STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHAEL ZIMMER
EXECUTIVE DIRECTOR

STEVEN ARWOOD
DIRECTOR

August 11, 2014

Dear Tax Tribunal Practitioner:

In our June 9th GovDelivery, we requested your comments regarding our proposal to shorten the time between the filing of an Answer in an ET case and placing that case on a Prehearing General Call. The Tribunal received several comments, which were greatly appreciated. However, during the past month, the Tribunal became aware that cases were being prematurely placed on a Prehearing General Call, allowing just three or four months from the date the Prehearing General Call was issued to the due date for valuation disclosures. Because our goal is to allow approximately nine months from the issuance date of a Prehearing General Call to the due date for submitting valuation disclosures, the Tribunal has reissued certain Prehearing General Calls and will, in the future, issue Prehearing General Calls that incrementally lengthen that time period to the nine month goal. Until that goal is achieved, the Tribunal will not proceed with any options regarding shortening the period from the filing of an Answer to the issuance of a Prehearing General Call. In the future, the Tribunal does expect to shorten that period to four to six months. Again, the Tribunal thanks those of you who submitted comments and also thanks all of you for your patience as we work to resolve ET scheduling issues.

Caseload/E-Filing

As most of you are aware, there have been many bumps in the road with the Tribunal's new e-filing system. A major setback occurred when the software collapsed during the last month of this year's filing season. Our sincere apologies are in order for this serious inconvenience and we thank you for your continued patience.

Fortunately, the Tribunal's e-filing system has been debugged and is again available for the public's use. We have also implemented additional *internal* features to assist you with account errors. For instance, if you failed to receive the validation e-mail after creating your account, the Tribunal can now validate your account for you; the Tribunal can also reset your password if you are unable to.

If you are attempting to create a new account or e-file a document in an existing account and are still experiencing issues, please feel free to call the Tribunal at 517-373-4400

Small Claims Appeals

When a respondent receives a Notice of Docket Number from the Tribunal, the party is required to file an answer to the petition within 28 days of the Notice of Docket Number, pursuant to TTR 279. This requirement is not waived or extended if the petitioner is in default. Also, due to budgetary constraints the Tribunal is unable to serve respondents a copy of the petition; please

visit the Tribunal's docket look up (available through our website) to obtain a copy of the petition.

New Forms

Please note the Tribunal created and is now utilizing new forms in both the Small Claims (petitions, answers) and Entire Tribunal (case information sheets) Divisions. Some forms require information not included on prior versions of the forms. For example, the current Entire Tribunal Case Information Sheet requires the petitioner to indicate whether multiple parcels are contiguous; however, the previous version did not. If you are using an old version of a form and information is missing, the Tribunal is placing the party in default for a revised form.

Recent Court of Appeals Decisions

Holland Land Company, LLC v City of Taylor, unpublished opinion per curiam of the Court of Appeals, issued June 26, 2014 (Docket No. 312534). In this case, Petitioner contended that because the Tribunal relied on the cost-less-depreciation approach in determining the true cash value of the subject property for the 2006 – 2009 tax years, in relying on the sales comparison approach for tax years 2010 – 2012, it "employed an arbitrary or capricious valuation standard." The Court of Appeals held that the Tribunal was not arbitrary or capricious in its use of a different method of valuing the subject property for subsequent tax years, especially when the method of valuation selected by the Tribunal was a court-sanctioned method. Specifically, the Tribunal "is not required to use the same valuation method in every instance; instead, it is only required to determine the property's true cash value."

Smith v ForesterTwp, unpublished opinion per curiam of the Court of Appeals, issued June 19, 2014 (Docket No. 315480)*; Gatt v Marion Township*, unpublished opinion per curiam of the Court of Appeals, issued February 11, 2014 (Docket No. 313656).

As we discussed in our March 2014 GovDelivery, in *Gatt*, the Court of Appeals held that although the Tribunal is obligated to independently value property on the basis of the evidence presented, the doctrine of res judicata applies to decisions of the Tribunal. Therefore, where the Tribunal determined the TCV's of a property to be $465,000 and $433,400 for 2009 and 2010, respectively (reduced from values on the assessment roll of $955,000 and $901,200), it could not conclude that Respondent's values on the assessment roll for 2011 and 2012 of $750,000 and $806,800, respectively, unless the Tribunal explained the large increase in value from 2010 to 2011. Specifically, the Court directed the Tribunal to "give due respect to the finality of the established 2010 valuation, and ensure that its valuation is supported by competent and substantial evidence."

In *Smith*, the Court of Appeals rejected claims of res judicata and collateral estoppel raised by Petitioner where the Tribunal held for Petitioner for tax years 2009 – 2011, but affirmed Respondent's assessment of the property for 2012. However, citing MCL 211.30c(2), the Court of Appeals reversed the Tribunal, stating that:

> the tribunal . . . offered no explanation for why it found the calculations on the property record card to be the most accurate valuation under the circumstances,

> nor did it explain why petitioner's contentions were inaccurate. More specifically, the tribunal made no findings regarding the subject property's TCV in 2011, the justification for dramatically increasing the subject property's land value from 2011 to 2012 or respondent's decision to value all of petitioner's land at the same rate, in contravention of the approach adopted by the tribunal for tax years 2009 through 2011.

Thus, these two recent Court of Appeals decisions, although unpublished, offer clear indication that the Court will require assessors, and the Tribunal, to consider the prior year determination of value as the basis for calculating the subject property's assessment in the immediately succeeding year under MCL 211.30c(2).