STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

May 9, 2016

Dear Tax Tribunal Practitioner:

Proof of Service

Because the Tribunal is experiencing an increase in the number of Answers to Petitions filed by Respondents that do not include a proof of service of those Answers on Petitioners, the Tribunal reminds Respondents that Respondent will be held in default for failing to file the requisite proof of service evidencing proper service of Answers. (TTR 211(11), 279)

Notice of Denial of PRE

The Tribunal continues to receive letter appeals from Petitioner's who have their PRE denied rather than the required petitions on Tribunal forms. One of the primary reasons for Petitioner's failing to properly file their appeals is that many jurisdictions are using an outdated version of Treasury Form 2742, which states that parties wishing to appeal their PRE denial to the Tribunal "explain your reasons in writing." Form 2742 was amended in July 2015 to correctly inform parties that the appeal must be on a Tribunal form or a form approved by the Tribunal. The Tribunal requests that taxing jurisdictions use the current version of Form 2742 when issuing a Notice of Denial of Principal Residence Exemption.

Appeal of PRE Denial by Treasury

It has come to our attention that in issuing certain Denials of the Principal Residence Exemption, the Department of Treasury informs property owners that they can file a "written appeal" with the Small Claims Division of the Tribunal "within 60 days of this decision in accordance with MCL 211.7cc(13)." As discussed above, the Tribunal no longer accepts written appeals of PRE denials. Further, MCL 211.7cc(13) specifically provides that appeals of a PRE denial must be made within 35 days of the date of the PRE denial rather than 60 days. In the event that a property owner has been incorrectly informed of his or her appeal rights, the Tribunal will assume jurisdiction of a PRE denial appeal where the appeal has been filed within 60 days of the denial.

Evidence

The Tribunal reminds parties to please submit evidence one-sided rather than two-sided, as it saves substantial time when scanning documents into our docket look-up system. Also, please be advised that if we are unable to scan a document due to its size, parties will be required to submit a FOIA request for said document.

Court of Appeals Decisions

Special Assessment

Lincoln v Tuscarora Twp, unpublished opinion per curiam of the Court of Appeals, issued April 19, 2016 (Docket No. 326107).

Petitioners appealed the Tribunal's Corrected Final Opinion and Judgment, which affirmed the special assessment levied against the subject property. Petitioners argued that the Tribunal's original opinion was final, as it lacked authority to modify the judgment, and that the assessment was disproportionate to the benefit conferred. The Court of Appeals held that MCR 2.612 provided a basis for the Tribunal to grant relief from judgment because Michigan Court Rules apply when there is no applicable Tribunal rule, and the Tribunal properly concluded that it lacked jurisdiction to enter an order with respect to one of the two parcels appealed: "[T]o the extent petitioners sought review of the township's imposition of a special assessment affecting their property, the Tax Tribunal had jurisdiction over the proceedings challenging the special assessment. However, because parcel 01 was not part of the sewer district and was not subjected to a special assessment by the township, there was no final decision, finding, ruling, determination, or order that relates to a special assessment that would grant the Tax Tribunal jurisdiction over parcel 01." On the issue of proportionality, the Court held that petitioners, having presented no credible evidence of their property's value with or without the sewer, failed to overcome the presumption that the assessment was valid, and "[o]n this basis alone, the decision of the Tax Tribunal was correct and should be upheld."

Use Tax

Kappen Tree Service, LLC v Department of Treasury, unpublished per curiam of the Court of Appeals, issued April 26, 2016 (Docket No. 325984)

The Department appealed the Court of Claims judgement, which cancelled its use tax assessment on the basis that the machinery, equipment and motorized vehicles at issue were exempt under the industrial processing and agricultural-production exemptions found in MCL 205.94o and MCL 205.94(1)(f). The Court of Appeals held that the agricultural-production exemption did not apply because the property at issue was not used for agricultural or horticultural production or growth: "Kappen was not involved in the planting, growing, cultivation, and care of trees and bushes; rather, DTE and other contracting parties would identify areas that required clearing and Kappen would use its equipment to trim or remove trees, branches, bushes or other woody vegetation in order to provide the necessary clearance." Further, "with respect to the phrase 'harvesting of the things of the soil . . . . ,' the Legislature plainly envisioned the planned growing of a crop or comparable thing, its cultivation, and then its extraction . . . ." As for the

industrial processing exemption, the Court held that equipment and machinery used to sever, extract, or remove the trees, limbs, bushes and other woody vegetation was not entitled to exemption, but that equipment used to move, convert, and condition the materials, including the chippers and grinders, were covered: "[O]nce Kappen finished severing, removing, and extracting the woody materials and was holding them for chipping and grinding at jobsites, the woody or raw materials were being kept or retained by Kappen for any purpose, i.e., they were used in 'raw materials storage' for purposes of MCL 205.94o(7)(a)." The case was remanded to the Court of Claims for a determination on the applicability of the extractive-operations exemption, which was not reached in its prior opinion, and apportionment under MCL 205.94o(2), consistent with *Detroit Edison Co v Dep't of Treasury*, 498 Mich 28 (2015).