STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

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

MICHAEL ZIMMER
DIRECTOR

March 3, 2015

Dear Tax Tribunal Practitioner:

Electronic Service

As you may know, the Tribunal is utilizing dual case management systems for our cases; our Oracle system manages all cases filed before February 3, 2014, and our Caseload system manages all cases filed on or after February 3, 2014. For cases filed and docketed in our Caseload system, the Tribunal has electronically served documents on parties or their attorneys or authorized representatives who have disclosed their e-mail addresses or have electronically filed documents. However, we have not used electronic service for cases pending in our Oracle system. The Tribunal has decided that, beginning March 2, 2015, we will electronically serve all documents (including, but not limited to, notices, orders, and opinions) on parties or their attorneys or authorized representatives in those cases filed before February 3, 2014, (i.e., pending in our Oracle system) if we have the party, attorney, or authorized representative's e-mail in our Caseload system.

As a related matter, please be aware that Petitioners can electronically file Motions to Amend to include the 2015 tax year in ET cases filed in 2014. However, please remember that the correct filing fee must accompany the Motion to Amend, and the Motion to Amend must include sufficient information such that the Tribunal can determine the correct fee due.

Finally, it has also been brought to our attention that certain Respondents are electronically filing their answers with the Tribunal, but not serving those answers on Petitioners, as required by TTR 221, 227, and 279. Copies of answers, motions, and documentation filed with the Tribunal must be served concurrently on the opposing party or parties. The copies may be mailed or, if the opposing party or parties agree, emailed to that party or parties.

Adding Subsequent Tax Year in Small Claims Appeals

Although we mentioned this in our February GovDelivery, the Tribunal reminds you that 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. Consistent with past practice, beginning with small claims hearings and exemption appeals held on or after April 1, 2015, the Tribunal will automatically include the 2015 tax year. Therefore, if you are participating in a small claims hearing or an exemption hearing to be held on or after April 1, 2015, that was initiated during 2014, you must submit to the opposing party and the Tribunal any valuation evidence (if a valuation appeal) or other evidence relating to the 2015 tax year at least 21 days prior to the date of the hearing.

Request for Comments

Although minor changes to the Tribunal rules were implemented in January 2015, the last substantive changes to Tribunal rules became effective in March 2013. For a variety of reasons, the Tribunal believes it prudent to once again review its rules to insure consistency with existing statute and Michigan Court Rules. For example, although MCL 205.747, which provides for mediation at the Tribunal and requires the Tribunal to, among other things, promulgate rules that establish requirements for one to be certified as a mediator, maintain a list of certified mediators, and create certain forms to be used in the mediation process, became effective on May 9, 2008, the Tribunal has failed to take these steps required by the statute. Therefore, the Tribunal is soliciting comments with respect to (1) any changes to Tribunal rules that you believe are warranted, and (2) implementing the mediation process at the Tribunal as contemplated by MCL 205.747. The Tribunal requests that all comments on its rules be submitted to the Tribunal on or before May 1, 2015.

Electronic Filing of Motions to Withhold Valuation Disclosure

As an increased number of valuation disclosures are being filed in 2014 cases, the Tribunal wanted to remind you of the proper procedures for electronically filing Motions to Withhold and Motions for Protective Order.

Motions to Withhold:

If you intend to electronically file your valuation disclosure, with a Motion to Withhold, you must adhere to the following guidelines:

- Electronically file the Motion to Withhold via the Tribunal's e-filing system. [Do NOT submit the valuation disclosure via electronic filing - it will be publicized to the Tribunal's docket lookup.]

- Submit your valuation disclosure by e-mailing it to taxtrib@michigan.gov. Please reference the docket number and the term "valuation disclosure" in the subject line of the e-mail.

Motions for Protective Order:

If you intend to electronically file a Motion for Protective Order, you must adhere to the following guidelines:

- Electronically file the Motion for Protective Order via the Tribunal's e-filing system.

- Do NOT submit the purportedly confidential documentation via electronic filing or by e-mail.

Court of Appeals Decisions

Hartland Glen Development, LLC v Hartland Twp, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2015 (Docket No. 318843).

Hartland Glen Development, LLC ("Petitioner") appealed from the Tribunal's final opinion and judgment in favor of Hartland Township ("Respondent"), "regarding property tax assessments levied by [R]espondent . . . on [P]etitioner's golf course for tax years 2011 and 2012." Petitioner's arguments for the values of the subject property were based on the fact that "the amounts due for outstanding special assessments should be deducted from value in the process of calculating the TCV." However, the Tribunal determined that "special assessments encumbering the property and payable in installments . . . [do] not result in a decrease in the property's true cash value (TCV)." The Tribunal reasoned that "[t]he deduction of the unpaid Special Assessment is akin to deducting an outstanding mortgage balance. It may be a function of a lending institution to follow federal regulatory agencies to provide for lending capital and determine a party's equity position, but it is not appropriate for determining true cash value under MCL 211.27." The Tribunal further indicated that "[v]aluing the subject property's equity interest is not [a] fee simple interest."

The Court of Appeals ("the Court") reversed the Tribunal's decision and remanded the case back to the Tribunal for further proceedings. The Court stated that "the determination of TCV needed to entail contemplation of a hypothetical sale of the golf course and the likely selling price of TCV on the tax assessment dates of December 31, 2010 and 2011." The Court referenced the parties' use of the comparison of a special assessment to a mortgage, for the purposes of determining the encumbrance on the subject property's values. The Court stated that "[a]n analogy can be made between a special assessment and a mortgage transaction that specifically funds a home improvement project; both result in a lien against the property, both will likely benefit the property, and both can potentially be paid off by way of future installment payments." However, the Court noted that "many mortgages are just the result of obtaining a loan to acquire property in the first place, absent any connection to an improvement, while special assessments must be tied to an improvement and be reasonably proportionate to the benefit accruing to the assessed property." Therefore, the Court held that "there was no evidence supporting the [Tribunal's] ruling.

Bay View Ass'n v Bear Creek Twp, unpublished opinion per curiam of the Court of Appeals, issued February 5, 2014 (Docket No. 317714).

Bay View Association ("Petitioner") appealed from the Tribunal's "orders granting [Bear Creek Township] [R]espondent's motion for summary disposition with respect to petitioner's exemption claims under MCR 2.116(C)(10) and granting summary disposition to respondent with respect to petitioner's taxable value methodology claim under MCR 2.116(I)(2)." Petitioner argues that "its taxable value should be determined by adding up the taxable value of all its sub-parts, part of which is the taxable value on each of the individual cottages that respondent tracks merely for uncapping purposes." Petitioner contends that "[R]espondent's failure to do so has resulted in petitioner having a larger taxable value on its single tax parcel than what the sum of the individual parts would have if assessed separately." Petitioner further argues that it is entitled

to a charitable exemption. The Tribunal granted Respondent's Motions based on the following facts: "Petitioner is an association affiliated with the United Methodist Church and organized under the Summer Respondent and Assembly Associations Act (SRAAA), MCL 455.51 . . . . Its property consists of 337 acres of land on which sits 444 summer cottages . . . . All of the cottages are privately owned by petitioner's lease-holding members. However, petitioner itself owns all the land on which the cottages are situated and merely leases the land to the respective cottage owner." The Tribunal indicated that "Petitioner engages in a large number of charitable and benevolent acts." The Tribunal further indicated that "Petitioner has elected to be taxed by respondent as a single tax parcel. Petitioner then apportions the resulting tax bill amongst itself and the various cottage owners as it is allowed to do under section 17 of the Summer Resort Act . . . . Respondent determined petitioner's tax bill by determining the taxable value of all its property." But, "[b]ecause several cottages change hands each tax year, respondent also separately keeps track of the assessed value and taxable value of the individual cottages. Respondent does this because once a cottage is sold or transferred its taxable value must be re-set so that it is equal with its assessed value."

The Court of Appeals ("the Court") affirmed the Tribunal's decision. The Court looked to the Summer Resort Act for guidance. More specifically, it allows "petitioner to have all property held by its lessees taxed to it as a single tax parcel the same as if petitioner itself owned the land." The Court indicated that "[t]here is no dispute that petitioner has made this election." The Court stated that "[b]ecause petitioner elected to have the property owned by its lessees assessed to it the same as if it were in fact the owner, respondent does not use the separately tracked assessed value and taxable value of each individual cottage for anything other than uncapping purposes." The Court further looked to *Colonial Square Coop*, stating that "because large portions of petitioner's single tax parcel have never been uncapped or at least, have not uncapped recently . . . . the taxable value on petitioner's single tax parcel remains far below its assessed value . . . ." As to Petitioner's claim of charitable exemption, the Court stated that "[w]hile the numerous charitable and benevolent activities petitioner engages in are certainly admirable, it appears petitioner's primary purpose is to provide an exclusive summer vacation community to those who meet its restrictive membership requirements and have the financial means to purchase a summer cottage." Therefore, the Court held that "the tax tribunal did not err in granting summary disposition to respondent . . . ."

Nass v Saugatuck Twp, unpublished opinion per curiam of Court of Appeals, issued February 24, 2015 (Docket No. 318437).

Jennie Nass ("Petitioner") appealed from the Tribunal's Final Opinion and Judgment that "affirmed respondent-township's denial of a principal residence exemption (PRE) on the subject property during the tax years 2009, 2010, 2011, and 2012." "Petitioner stated that she lives at the Fennville property and visits her husband at their Illinois home on some weekends." Petitioner submitted multiple forms of evidence to establish the "Fennville property is [P]etitioner's true, fixed, and permanent home." The evidence included at least two years of utility bills demonstrating consistent usage, Michigan income tax returns for the years at issue, a Michigan driver's license with the Fennville address and a vehicle titled and registered in Michigan with the Fennville address. In addition "Petitioner's business is incorporated in Michigan, and all relevant business documentation lists petitioner's Fennville address" and

"Petitioner is registered to vote in Michigan." Respondent offered two forms of evidence consisting of "its answer and the property record card for the Fennville property." The Tribunal denied Petitioner's request for a PRE.

The Court of Appeals ("the Court") reversed the Tribunal's decision "[b]ecause the MTT's decision was not supported by competent, material, and substantial evidence[.]" The Court discredited Respondent's evidence stating "the property record card does nothing to suggest that the Fennville property is not [P]etitioner's principal residence" and "Respondent's answer is equally unpersuasive. It simply states that the reason for denial of a PRE was that [P]etitioner owns property in Illinois and that a PRE, or its Illinois equivalent, was being received on both the Illinois and Fennville properties." The Court acknowledged that "owning property in another state does nothing to deprive an individual of a Michigan PRE." The Court further stated "[P]etitioner definitely established that she and her husband filed separate income tax returns during the tax years at issue and this Court has ruled, consistent with applicable statutes, that a married party who files a separate income tax return may obtain a PRE on his or her principal residence even if his or her spouse obtains a similar exemption in another state on another property." Therefore, the Court held that the Tribunal's decision "constituted an 'error of law'" and thus "[t]he decision of the MTT is reversed and we remand for entry of an order granting petitioner's PRE.