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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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July 6, 2015

Dear Tax Tribunal Practitioner:

State Tax Commission – Seizure of Assessment Rolls

As noted in our June 2, 2015 GovDelivery, the STC seized the rolls of several taxing jurisdictions, and the Tribunal correspondingly placed all pending appeals for those jurisdictions in abeyance until the assessment rolls are returned to the affected jurisdictions by the STC. In that regard, the Tribunal has been informed by the STC that the assessment rolls for Holland Township (2013), Liberty Township (2013), City of Dexter (2015), Scio Township (2015), and Webster Township (2015) were returned and, therefore, all affected appeals have been removed from abeyance. Finally, the STC also seized the assessment roll for the City of River Rouge for the 2015 tax year, and the Tribunal will be taking action on any applicable pending appeals.

Assessor Renewal Classes

As many of you are aware, Steve Lasher, Tribunal Chair, and Samantha Snow Shaffer, Tribunal Deputy Chief Clerk, have, for the past year, been teaching six-hour renewal classes with the content primarily focusing on how assessors should prepare for, and participate in, small claims hearings. For your information, we will be conducting these renewal classes in Flint on July 31st, in Cadillac on August 7th, in Big Rapids on August 28th, and in West Olive (Muskegon) on September 18th. In addition, a four-hour class will be presented at the Michigan Assessors Association Summer Conference in Bay City on August 3rd in the afternoon, and eight-hour classes will be presented in Novi on August 26th and in Shanty Creek on October 6th.

2015 ET Cases

The Tribunal has received approximately 2,200 ET appeals for the 2015 tax year, which are substantially less than the 3,100 ET appeals filed in 2014 and the 3,900 appeals filed in 2013. In addition to reduced fee revenue received by the Tribunal, this decrease in the number of ET appeals filed for 2015 will result in files generally being placed more quickly on a prehearing general call. In this regard, all 2013 and 2014 ET appeals will have been placed on a PHGC by mid-August 2015, with PHGC Orders for 2015 ET appeals commencing thereafter. Beginning with the September 2015 PHGC, the number of appeals included in each PHGC will be reduced from 125 to 100.

Court of Appeals Decisions

Howell Promenade, LLC v City of Howell, unpublished opinion per curiam of the Court of Appeals, issued June 9, 2015 (Docket No. 433125).

Howell Promenade LLC ("Petitioner") appealed from the Tribunal's Final Opinion and Judgment that determined "the property [a shopping center] had a true cash value of $2,088,160 for the 2012 tax year." Petitioner argued "that the Tribunal erred when it accepted the appraisal value of the property as if it were in a stabilized and cured status but failed to make any deductions to reflect its value in its actual, uncured and unstabilized, condition" and "that the Tribunal's ultimate finding on the property's true cash value was not supported by substantial evidence . . . [because] there is no dispute that the property was not cured and stabilized." Petitioner's appraiser "determined the true cash value of the property (as if it were stabilized and cured) was $2,100,000 under the income-capitalization approach[,]" and then "deducted $130,000 for lease-up costs and $480,000 for deferred maintenance" to get the true cash value of $1,490,000. The Tribunal accepted the $2,100,000 true cash value appraisal; however, the Tribunal "only deducted $11,840 for leasing commissions, resulting in a true cash value of $2,088,160." The Court of Appeals ("the Court") vacated the Tribunal's opinion and judgment and remanded the case back to the Tribunal "to determine the proper amount to deduct from the $2,099,160 cured but (unstabilized) value to arrive at the proper true cash value." The Court concluded that the Tribunal "recognized 'repairs to the property are needed'" yet the Tribunal "disallowed any deduction for the repairs. . . . a property that is not cured should have less value than one that is cured, with all other things being equal." Therefore, the Court held that "[b]ecause the Tribunal acknowledged that the property was not cured, it erred when it concluded that no deduction was necessary to reflect its value in its uncured condition.

JD Norman Industries v City of Leslie, unpublished opinion per curiam of the Court of Appeals, issued June 23, 2015 (Docket No. 321314).

JD Norman Industries ("Petitioner") appealed from the Tribunal's Final Opinion and Judgment that determined the 2012 tax assessment for personal, industrial property Petitioner purchased in its asset purchase of Len Industries, Inc. Petitioner presents two arguments on appeal: (1) the "appraisal petitioner wanted to enter into evidence, which it claimed substantiated its valuation of the personal property" was not admitted into evidence and (2) "the tribunal erred in its assessment of the true cash value of the personal property[,]" specifically, "that the tribunal erred in declining to consider the valuation by the parties in the recent sale of the property, which occurred when petitioner purchased all of the assets of Len Industries." At the hearing City of Leslie ("Respondent") argued that "sale price may be relevant in terms of the value of the business [however] that price was not relevant in terms of the value of the property for tax purposes." Instead "Respondent proposed that its methodology of using the historic value of the personal property, less depreciation, was the most reliable indicator of its value." The Tribunal

"concluded that petitioner did not meet its burden of proof in establishing that respondent's assessed value of property was in error" and after an independent assessment the Tribunal found "respondent correctly assessed that the true cash value of the property was $6,219,900 and the taxable value was $3,109,950." The Court of Appeals ("the Court") affirmed the Tribunal's decision. The Court first looked to MCL 205.746 which states, "Irrelevant, immaterial, or unduly repetitious evidence may be excluded. The Court looked to Antisdale v City of Galesburg, 420 Mich 265, 278; 362 NW2d 632 (1984) to show "[t]he rule in Michigan, as in many other states, is that the selling price of a particular piece of property is not conclusive as evidence of the value of that piece of property." In addition the Court stated, "pursuant to MCL 211.27(6), '[T]he purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.'" Thus, while "petitioner [argued] that the tribunal should have presumptively concluded that because the automotive industry collapsed in 2008, the equipment and machinery sold and assessed for the 2012 tax year was necessarily depressed" petitioner did not offer any "testimony [nor evidence in its exhibits] at the hearing regarding how the 'financial meltdown' of the automotive industry actually affected the value of the personal property." Therefore, the Court held that "we find no error warranting reversal in the tribunal's decision to exclude the appraisal. Nor do we find any error in the tribunal's assessment of true cash value and taxable value of the personal property."

Autozone Stores Inc./Auto Zone, #2137 v City of Warren, unpublished opinion per curiam of the Court of Appeals, issued June 23, 2015 (Docket No. 320213).

City of Warren ("Respondent") appealed from the Tribunal's Final Opinion and Judgment of the TCV of the subject property. Respondent presented four arguments on appeal: (1) "that the Tribunal failed to determine the highest and best use of the property[,]" (2) "that the Tribunal erred in disregarding its leased comparables in favor of valuing the property as if vacant and available for sale[,]" (3) "that the Tribunal erred in failing to consider the 'existing use' of the property. . . . suggest[ing] that the Tribunal improperly valued the property as if vacant and available at the time of sale when relying on petitioner's comparables 1, 2, 4, and 6, as opposed to relying on respondent's leased comparables[,]" and (4) "that the hearing referee improperly accepted Petitioner's attorney representative's appraisal report even though he did not have an appraiser's license, and that the report had several errors and oversights that further implicated its competency." At the hearing Respondent "submitted a detailed valuation report, wherein it asserted that the interest to be valued was fee simple, and that the highest and best use of the property was a retail building" and included comparables that represented properties with leases in place. The Tribunal "found that the appropriate method for determining the true cash value of the property was the sales approach, and it concurred in petitioner's assessment that leased fee transactions were not predicated on market rent. . . . [therefore] respondent's reliance on leased fee transactions were not reliable indicators of value." The Court of Appeals ("the Court") affirmed the Tribunal's decision. At the hearing "respondent argued . . . that the highest and best use of the property was a retail store, a fact . . . uncontested" at the hearing. The Court then

looked to Great Lakes Div of Nat'l Steel Corp, 227 Mich App at 391, "if the analysis of a comparable sale is flawed, the valuation for the subject property is also flawed" to demonstrate the leased comparables provided by Respondent were inadequate and thus their valuation was flawed. The "Tribunal did not reject respondent's comparables . . . merely because they were leased interests" the tribunal rejected the comparables because "the subject property right was different than the property right valued in respondent's comparables, appropriate adjustments had not been made, and there was insufficient information regarding the leased transactions." Further, "Respondent highlights no evidence that petitioner's property was subject to a lease at the time of the assessment. Because the property was not being leased at the time of the assessment, there was no present economic income to be considered." In addition, the Court stated "[v]aluing the property as vacant and available for sale, as opposed to occupied, constituted a proper valuation of the fee simple interest. . . . the true cash value is based on the 'usual selling price . . . at the time of assessment.' MCL 211.27(1)" Further, the Court stated that consistent with the tribunal's findings, there is no indication that Petitioner's representative improperly acted as an appraiser, nor that the petition purported to offer evidence from an appraiser. Rather, petitioner was offering valuation evidence. Therefore, the Court held that "the tribunal did not adopt a wrong principle when declining to consider respondent's leased comparables, and its decision was supported with competent, material, and substantial evidence. We have reviewed all other claims and find them meritless."

Robert C Ohlman Protection Trust v Dept. of Treasury, unpublished opinion per curiam of the Court of Appeals, issued June 25, 2015 (Docket No. 320831).

Robert C Ohlman Protection Trust ("Petitioner") appealed from the Tribunal's Final Opinion and Judgment that determined "there was no entitlement to a principal residence exemption (PRE) for tax years 2008, 2009, 2010, and 2011 with respect to real property owned by Robert C. Ohlman (Ohlman) in an individual capacity up until a November 2009 conveyance and thereafter owned by Ohlman in a representative capacity as trustee of the trust." On appeal Petitioner argued: (1) a trust cannot hold a PRE and the Tribunal erred in addressing the notice to the trust, (2) the Tribunal erred in the denial of the PRE based on the Florida homestead exemption, (3) the department erred in their failure to recognize the corrected nonresident Michigan Tax Returns and recession of the Florida homestead exemption of 2008-2010 negate the disqualification of the PRE under MCL 211.7cc(3)(a), (4) "collateral estoppel precludes any attempt to revisit the previously determined conclusion that the property severed as Ohlman's principal residence[,]" and (5) all the evidence showed the property "was the one place where Ohlman had his true, fixed, and permanent home to which, whenever absent, he intended to return, thereby satisfying the definition of 'principal residence.'" At the hearing, the referee determined Ohlman himself was not entitled to a PRE for the tax years at issue. The Court of Appeals ("the Court") affirmed the Tribunal's decision. The Court stated that a correction to the nonresident Michigan Tax returns and the Florida homestead exemption did not warrant reversal because "[t]here is no indication in the record that the Florida homestead exemption has been successfully rescinded,

nor . . . any supporting legal authority under Florida law regarding the viability of a retroactive rescission." Further, the Court rejected Petitioner's collateral estoppel argument; "[a] determination that the property was a principal residence in, for example, 1999, cannot govern the question whether the property was a principal residence in 2008." In addition, because Petitioner claimed a substantially similar exemption on property in another state he is not entitled to a PRE. Petitioner's PRE was rescinded in 2008 due to the Florida homestead exemption he took and he failed to file a new PRE affidavit and application for the 2011 tax year. Therefore, the Court affirmed the Tribunal's decision.

Chaofu Qin v Twp of Waterford, unpublished opinion per curiam of the Court of Appeals, issued June 25, 2015 (Docket No. 320859).

Chaofu Qin ("Petitioner") appealed from the Tribunal's Final Opinion and Judgment that determined Petitioner's residential real property to have a true cash value (TCV) of $299,600 for the 2013 tax year. Petitioner presents two arguments on appeal: (1) "the property's TCV in 2013 should have been determined by the price he purchased it for in 2012," and (2) "respondent's sales-comparison analysis 'does not make sense' and does not incorporate 'commonly accepted standards.'" At the hearing, "Petitioner [alleged] that the property was assessed as if it had 131 feet of lake frontage when it only has 56 feet." The Tribunal declined to consider this new evidence as it was untimely and Petitioner presented no evidence to support this claim. "The Tribunal reiterated that the property's purchase price was not necessarily indicative of its market value, especially considering that the sale may not have occurred under normal market conditions" and "the Tribunal concluded that respondent's cost-less depreciation approach . . . was supported by the sales comparison analysis[.]" The Court of Appeals ("the Court") affirmed the Tribunal's decision. The Court looked to MCL 211.27(6) to "mak[e] clear, 'the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.'" Therefore, Petitioner's argument that the 2012 sales price "is conclusive as to its TCV in 2013 is without merit" because in determining true cash value "the assessor is required to assess the transferred property 'using the same valuation method used to value all other property of that same classification in the assessing jurisdiction.'" In response to Petitioner's second argument the Court stated "petitioner did not raise this issue in his statement of questions presented, meaning this Court need not consider it."[1] The Court went on to state "[n]evertheless, '[t]he Tax Tribunal is under a duty to apply its expertise to the facts of a case to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances.'"[2] Here, respondent's sales-comparison analysis provided competent and substantial evidence supporting the cost-less-depreciation approach, as respondent's TCV of $299,600 fell within the $294,000 to $335,000 range indicated in the sales-comparison analysis.