STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

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February 5, 2018

Dear Tax Tribunal Practitioner:

Parties' Failure to Appear

In the last GovDelivery message, the Tribunal announced that a case will no longer be dismissed where Petitioner fails to appear; instead, Petitioner will be given an opportunity to provide an explanation for the failure to appear (to be provided within 14 days of the Tribunal Order) which the Tribunal will then consider before either allowing the case to proceed or dismissing the case. In implementing this approach where Petitioner fails to appear, the Tribunal recognized that it must also revise its procedure where Respondent fails to appear for a scheduled hearing or prehearing. In this regard, the Tribunal has conducted independent research and has concluded that even though there is no direct caselaw regarding default hearings, the Tribunal must consider the factors detailed in *Grimm* before *both* dismissing a case and scheduling a hearing as a default hearing. In light of this, the Tribunal will begin placing both petitioners and respondents in default for failing to appear at a hearing. Like the order requiring information, the order of default shall require the party to explain their absence from the hearing or prehearing conference. If the party cannot show good cause as to why an appearance at the hearing was not made, the case will be dismissed (in instances where a petitioner failed to appear) or a default hearing will be scheduled (in instances where a respondent failed to appear).

Separately, the Tribunal shall also analyze the factors detailed in *Grimm* prior to scheduling a default hearing when a respondent fails to cure a default due to its failure to file an answer to the petition or for deficiencies contained in the answer.

Stipulation Notifications

On April 24, 2014, the Tribunal issued a GovDelivery message indicating e-mail notification of settlements was acceptable. The May 1, 2014 GovDelivery reiterated this and indicated that "if the property does not have a PRE of 50% or more, a motion fee is required ($25 – Small Claims, $50 – Entire Tribunal) and we will require a copy of the check faxed or e-mailed to us with the signed stipulation by 4:30 p.m. on the day prior to a hearing. Otherwise, the hearing will proceed as scheduled." The Tribunal has revised our policy regarding Stipulation Notifications as follows:

As of March 1, 2018, the Tribunal is no longer accepting filings or notifications by facsimile. All previously-faxed documents must now be sent to the Tribunal's email at taxtrib@michigan.gov or by mail. Note that if you attempt to email a document that must be formally filed, the Tribunal will respond to your e-mail indicating it will not be accepted.

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Further, the parties are no longer required to provide a copy of the check if a filing fee is due. Rather, the email notification can merely indicate the formal stipulation and filing fee, if required, is forthcoming. At this point, the Tribunal will adjourn a scheduled hearing and the hearing will not proceed. If the formal stipulation and filing fee is not received within 14 days of the settlement notification, the case will resume and a hearing will be rescheduled, if necessary.

Small Claims Hearings

This is a reminder that no Small Claims hearings will be held during the period February 26, 2018 through March 31, 2018. However, you are further reminded that with hearings held on April 1, 2018 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, 2018, the Tribunal will automatically include the 2018 tax year. Therefore, if you are participating in a small claims hearing or an exemption hearing to be held on or after April 1, 2018, that was initiated during 2017, you must submit to the opposing party and the Tribunal any valuation evidence (if a valuation appeal) or other evidence relating to both the 2017 and 2018 tax years at least 21 days prior to the date of the hearing.

Assessor Two-Year Sales Studies

Given the change in the dates for assessor two-year sales studies to April 1, 2015 through March 31, 2017, and the retention of single year study dates of October 1, 2016 through September 30, 2017, the Tribunal wants to emphasize advice given by the State Tax Commission (Bulletin No. 24 of 2017) that "the above sale study dates **are not** the same as the valuation date used in appeals before the Michigan Tax Tribunal. Evidence presented in a Tax Tribunal appeal should reflect the value of the property as of tax day (December 31). This means that sales occurring *after* March 31, 2017 and September 30, 2017 should still be considered and included when submitting evidence in a Tax Tribunal appeal involving the 2018 tax year."

Court of Appeals Decisions

City Income Tax

Honigman Miller Schwartz and Cohn LLP v City of Detroit, __Mich App__; __NW2d__ (2018)

Petitioner appealed the Tribunal's determination that services performed by an attorney on behalf of a client located outside of the city while that attorney is physically located in the city is to be considered in-city income under the City Income Tax Act ("CITA"). Petitioner argued that the relevant consideration is where the client receives the services, not where the work is performed. The Court of Appeals agreed, reasoning that the Legislature used two different terms in drafting the payroll ("services performed") and sales ("services rendered") apportionment

factors, thus they must be given two different meanings. It found the Tribunal's definition of "render" ("to do for another; perform") strained, and accepted Petitioner's definition of the term ("to transmit to another: deliver") from the 1969 edition of Webster's Dictionary. The Court noted that while different from tangible items, services can be delivered, and also result in a tangible item such as a will, complaint, contract, brief, etc. "Thus, for purposes of [MCL 141.623], where a service is provided to a client outside the city of Detroit it is to be considered an out-of-city service while services provided to a client in the city is to be considered an in-city service."

Valuation

Petoskey Duplicate Bridge v Resort Twp, unpublished per curiam opinion of the Court of Appeals, issued January 23, 2018 (Docket No. 335326).

Petitioner appealed the Tribunal's determination that the cost-less-depreciation approach was the most reliable indicator of the subject property's true cash value. Petitioner argued that the Tribunal erred in rejecting the detailed valuation prepared by its expert and in relying on *Clark Equip Co v Twp of Leoni* and *Menard Inc v City of* Escanaba. Petitioner argued that *Clark* was effectively overturned and *Menard* wrongly decided, and both were factually distinguishable. The Court of Appeals held that the Tribunal did not err in rejecting Petitioner's appraisal because it failed to establish that it's proposed highest and best use was financially feasible or maximally productive, or support its contention that the only potential purchaser of the property was a buyer who would convert the 3,688 SF bridge hall to a residence. The Court noted that the proposed use would require an extensive alteration of the entire property at a cost of $150,000 to $200,000, and that a small market does not mean that a property is not being put to its highest and best use. Rather, as held in *Clark and Menard*, "a small market provides a basis to employ a cost-less-depreciation approach for purposes of valuation as opposed to a sales comparison approach." The Court rejected Petitioner's argument that these cases were bad law because *Menard* is binding precedent, and that panel favorably cited *Clark*. The *Detroit Lions* panel also observed that "the cost-less-depreciation method is particularly appropriate for valuing special purpose properties with a limited or inadequate market." Petitioner failed to cite any binding authority that it was improper for Tribunal to consider the record card as evidence of TCV, and the submitted card contained value calculations. As such, the Tribunal's findings were supported by competent, material, and substantial evidence.

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