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

SHELLY EDGERTON
DIRECTOR

June 7, 2016

Dear Tax Tribunal Practitioner:

Stipulations

Because the Tribunal receives many Stipulations for Consent Judgment with illegible signatures, the Tribunal has revised its Stipulation forms to include a line for printing the name of the person signing the Stipulation on behalf of a party. Because the Tribunal only accepts Stipulations signed by the party or the party's authorized representative, it is important that we are able to recognize the signer of the Stipulation. Stipulations that are not properly completed to include this information will be returned to the parties.

Further, the Tribunal will deny a Stipulation in instances where a subsequent tax year (i.e. 2016) is included in the settlement and the parties have not identified the subsequent year's assessment, as confirmed by the Board of Review.

Small Claims – Notice Giving Rise to the Appeal

The Tribunal reminds parties in Small Claims *property tax contested cases* that a copy of the notice or action taken by the local board of review shall be attached to the petition and answer. See TTR 277(3) and TTR 279(4). "For special assessment proceedings, a copy of the resolution confirming the special assessment roll shall be attached [to the petition]. For non-property tax proceedings, a copy of the final assessment notice or other order being appealed shall be attached [to the petition]." TTR 277(3). Alternatively, "[f]or special assessment contested cases, the answer shall specify the statutory authority under which the special assessment district was created and a copy of the resolution confirming the special assessment roll shall be attached and [f]or non-property tax contested cases, a copy of the final notice of assessment or other order being appealed shall be attached." TTR 279(4).

If a party fails to attach the required documentation to their pleading, the Tribunal will place the party in default and order a copy of the document be filed.



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Court of Appeals Decisions

Big Box Stores

Menard, Inc v City of Escanaba, __Mich App__:__NW2d__(2016).

In an appeal arising out of an assessment dispute, the Court of Appeals found that the Tribunal committed an error of law when it rejected the cost-less-depreciation approach and adopted a sales-comparison approach that failed to fully account for the effect of deed restrictions that limited the use of the comparables for retail purposes. The Court held that the properties could not be sold for their HBU, and therefore there could be no sale of the entire fee simple interest; the market would be limited to buyers willing to accept the use restrictions, and given the need to convert the properties to a different use, those buyers would necessarily pay a lower price. Such a market would not reflect the full value of the unrestricted fee simple, and because no adjustments were made to account for this difference between the comparables and the subject, which was not bound by any such restrictions, the Tribunal's reliance on these properties resulted in a failure to value the subject property at its highest and best use. Further, given the prevalence of self-imposed deed restrictions on properties like the subject, consideration of the cost-less-depreciation approach was appropriate. "The adjusted-cost-of-reproduction-less-depreciation method is most suitable for industrial facilities for which no market, an inadequate market, or a distorted market exists." The Tribunal's attempt to discredit this approach on the basis of functional obsolescence was erroneous, as there was no evidence of any deficiency that would prevent the property from functioning as an owner-occupied freestanding retail building, and the lack of a market for a property's existing use is irrelevant.

Exclusion of Evidence

Kristin Wise v City of Holland, unpublished opinion per curiam of the Court of Appeals, issued May 12, 2016 (Docket No. 327450).

Petitioner appealed the Tribunal's Final Opinion and Judgment, challenging its value determination. Petitioner also argued that the Board of Review's failure to comply with MCL 211.30, and its refusal to consider her protest, violated due process, and that this error was compounded by the Tribunal's exclusion of her documentary evidence. The Court of Appeals held that the Tribunal's determination was supported by competent, material, and substantial evidence, and while the Board's actions were improper, the Tribunal's de novo proceedings afforded Petitioner a meaningful opportunity to be heard. Further, exclusion of Petitioner's evidence, which was occasioned by her failure to comply with established rules of procedure, was not improper. It likewise did not amount to a deprivation of due process, as Petitioner was



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given written notice before the hearing detailing the rules for submission of evidence and the consequences for failing to comply with those rules.

Tribunal Jurisdiction

Saginaw Twp v State Tax Commission, unpublished opinion per curiam of the Court of Appeals, issued May 12, 2016 (Docket No. 325252).

Saginaw Township appealed the circuit court's order dismissing its challenge of the denial of a personal property tax exemption for lack of subject-matter jurisdiction. Noting that the matter involved direct review of a final decision relating to an assessment arising under Michigan's property tax laws, the Court of Appeals held that the Tribunal had exclusive jurisdiction under MCL 205.731(a). The circuit court therefore lacked subject-matter jurisdiction as a matter of law: "Ultimately, when a matter falls within the MTT's exclusive jurisdiction, the circuit court is prohibited from exercising jurisdiction." The Commission's indication to the contrary did not excuse the township's failure to pursue relief in the appropriate forum, as there was no indication that there was some outstanding confusion in the law or that the township lacked the means of ascertaining the correct procedures for appealing the decision.

Single Business Tax

PBM Nutritionals LLC v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued May 26, 2016 (Docket No. 324471).

In an appeal arising out of an SBT audit, the Court of Appeals found that the Court of Claims correctly concluded that PBM shipped and delivered its goods to a purchaser in Michigan, and as such, its sales were properly sourced to Michigan for apportionment purposes. Although the goods were shipped to a warehouse owned by a third party, the Court concluded that PBM's actions constituted a sale to PBM Products for purposes of MCL 208.52(b), as that company had the right to sell the goods to the ultimate purchaser, and its contracts precluded customers from dealing with PBM directly. Further, it was PBM Products and not PBM that paid the warehouse for its services. The Court concluded that the warehouse served as an agent for PBM Products, and that PBM surrendered control of the goods once they were cleared for resale and the warehouse was directed to ship the goods to the ultimate purchasers.