STATE OF MICHIGAN
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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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August 11, 2015

Dear Tax Tribunal Practitioner:

Motion Fees

We have recently received questions regarding when fees are not required to be submitted with motions. Please be advised that the Tribunal does not require that a fee be paid with motions filed requesting a withdrawal of an appeal, stipulated motions for substitution of counsel, motions for withdrawal of counsel, motions to hear an appeal "on the file," motions requesting a telephonic hearing, or errata requests.

2015 Small Claims Appeals

Now that the July 31, 2015 deadline for filing Small Claims Appeals has passed, the Tribunal is focusing on docketing paper-filed Small Claims petitions and Answers. Although a few Small Claims hearings will be held during August and September, it is expected that a normal schedule of Small Claims hearings will begin in October.

ET Appeals

As discussed in our last GovDelivery, we have already begun including 2015 appeals in Prehearing General Calls, with Prehearing dates commencing next May. Because we have recently discovered errors in prior Prehearing General Calls attributable to our new MyCaseload system (primarily dealing with our policy to not schedule more than 25 cases per PHGC for the same agent or law firm), we ask that you notify us of any errors you may discover in past or future Prehearing General Call orders.

Submission of Paper Filings

The Tribunal requests that all paper filings with the Tribunal be one-sided as this greatly facilitates the scanning of such documents for purposes of loading on our docket look-up system.

Tax Tribunal Decisions

Although the Tribunal typically does not highlight its own decisions, decisions issued in two recent cases may be of interest.

John C Kantgias v Benzonia Township, MTT Docket No. 14-007876, issued August 7, 2015.

In this PRE case, Petitioner resided in Bloomfield Hills, MI before moving to New York to attend college. A few weeks after leaving for college, Petitioner purchased property in Benzonia Township and filed an Affidavit for the PRE. Although there was no issue regarding Petitioner's ownership of the subject property, the Tribunal concluded that because Petitioner never "dwelled in" or "resided in" the subject property prior to leaving for New York, Petitioner failed to satisfy the "occupy" standard required by the statute.

Theo J Chandler v Benzonia Township, MTT Docket No. 15-000542, issued August 4, 2015.

In this Veteran's Exemption case, Petitioner and Respondent agreed that Petitioner was a 100% disabled veteran. However, because Petitioner rented a portion of his house to an elderly lady in need of housing, Respondent's Board of Review followed the direction of the State Tax Commission and denied the exemption. The Tribunal concluded that because the applicable statute (MCL 211.7b) simply requires a disabled veteran to use the real property "as a homestead," there is no indication that the legislature intended that the property be used *solely* as a homestead. Further, the Tribunal finds no statutory support for the State Tax Commission's conclusion that the property qualifies for the exemption if 5% or less of the value of the parcel is used for business purposes.

Court of Appeals Decisions

New Covert Generating Company v Covert Township, unpublished opinion per curiam of the Court of Appeals, issued August 4, 2015 (Docket No. 320877)

Respondent appealed as of right from the Final Opinion and Judgment of the Tribunal, as modified on reconsideration, regarding the true cash value and allocation of Petitioner's property for the 2010 and 2011 tax years. In its appeal, Respondent raised a variety of issues:

(1) With respect to jurisdiction, Respondent argued that under MCL 205.735a(4)(b), a personal property assessment may only be protested before the board of review or appealed to the Tribunal if a statement of assessable property is filed prior to the commencement of the board for the tax year involved, and that Petitioner's filing of form 4175, which is issued by the STC for purposes of reporting personal property, was not a sufficient statement of assessable property because the instructions for the form required the filing of real property forms 3991 and 4094 to report turbines and generators. The Court concluded that subsection (4)(b) "permits a petitioner to protest an assessment before the board of review, but also offers . . . the option of appealing to the tribunal without protest if an additional condition is satisfied: a statement of assessable property must be filed under § 19 of the general property tax act before commencement of the

board of review for the particular tax year." Further, only form 4175 is required: "MCL 205.735a(4)(b) does not specify that a specific statement must be filed; the plain language of MCL 211.19 requires the filing of a statement of assessable property in a form prescribed by the state tax commission. The state tax commission has prescribed form 4175 as a personal property statement." The Court noted that while the instructions for form 4175 did require the filing of real property statements, they did not require attachment of the same.

(2) On the issue of true cash value, Respondent argued that the Tribunal's determination was based on its adoption of wrong legal principles in four critical areas of the cost-less-depreciation approach: replacement cost new, determination of functional obsolescence, determination of economic obsolescence, and the calculation of replacement cost new depreciation. The Court held that Respondent failed to demonstrate adoption of a wrong principle on all four counts.

(3) As for Respondent's motion for relief from judgment under MCR 2.612(C)(1)(b) and (f), Respondent argued that the Tribunal erred by finding that new evidence, which consisted of Respondent's discovery that Petitioner had appeared before the Michigan Public Service Commission ("MPSC") and testified that it had submitted proposals to sell the property to Consumers Energy for a price comparable to the cost of building a new facility, was public knowledge discoverable with reasonable diligence. The Court held that Respondent's acknowledgement that a summary of the MPSC testimony was reported by the press in November 2013 weakened its argument that the testimony could not have been discovered earlier. Further, the Tribunal thoroughly articulated why the evidence was not likely to change its determination of value, and Respondent did not specifically address or challenge these findings. Respondent contended only that the Tribunal was obligated to "evaluate the evidence independently as the final agency administering the property tax law in Michigan." The Court held that this conclusory statement, without any argument or analysis, was insufficient to challenge the Tribunal's finding that the new evidence was not likely to change the result.

(4) The Court also held that the Tribunal did not abuse its discretion by admitting testimony from Petitioner regarding its responses to Consumers Energy's request for proposals without requiring the production of the actual responses. The best evidence rule, under which an original document is generally required to prove the content of a writing, only applies when the contents of a writing are at issue, and the disputed testimony was not offered to prove the truth of the matter asserted, as it was Respondent, and not Petitioner, that elicited the testimony and wished to explore the contents of the documents. Respondent likewise failed to demonstrate that the Tribunal abused its discretion by denying its motion on the grounds that the MPSC testimony was not contradictory to that presented in the Tribunal as contended by Respondent. The Tribunal found the testimony offered at the MPSC hearing was for a different purpose than that offered in the Tribunal, and that "appraisal evidence of the market value at a date occurring in the past and a proposal to sell which is designed to obtain a profit at some point in the future are simply

not comparable scenarios whereby the Tribunal could find something resembling fraud." Respondent demonstrated no error in this determination.

(5) Respondent also argued that Petitioner failed to report its costs, and that the Tribunal wrongfully denied relief for its improper conduct. The Tribunal rejected Respondent's argument, which was raised for the first time at the hearing regarding the newly discovered evidence, on the ground that it was beyond the scope of the Remand. The Court of Appeals held that to the extent that Respondent seemed to argue that Petitioner's failure to present cost information constituted improper conduct under subsection (C)(1)(f), this was not an argument presented in the Tribunal.

(6) Regarding several other discretionary rulings, the Court held that Respondent failed to provide an explanation of the manner in which its valuation disclosure was incomplete, or how it was prejudiced by filing the valuation disclosure that it did file, and as such, failed to demonstrate that the Tribunal abused its discretion by denying a stipulated motion to extend the deadline for the filing of the disclosure. Further, MCL 205.743(1) clearly grants the Tribunal discretion regarding its enforcement and nothing in the plain language of the statute requires the Tribunal to consider the fiscal impact on the affected local units when exercising its discretion to waive the payment of taxes requirement. And though Respondent, in a footnote in its brief, generally asserted that the Tribunal prejudiced its ability to present its case by denying various other motions, including a motion to compel discovery, a motion to intervene, and a motion to set aside protective order, Respondent failed to explain how those rulings caused it injury or constituted an abuse of discretion. The Court held that "[c]omplaining about the tribunal's discretionary decisions in a footnote without any legitimate briefing or citations to the record is tantamount to abandoning it."

Brighton Mall Assocs., L.P. v City of Brighton, unpublished opinion per curiam of the Court of Appeals, issued July 14, 2015 (Docket No. 321044).

City of Brighton ("Respondent") appealed from the Tribunal's Final Opinion and Judgment that determined the aggregate true cash value of the property was $13,103,600 for the 2012 tax year. Respondent presents two arguments on appeal: (1) "the Tax Tribunal erroneously used the value of the long-term, unfavorable Sears lease to determine the true cash value of the property because it ignored evidence that the lease would not be renewed in subsequent years" and (2) "the Tax Tribunal erred when it reduced the property's assessment about $8 million between 2011 and 2012 because there was no indication that economic circumstances had changed since its 2011 determination." The property is a multi-unit retail center and office complex that consists of three separate tax parcels, the issue stemming from the valuation of approximately 85,000 square foot space that Sears rented. The Court held that "the Tax Tribunal concluded Petitioner's appraisal correctly used Sear's lease when calculating the property's projected net operating income. . . . [and] determined that the property's aggregate true cash value for the 2012 tax year was $13,103,600." The Court stated the Tax Tribunal is required to consider the effect

of unfavorable long-term leases when determining a property's true cash value[1] and "[i]n this case, substantial evidence supported the Tax Tribunal's determination that the property was subject to a long-term lease that affected its true cash value." Further, "[w]hile the Tribunal considered the prior year's determination, it gave the prior determination little weight because it was based on a different set of appraisals and different evidence. The 2011 valuation was only one piece of evidence in this case." Therefore, the Court held "the Tribunal did not err by basing its valuation on the property's actual income" and "the Tribunal properly exercised its jurisdiction and fulfilled its duty to make an independent determination of the property's true cash value."

Great Lakes Guardians v Sims Township, unpublished opinion per curiam of the Court of Appeals, issued July 14, 2015 (Docket No. 320856).

Great Lakes Guardians ("Petitioner") appealed from the Tribunal's Final Opinion and Judgment that determined Petitioner was not exempt from ad valorem taxation under MCL 211.7o(5) for the 2012 and 2013 tax years and disallowed costs and attorney fees. Petitioner presents two arguments on appeal: (1) "the Tax Tribunal erred when it found that petitioner was not entitled to an exemption because petitioner did not meet the requirements under MCL 211.7o(5)(b)" and (2) "it was an abuse of discretion for the Tribunal to deny its request for costs and attorney fees." Petitioner, a nonprofit charitable corporation, purchased the subject real property in 2011 and sought a tax exemption for the property pursuant to MCL 211.7o(5). The Sims Township Board of Review and the Sims Township Assessor denied the request for the tax exemption and Petitioner appealed the Board of Review decision to the Tax Tribunal. At the hearing the Tribunal "found that the property was being held for conservation purposes pursuant to MCL 211.7o(5). . . . [and] that petitioner had met the requirement under MCL 211.7o(5)(a) because petitioner's purpose stated under its articles of incorporation paralleled the purpose delineated in the statute[;]" however, Petitioner failed to satisfy MCL 211.7o(5)(b) and thus was not entitled to an exemption. The Court of Appeals ("the Court") affirmed the Tribunal's decision. The Court stated "while petitioner's articles of incorporation and bylaws provide that its purpose is to hold property in perpetuity, the same articles and bylaws provide that petitioner can 'disperse of' real and personal property if it is 'in furtherance of the purposes of the Corporation,' it does not specify that the property can be 'dispersed of' only if it 'is no longer suitable' for purposes of 'acquiring, maintaining, and protecting nature sanctuaries, nature preserves, and natural areas in this state, that predominantly contain natural habitat for fish, wildlife, and plants' which is what is required by subsection (b)(i)." Further costs are awarded at the discretion of the Tribunal and "the Tribunal determined that petitioner had not shown good cause to grant its request for costs and attorney fees, and found that such an award was not justified in this case." Therefore, the Court held Petitioner was not entitled to an exemption ad valorem taxation under MCL 211.7o(5) for the 2012 and 2013 tax years and costs and attorney fees are disallowed.

West Shore Services, Inc, v Department of Treasury, unpublished opinion per curiam of the Court of Appeals, issued July 21, 2015 (Docket No. 321085).

Petitioner, a distributor of outdoor warning sirens, argued that the sirens are not fixtures, but tangible personal property, and therefore Petitioner is a retailer not subject to use tax under the Use Tax Act. The Tribunal concluded that (i) Petitioner's installation process was sufficient to annex the sirens to the real property, (ii) even if not actually annexed, the sirens were constructively attached to the realty by virtue of their size, weight and method of installation, (iii) the sirens were adapted to the purpose of the land and intended to be part of the realty. The Court held that the Tribunal did not err in concluding that the sirens were fixtures, and that Petitioner was a contractor subject to use tax. The Court concluded that the sirens, which are attached to 50-foot wooden poles, were physically annexed to the realty. The fact that Petitioner did not use concrete, cables, wires or bolts in its installation process was irrelevant, as further securing the poles, which are placed into an eight-foot hole in the ground and can only be moved using heavy machinery, was likely unnecessary given their size and immobile nature. Concerning intent, the objective, visible facts demonstrating that the sirens can only be moved with heavy machinery, superseded Petitioner's claim that they were "easily removable." The Court found that Petitioner's argument ignored the fact that "the utility of the poles comes partially from their stability and relative permanence, as well as their ability to withstand the very weather conditions about which they were designed to warn the public."

Gardner v Dep't of Treasury, Ngo v Dep't of Treasury, Maselli v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued July 9, 2015 (Docket Nos. 150293, 150294, and 150295).

Petitioners seek a refund of the transfer tax they paid on the sale of their properties. Petitioners were all homeowners who sold their principal residences when the state equalized value (SEV) of their properties was less than the SEV at the time of their purchase. Petitioners paid a transfer tax pursuant to MCL 207.523 and then requested a refund from Treasury. The Tribunal reversed Respondent's denial and held that Petitioners, in all three cases, were entitled to refunds. Respondent appealed from the Tribunal's Final Opinion and Judgment and the Court of Appeals reversed the Tribunal's decision. The Supreme Court reversed the Court of Appeals decision and remanded to the Tax Tribunal for further proceedings. The Supreme Court stated there is no support for the Court of Appeals interpretation that the penalty clause applies whenever a property is sold for an amount "different" from twice the property's SEV at the time it is sold; "the only instance in which the penalty clause would apply to preclude entitlement to the exemption is when a seller or transferor sold the property for an amount other than an amount at which a willing buyer and a willing seller would have arrived through arms-length negotiation." The Supreme Court further stated "to be entitled to the transfer tax exemption under MCL 207.526(u), the petitioning taxpayer need only demonstrate that the property at issue is the principal residence of the seller or transferor, that it has an SEV at the time of conveyance that is less than or equal to the SEV at the time of acquisition, and that it was sold or transferred

for a price at which a willing buyer and a willing seller would arrive through an arm's-length negotiation." The Supreme Court determined these three elements were met in each of the consolidated cases. Therefore, the Supreme Court held "the Tax Tribunal properly determined that petitioners were entitled to a refund of the real estate transfer tax they had paid [and] [t]he Court of Appeals erred when it held that to be entitled to the exemption, petitioners must have sold their properties for exactly double the SEV at the time of sale."