STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

July 10, 2017

Dear Tax Tribunal Practitioner:

Filing Dates for Certain Petitions

The Tribunal would like to remind property owners and practitioners that the July 31st deadline for filing valuation appeals involving property classified as agricultural real property, residential real property, timber-cutover real property or agricultural personal property is approaching. Please remember that the Tribunal does not accept petitions filed by e-mail (as opposed to efiling) or facsimile. As a result, the Tribunal will be disconnecting its fax machine at the close of business on July 28, 2017, and will reconnect it on August 1, 2017. This brief interlude will allow the Tribunal to dedicate its efforts to processing new appeals and will ensure that petitioners do not incorrectly rely on an appeal filed via facsimile. Finally, if a petition is filed by e-mail, the Tribunal will not respond and the e-mail will be deleted. With respect to e-filing, if you encounter technical issues, please feel free to call the Tribunal during regular business hours. However, to ensure you are directed to the correct staff for assistance, please make sure you indicate to the Tribunal staff member responding that you have questions specific to electronically filing documents. Please note the Tribunal does not provide e-filing support over the weekend.

Court of Appeals Decisions

Petitioner Failure to Appear

Borgeson v Norvell Twp, unpublished opinion per curiam of the Court of Appeals, issued June 14, 2017 (Docket No. 332721).

Petitioner appealed the Tribunal's order dismissing his appeal for failure to appear at a duly-noticed hearing. Petitioner argued that the Tribunal abused its discretion because it failed to evaluate other sanction options or consider the *Vicencio* factors, i.e., "(1) whether the violation was willful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice." The Court of Appeals agreed, noting that the record was insufficient to facilitate an analysis of these factors, which it had applied to the Tribunal in *Grimm v Dep't of Treasury*. The Court found no merit in Petitioner's due process argument, however, as the Tribunal provided him with notice and a meaningful opportunity to be heard, and Petitioner did not show up. Further, the Tribunal informed Petitioner that his motion to adjourn the hearing was not properly pending and that it

would not consider the motion without the appropriate filing fee. The Tribunal complied with TTR 225 and was not required to take action on the motion.

Failure to Timely Appeal

Jenks v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued June 15, 2017 (Docket No. 332787).

Petitioner, having been assessed as a responsible person for certain unpaid taxes of Jenks Plumbing and Heating Inc., appealed the Tribunal's grant of summary disposition in favor of Respondent. Petitioner acknowledged that he did not appeal the disputed assessments within the timeframe prescribed by MCL 205.22(1), but argued that his payment of a portion of the assessments entitled him to challenge the assessments through the refund procedure set forth in MCL 205.30. The Court of Appeals held that Petitioner's challenge, which was an admitted collateral attack on the underlying assessments, was barred by MCL 205.22(4) and (5). The assessments became final under MCL 205.22(4) when Petitioner failed to avail himself of his appeal rights within the prescribed timeframe, and MCL 205.22(5) plainly states that a taxpayer is not entitled to any refund after an assessment becomes final.

Small Business Alternative Credit

Four Zero One Associates LLC v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued June 15, 2017 (Docket No. 332639).

Petitioner appealed the Tribunal's Final Opinion and Judgment, which entered summary disposition in favor of Respondent. Petitioner argued that inclusion of a bonus in compensation for purposes of determining eligibility for the small business alternative credit ("SBAC") under the Michigan Business Tax Act ("MBTA") should be done based on the taxpayer's elected method of accounting. The Court of Appeals held that the taxpayer's method of accounting is relevant only to the calculation of compensation involving pensions, retirement, and profit sharing. It reasoned that the Legislature's omission of any reference to the taxpayer's method of accounting with respect to bonuses, commissions, fees, wages, salaries, and other payments was intentional given its inclusion of such language in reference to the types of compensation identified in the third sentence of MCL 208.1107(3). Further, the listing of types of payments in the first sentence of the statute leads to the conclusion that a cash method of accounting is required absent some indication to the contrary.

Charitable Exemption

*Baruch SLS, Inc v Tittabawassee Twp,*__Mich__ ; __NW2d__ (2017).

Petitioner appealed the Tribunal's determination, as affirmed by the Court of Appeals, that it did not qualify as a charitable institution within the meaning of MCL 211.7o and MCL 211.9 because it offered its charity on a discriminatory basis. The Supreme Court held that the

Tribunal and the Court of Appeals decided this issue on the basis of an incorrect understanding of the third factor in the *Wexford* test and remanded to the Tribunal for proceedings consistent with its opinion. Noting that it has been interpreted as excluding from the definition of charitable institution organizations that charge fees for their services or select their beneficiaries using any non-random criteria, the Court clarified that this factor excludes only restrictions or conditions that bear no reasonable relationship to a permissible charitable goal. Beneficiaries have to be selected in some manner, as most organizations cannot serve everyone, and charitable institutions are not required to operate at a loss. The fifth factor specifically allows charitable institutions to charge an amount necessary to remain financially stable, and fees are to be assessed under that factor as opposed to the third factor. Further, the "reasonable relationship" test is to be construed broadly: "In short, the relationship between the institution's restriction and its charitable goal need not be the most direct or obvious. Any reasonable restriction that is implemented to further a charitable goal that passes factor four is acceptable." The court acknowledged the deferential nature of this test, but found it warranted absent any indication in the statute as to the restrictions a charity may or may not place on its services.

Religious Exemption

Family Bible Church of Muskegon v City of Norton Shores, unpublished opinion per curiam of the Court of Appeals, issued July 6, 2017 (Docket No. 332942).

Respondent appealed the Tribunal's Final Opinion and Judgment, which granted Petitioner a parsonage exemption pursuant to MCL 211.7s. Respondent argued that the property was not "owned by a religious society" because the land contract was a sham transaction that nominally gave petitioner possession, but allowed the vendors to exercise control and dominion over the property while avoiding having to pay taxes; it also argued that the contract itself was invalid. The Court of Appeals found Respondent's argument enticing, but held that it must fail because Respondent did not provide any evidence showing that the land contract, which contained all material elements, was anything other than what Petitioner claimed it to be. Further, the Tribunal did not abuse its discretion in denying Respondent's motion to transfer the case to the Entire Tribunal or by not ordering discovery. The case was properly pending in the small claims division and Respondent could have filed a motion to conduct discovery. It failed to do so, and likewise failed to provide any authority in support of its implied argument that the Tribunal should have granted it sua sponte relief that it could have expressly requested.