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

MICHAEL ZIMMER
DIRECTOR

March 9, 2016

Dear Tax Tribunal Practitioner:

New Tribunal Member Appointed

On February 26, 2016, Governor Snyder announced the appointment of Marcus L. Abood to fill a vacant At-Large Member position at the Tribunal. As most of you know, Judge Abood previously served five years as the appraiser member of the Tribunal. As a licensed appraiser in the State of Michigan, Judge Abood brings a wealth of knowledge and experience to the Tribunal in the valuation of residential and commercial property. Judge Abood's term will expire on June 30, 2019.

Adding 2016 Tax Year to Pending Small Claims Appeals

Following up on last month's GovDelivery, the Tribunal again reminds all parties to a Small Claims appeal that tax years subsequent to the tax year initially under appeal are automatically included (except for PRE, Poverty and Veteran's exemption appeals). Consistent with past practice, beginning with small claims hearings held on or after April 1, 2016, the Tribunal will automatically include the 2016 tax year. Therefore, if you are participating in a small claims hearing to be held on or after April 1, 2016, for an appeal filed during 2015, you must submit to the opposing party and the Tribunal any valuation evidence or other evidence relating to the 2016 tax year at least 21 days prior to the date of the hearing.

Court of Appeals Decisions

Tribunal Jurisdiction

IGIT Industries, Inc. v City of Warren, unpublished opinion per curiam of the Court of Appeals, issued February 25, 2016 (Docket No. 324752).

The City of Warren appealed the Tribunal's Final Opinion and Judgment, which concluded that the STC erred in dismissing petitioner's 154 petition ("Notice by Owner of Property Incorrectly Reported or Omitted from Assessment Roll") for lack of jurisdiction and made a de novo determination as to the items of property taxable to petitioner and the true cash, state equalized, and taxable values of that personal property. The Court of Appeals held that the Tribunal had authority to review the STC's determination, but erred in determining that it had jurisdiction over the subject petition. The Court noted that petitioner did not assert in the petition that it had incorrectly reported property or that the assessor had fraudulently assessed or omitted property; the only stated basis for its challenge was lack of notice of the assessments for the tax years at



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issue. “Hence, the notice on its face did not raise proper subject matter jurisdiction.” Because it was unclear as to what, if any, attachment was provided by the City’s assessor, who signed the petition to express disagreement with petitioner’s request, and a document filed by Petitioner could be read as raising an allegation that property was improperly assessed, the Court remanded the case to the STC for it to determine whether it has jurisdiction under MCL 211.150(3).

Clinton Township Volunteers of America Elderly Housing, Inc v Clinton Twp, unpublished opinion per curiam of the Court of Appeals, issued March 1, 2016 (Docket No. 324927).

Petitioner appealed the Tribunal’s Final Opinion and Judgment, which determined that it did not have authority to consider Petitioner’s claim for exemption under MCL 211.7d. The Court of Appeals held that the Tribunal correctly determined that the housing exemption for elderly or disabled families does not apply until a taxpayer claims the exemption and the local assessor and Michigan Department of Treasury approve the claim, but erred to the extent that it determined that petitioner could not challenge the Township’s failure to act on its application. “A local assessor’s failure to approve or deny an application for an exemption under MCL 211.7d in the same year that it is made constitutes a de facto denial of the exemption for the following tax year, which decision the Tribunal may review as a final decision.” Consequently, “Clinton Township’s failure to take any action on the application in 2012 amounted to a final decision denying the application with regard to tax year 2013, which the Tribunal had jurisdiction to review. The Tribunal also had jurisdiction to consider respondent’s failure to take any action in 2013, which in turn amounted to a denial of the exemption for 2014.”

Michigan Business Tax

Four G. Construction, Inc. d/b/a Geeding Construction, Inc. v Dep’t of Treasury, unpublished opinion per curiam of the Court of Appeals, issued February 23, 2016 (Docket No. 324065).

Treasury appealed the Tribunal’s order granting summary disposition to petitioner with respect to penalty assessed under the Michigan Business Tax Act. The Tribunal determined that petitioner was entitled to a waiver of the penalty under MCL 205.24(4), which mandates waiver if it is shown that failure to timely file a return or remit payment resulted from reasonable cause as opposed to willful neglect. Noting that Treasury’s evidence established only that petitioner’s second quarter payment was late, and failed to address the issue of reasonable cause, the Court of Appeals held that the Tribunal’s grant of summary disposition was appropriate: “[R]egardless of whether petitioner was correct in its assessment and interpretation of the MBT’s requirements, the unrefuted evidence in this case demonstrated an attempt and desire to make quarterly payments in the MBT, and not a willful neglect to pay taxes that were due.” Further, the Tribunal did not engage in impermissible fact-finding: “Indeed, the only evidence before the MTT with regard to reasonable cause was that which was presented by petitioner. Despite the fact that petitioner asserted essentially the same defense of reasonable cause from the outset of



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its challenge to the penalty imposed, and despite the fact that the parties conducted discovery, respondent was unable to present any evidence to contradict petitioner's evidence or create a genuine issue of material fact." The court also rejected Treasury's assertion that its failure to show a genuine issue of material fact was caused by an inability to respond to petitioner's response to its motion for summary disposition, because as the moving party, the Department bore the burden of identifying the matters on which there was no factual dispute and supporting its position with documentary evidence.

Michigan Single Business Tax

AK Steel Holding Corp v Dep't of Treasury, Mich App ; NW2d (2016).

Plaintiffs appealed the Court of Claims' determination that the mandatory apportionment provision of the former Single Business Tax Act impliedly repealed the apportionment election provision of the Multistate Tax Compact. The Court of Appeals, noting that "implied repeals are disfavored," and relying on the reasoning set forth by the Supreme Court's lead opinion in *Int'l Business Machines Corp v Dep't of Treasury*, held that there was no implied repeal of the Compact: "[T]he Legislature provided [taxpayers] with a choice . . . between the apportionment method contained in the Compact or the apportionment method required by the SBTA. If a taxpayer elects to apportion its income as provided by the Compact, Article IV(9) requires that the taxpayer do so using a three-factor apportionment formula. Alternatively, if the taxpayer does not elect the apportionment method under the Compact, then the taxpayer is required to use the apportionment formula set forth in the applicable tax laws." The Court acknowledged 2014 PA 282, which retroactively repealed the Compact effective January 1, 2008, but noted that the act indicated only that the Legislature had intended to impliedly repeal the Compact when it enacted the Michigan Business Tax Act—it did not address the validity of the Compact for the years in which the SBTA governed the taxation of business activity in Michigan. "Accordingly, especially in light of the Legislature's clear expressions of intent regarding the express and implied repeal of the Compact in conjunction with the enactment of the MBTA, and the lack of any indication that §41 of the SBTA was intended to repeal the apportionment election provision in the Compact, we assume that the Legislature intended for the Compact election provisions to remain in effect alongside the SBTA." On Treasury's cross-appeals, the Court held that the Court of Claims properly concluded that the SBT is an income tax within the meaning of the Compact, and that 2014 PA 282 did not bar plaintiffs from asserting their refund claims, as the language "stating that the Compact was repealed 'effective beginning January 1, 2008,' is properly understood as indicating that the express repeal of the Compact applies to tax years beginning on January 1, 2008."