



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

April 9, 2018

Dear Tax Tribunal Practitioner:

Filing Dates for Petitions

The Tribunal would like to remind property owners and/or their representatives that Thursday, May 31, 2018, is the statutory deadline for filing 2018 petitions involving commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property valuation appeals.

Tuesday, July 31, 2018, is the statutory deadline for filing 2018 petitions with the Tribunal for property classified as agricultural real property, residential real property, timber-cutover real property, or agricultural personal property.

Member Valerie Lafferty

Valerie Lafferty, the Appraiser Member of the Tribunal, has announced that she will be retiring from the Tribunal effective April 30th. During her approximately three years as a Tribunal Member, Val has positively contributed to the Tribunal and we wish her well in future endeavors.

Court of Appeals Decisions

Poverty Exemption

Smith v Forester Twp, __Mich App__; __NW2d__ (2018).

Petitioner appealed the Tribunal's determination that he was not entitled to a poverty exemption for the 2015 tax year. Petitioner argued that the Tribunal erred by treating reverse mortgage payments as income rather than assets. The Court of Appeals held that Petitioner's argument presented a moot question because his reverse mortgage was in excess of \$12,000, so even accepting the argument, his assets would be well in excess of the \$4,500 limit. Petitioner failed to develop his argument that a reverse mortgage should be considered a protected asset, but the Court noted that not including a reverse mortgage as either an asset or income for purposes of the poverty exemption would undermine the intent of the exemption.

Valuation

Smith v City of Hamtramck, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2018 (Docket No. 335547).



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Petitioner appealed the Tribunal's Final Opinion and Judgment, which affirmed Respondent's assessment for the 2015 and 2016 tax years. Petitioner argued that the Tribunal erred in finding that her home was constructed over a two-year period, which resulted in an erroneous doubling of the true cash value for the 2015 tax year. Petitioner argued that the property record cards showed that only the bathrooms and a chain link fence were omitted from the assessment, and that these two items alone could not be the basis of the doubling in the assessment. The Court of Appeals held that the Tribunal's findings were supported by competent, material, and substantial evidence on the record. It noted that the Tribunal did not find that the home was constructed over a two-year period, but that it was assessed in 2014 as if it were not completed until 2014, and the additions were documented in a property record card dated April 6, 2016.

Landon v City of Flint, unpublished per curiam opinion of the Court of Appeals, issued March 20, 2018 (Docket Nos. 338200-338202).

In a consolidated case, Petitioner appealed three opinions of the Tribunal determining the true cash value ("TCV") of three rental properties. Petitioner argued that the Tribunal erred when it utilized the income approach to calculate the TCV of the properties because he presented more comparable properties under the market approach. Petitioner also argued that the Tribunal erroneously adopted the income approach because it had adopted the market approach in several previous decisions. At the hearing before the Tribunal, for each subject property, Petitioner presented a list of 10-30 properties he asserted were comparable. Respondent offered four comparable properties for each subject property. In addition, Respondent's representative presented a calculation for each property under the income approach, based on research performed on zillow.com, apartments.com and its records from landlords. The Court held that the Tribunal properly utilized the income approach because the testimony of Respondent's representative, which the Tribunal found credible, provided substantial evidence supporting its determination. Although some evidence supported the argument that the market approach is generally favorable, the Court held, the Tribunal properly rejected that approach because neither party provided adequate comparable properties to produce a reliable TCV. The Court also held that the income approach was proper despite previous decisions because the Tribunal considered the party's evidence and the specific circumstances of each property.

D'Anniballe v Twp of Lyon, unpublished per curiam opinion of the Court of Appeals, issued March 22, 2018 (Docket No. 335953).

Petitioner appealed the Tribunal's final opinion and judgment determining the true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") of Petitioner's home. Petitioner argued that the Tribunal made an error of law when it accepted Respondent's calculation of TCV under the market approach because a calculation based on the average price per square foot of neighboring homes would have resulted in a more accurate TCV. Petitioner also argued that Respondent's calculation of TCV violated the Michigan Constitution because the resulting TV would exceed 50% of the most accurate estimate of TCV, which he asserted



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

was his own estimate. To arrive at his calculation of TCV, Petitioner obtained the price per square foot for numerous homes near his and multiplied that number by his home's square footage. Respondent calculated the TCV of Petitioner's home under the market approach by considering homes of a similar style near Petitioner. The Court held that the Tribunal's findings were supported by competent, material, and substantial evidence. It noted that the Tribunal characterized Petitioner's method as "mechanical calculations" that were not recognized as an approach for obtaining TCV. The Court further explained that Petitioner had failed to carry his burden to establish that Respondent's calculations were wrong because Petitioner's calculations were based only on homes in close proximity, whereas Respondent's calculations included market considerations and similar homes. The Court also held that Respondent's TCV estimate did not violate the Michigan Constitution because the Tribunal's adoption of Respondent's TCV assessment was supported by substantial and material evidence, and the TV did not exceed 50% of the TCV.

Ferguson v Twp of Hamburg, unpublished per curiam opinion of the Court of Appeals, issued March 15, 2018 (Docket No. 336226).

Petitioner appealed the Tax Tribunal's determination of the true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") of a four-unit rental property. Petitioner argued that the Tribunal adopted a conclusive presumption of validity with respect to Respondent's calculations. In addition, Petitioner argued that the Tribunal erred when it accepted Respondent's calculations because those calculations were incorrect. Petitioner also argued that the rental property should have been categorized as a town house, which would have resulted in a lower TCV. Before the Tribunal, Petitioner did not submit an independent valuation of the property, instead relying on her own handwritten calculations. Respondent submitted floor sketches and calculations based on exterior measurements and photographs. The Court held that the Tribunal did not adopt a conclusive presumption of validity because the Tribunal made findings of fact that Petitioner failed to submit an independent valuation disclosure, and that Respondent's evidence was persuasive, competent and substantial. Therefore, the Court concluded, the Tribunal could adopt Respondent's calculations as its independent finding of TCV. The Court also held that Petitioner failed to carry her burden of establishing the property's TCV because she did not submit persuasive evidence to support her calculations. The Tribunal correctly determined that the building was not a town house, explained the Court, because the State Tax Commission's Assessor's Manual provides that town houses do not have units above or below each other, and Respondent's floor plans showed that the building had two apartments on the ground floor, and two apartments directly above.

Tribunal Jurisdiction

Indian River Trading Post v Tuscarora Twp, unpublished opinion per curiam of the Court of Appeals, issued February 27, 2018 (Docket No. 336181).



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Petitioners appealed the Tribunal's order granting summary disposition to Respondent for lack of subject-matter jurisdiction. The Court of Appeals held that the Tribunal properly concluded that it did not have jurisdiction to decide Petitioners' claims, which sought to challenge an ordinance that imposed a benefit fee to connect to the township's sewer system. Petitioners argued that the fee was a tax that violated the Headlee Amendment of the Michigan Constitution, and the Court of Appeals held that this constitutional claim was properly brought in the Court of Appeals or the circuit court. The Tribunal erred, however, by going beyond the jurisdictional question as to what court should decide whether the charge was a fee or a tax and addressing the substantive issue of whether it was a fee or a tax. Because the Tribunal lacked jurisdiction to decide the merits of the claim, any action aside from dismissing the case is void, and the Court of Appeals vacated its determination that the charge was a fee accordingly.

Special Assessments

Miclea v City of Farmington Hills, unpublished per curiam opinion of the Court of Appeals, issued March 15, 2018 (Docket No. 336565) and *Thakur v City of Farmington Hills*, unpublished per curiam opinion of the Court of Appeals, issued March 15, 2018 (Docket No. 336566).

Petitioners appealed the Tribunal's final opinions, which upheld Respondent's special assessment for road improvements. Petitioners argued that the Tribunal erred in placing the burden on them to rebut the presumption of the assessment's validity because Respondent was required to establish that it conducted a cost-benefit analysis before being entitled to that presumption. Petitioners also argued that Respondent's failure to conduct such an analysis invalidated the assessment. The Court of Appeals held that these arguments were without merit because the evidentiary burden in special assessment appeals is well-settled, and assessments are presumed valid until the challenging party presents credible evidence to rebut that presumption. Further, Petitioners failed to cite any legal authority requiring Respondent to conduct a cost-benefit analysis. Petitioners also argued they met their burden of rebutting the presumption of validity, but the Court agreed with the Tribunal that their benefit analyses, which showed general trends regarding home sales *before* and *after* road improvements, failed to address the relevant issue and adequately explain how that information supported the conclusion that property values were the same *with* and *without* the road improvements. Another exhibit alleged by Petitioners to have been improperly excluded from consideration that was not specifically addressed by the Tribunal similarly failed to address the applicable inquiry, and therefore was not relevant and could properly be excluded.

Interest Waiver

Hardenbergh v Dep't of Treasury, __Mich App__; __NW2d__ (2018).

Petitioners appealed the Tribunal's final opinion, which upheld Respondent's denial of their request to waive interest under MCL 211.7cc(8). The statute provides for waiver of interest when the assessor files an affidavit stating that the tax in a corrected or supplement tax bill



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

resulting from a PRE denial “is a result of the assessor’s classification error or other error or the assessor’s failure to rescind the exemption after the owner requested in writing that the exemption be rescinded.” Petitioners argued that the Tribunal erred in finding that “other errors” are those akin to classification errors. The Court of Appeals disagreed, concluding that the term “is a catch-all phrase that includes mistakes different than those specifically mentioned in the statute.” The Court noted that catch-all phrases are interpreted “to include only those things of the same type as the preceding specific list,” and “considering that the types of actions listed include those for which a statutory duty exists requiring the assessor to take some action, it is clear . . . that ‘other errors’ is limited to include all other errors that an assessor may undertake through a statutory grant of authority.” The Court held that misadvising on PRE eligibility does not qualify as an “other error,” and Petitioners attempt to categorize the error as a classification error failed to recognize that that term “has a particular legal meaning under the GPTA that does not include categorizing property as exempt.” The Court further held that waiver of interest under the statute is permissive, not mandatory, and as such, Respondent would not have been required to waive interest even if Petitioners had established that the tax set forth in the corrected tax bill was the result of an assessor’s error.

Michigan Tax Tribunal
P.O. Box 30232 • Lansing, MI 48909
www.michigan.gov/taxtrib
Phone: (517) 373-4400 • Fax: (517) 373-4493