact exists whether Respondent provided notice by mailing the assessment to Petitioner or failed to fulfill its statutory obligation depriving Petitioner its constitutional right to due process. Viewing the evidence in the light most favorable to Petitioner, competent, material, and substantial evidence on the whole record did not support the Tribunal's finding that Respondent gave Petitioner notice as required under MCL 211.24c(1). Because a genuine issue of fact existed, the Tribunal erred by granting respondent summary disposition.

Greenfield – 8 Mile Plaza v. City of Southfield, unpublished per curiam opinion of the Court of Appeals, issued December 12, 2019 (Docket No. 346183).
Petitioner appealed as of right the Tribunal's determination that Petitioner's real property was underassessed, but the underassessment did not affect the property's taxable value. Petitioner presented numerous positions challenging the Tribunal's conclusion of the true cash value (TCV) of Petitioner's property. Petitioner contended that the highest and best use of the property is as an industrial warehouse and prepared a sales comparison valuation approach using industrial properties and shopping centers as comparables. Petitioner also contended that the value of the property was greatly reduced by the presence of a deed restriction. Other issues raised by Petitioner included: the Tribunal failed to address deferred maintenance, erroneously qualified Respondent's expert, made various errors of law and there were various deficiencies in Respondent's valuation disclosure. Respondent contended that the highest and best use of the property is for a retail-oriented business. Respondent stated that Petitioner's use of the property is actually retail, and the fact that Petitioner does not sell to the general public did not change the fact it was conducting a retail operation; current zoning does not permit an industrial warehouse, but the current use is permitted. Respondent further contended that the effect of the deed restriction is minimal, and the appropriate comparables are former big-box retail stores. The Tribunal disagreed with industrial use and gave no weight to Petitioner's comparables. The Tribunal rejected Petitioner's income capitalization valuation approach because the property was owned, not leased. The deed restriction did not have a significant impact. The Court affirmed. Citing *Menard v Escanaba*, the Court stated that the Tribunal is under a duty to apply its expertise to reach an independent conclusion of value. The property must be assessed at its highest and best use, which the Court agreed was for retail use. The Court rejected the remainder of Petitioner's arguments.

Kojaian Mgt Corp and Affiliates v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued December 17, 2019 (Docket No. 344697).
Petitioner appealed the Court of Claims' opinion and order denying it summary disposition and granting summary disposition to Respondent under MCR 2.116(C)(10). Petitioner argued that it was entitled to investment tax credits (ITC). MCL 208.1403(3)(a) allows a taxpayer to claim an ITC for cost of assets when: (1) the cost was either paid or accrued during the tax year; (2) the assets are or will be eligible under the Internal Revenue Code for depreciation for federal tax purposes; (3) the assets are located in Michigan; and (4) the assets are for use in a business activity in

Michigan. The Court of Claims interpreted these requirements to require a purchase or acquisition in the tax year the ITC is claimed. Petitioner did not acquire the assets at issue because it was a partnership and merely took a step-up in basis for already-existing assets, based on IRC 754. The Court of Claims described this as "merely an accounting adjustment," which did not qualify as a purchase or acquisition, thus denying Petitioner's claim for the ITC. The Court reversed and remanded the Court of Claims' decision. The Court analyzed the applicable federal tax law, finding that IRC 754 requires adjustment to basis, up or down, depending on the difference between the transferring partner's basis in the partnership property and the transferee's basis in the partnership interest. An increased basis in an asset technically reflects the increased cost required to obtain the asset. The costs were considered "paid or accrued" because Petitioner took possession or control of the assets in the relevant tax year.

Apex Laboratories Int'l Inc v City of Detroit (On Remand), ___ Mich App ___; ___ NW2d ___ (2020) (Docket No. 338218).
The Court in a previous opinion, affirmed the Tribunal's order granting Petitioner's motion for summary disposition and denying Respondent's) motion for summary disposition. The Michigan Supreme Court vacated the previous opinion and remanded the case back to the Court for "reconsideration in light of *S Dakota v Wayfair Inc*, ___ US ___; 138 S Ct 2080, 2099; 201 L Ed 2d 403 (2018)." This case involves the ability of a taxing entity to impose an income tax on a non-resident corporation. Prior to the Wayfair decision, physical presence in the taxing entity was required by *Quill Corp v. North Dakota ex rel Heitkamp*, 504 US 298; 112 S Ct 1904; 119 L Ed 2d 91 (1992). A taxing jurisdiction's ability to impose a tax implicates the Due Process Clause and the Commerce Clause of the U.S. Constitution. Under the Commerce Clause analysis, physical presence is required under *Quill*; this is no longer the case under *Wayfair*. Because they address different concerns, the analysis required under each is a separate matter. The Tribunal repeatedly stated in its decision that its holding is based on Petitioner's lack of physical presence in Detroit. The Court remanded the case to the Tribunal for further proceedings consistent with *Wayfair*, and to address alternative arguments raised by Petitioner that were not reached in the previous proceedings. In choosing to remand, the Court stated that it is not compelled by *Wayfair* or the Michigan Supreme Court's order to reverse the MTT so as to hold that Petitioner does owe the challenged taxes, nor did the Court believe it would be appropriate for them to do so.

Campbell v Dep't of Treasury, ___ Mich App ___; ___ NW2d ___ (2020) (Docket No. 350248).
Respondent appealed from the Tribunal's order granting Petitioner a Principal Residence Exemption (PRE) for the 2017 tax year. Petitioner, a lifelong Michigan resident, purchased property in Arizona in 2017 (the Court of Appeals erroneously stated that Petitioner purchased the property in 2016). At the time of purchase, Arizona automatically gave Petitioner a credit on his property tax bill without his knowledge. Respondent thereafter denied Petitioner a PRE for 2017 because he had a similar exemption in Arizona. The Tribunal concluded that Petitioner did not qualify for a PRE in 2017, but that his previous PRE remained in effect through December 31,

2017. Respondent argued that the PRE ceased at the time Petitioner received the similar exemption for Arizona, and did not continue until December 31, 2017. The Court explained that the denial was proper because, although Petitioner did not request the Arizona exemption, a claim occurs at the time of granting a similar exemption. The language “until December 31 of the year in which” in MCL 211.7cc(4) does not only apply to when the property is transferred, it also applies to the remaining situations when a PRE ceases. Basic rules of statutory interpretation state that this section should be read in a way that harmonizes with the rest of the statute. Subsection 4 creates a uniform point at which an exemption is no longer applicable. Respondent interpretation would destroy that uniformity by forcing taxing authorities to track varying dates upon which exemptions ceased. Also, if Respondent’s interpretation were correct, the statute would lack direction in terms of if, and how, taxes are to be prorated. The last antecedent rule also supports this construction, because the dominant purpose of the statute supports a uniform rule for termination. The Court explained that it did not need to decide whether to give the Tribunal’s interpretation deference because such deference would not assist Respondent’s position.

That is all for this edition, best wishes.

Steven M. Bieda
Chairman, Michigan Tax Tribunal