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MICHIGAN ADMINISTRATIVE HEARING SYSTEM

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Dear Tax Tribunal Practitioner:

Court of Appeals Decisions

Petitioner Failure to Appear

Peach Tree Ass'n LLC v Henrietta Twp, unpublished opinion per curiam of the Court of Appeals, issued July 20, 2017 (Docket No. 333180).

Petitioner appealed the Tribunal's dismissal of its appeal for failure to appear at a duly-noticed hearing, arguing that it abused its discretion. The Court of Appeals noted that it adopted the factors set forth in *Vicencio v Jaime Ramirez, MD, PC* as factors the Tribunal should consider before imposing the sanction of dismissal, and it could not discern from the record that these factors were considered in this case. The Court concluded that Petitioner's failure to appear was accidental or inadvertent rather than willful, there was no history of deliberate delay or noncompliance with other orders of the Tribunal, and Petitioner attempted to cure its failure to appear by filing a motion for reconsideration immediately upon becoming aware of the dismissal order. The Court opined that a lesser sanction (such as the imposition of costs) would sufficiently serve the interests of justice, but left it up to the Tribunal to determine the appropriate sanction on remand.

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Four Zero One Associates LLC v Dep't of Treasury, unpublished opinion per curiam of the Court of Appeals, issued June 15, 2017 (Docket No. 332639).

Originally issued as an unpublished decision in June 2017 (see GovDelivery dated July 10, 2017), on August 1, 2017, the Michigan Court of Appeals approved this decision for publication.

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.



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Sales Tax

Garfield Mart Inc v Dep't of Treasury, __Mich App__ ; __NW2d__ (2017).

Petitioner appealed the Tribunal's Final Opinion and Judgment, which affirmed Respondent's sales tax assessment, inclusive of interest and a 10% negligence penalty. Petitioner argued that the Tribunal erred in concluding that its sales of certain prepaid wireless calling arrangements—PINless top-up and EPIN transactions—were sales or reauthorizations of "prepaid telephone calling cards" or "prepaid authorization numbers for telephone use" within the meaning of MCL 205.52(2)(b). The Court of Appeals affirmed the Tribunal with respect to the EPIN transactions, but reversed with respect to the PINless top-up transactions. It held that neither the PINless top-ups, which automatically add minutes to a prepaid cellphone via wireless download upon completion of payment, nor the EPIN transactions, which add minutes after the customer dials a 1-800 number and enters a PIN, are "telephone calling cards" within the meaning of the statute, i.e., "a credit-card-sized stiff card with a PIN." The Court further held that while an EPIN transaction is a sale of a "prepaid authorization number for telephone use," PINless top-ups are not: "A purchaser of a PINless top-up purchases additional prepaid telephone services without any concomitant purchase of an authorization number necessary to access the purchased service. Because no sale of a prepaid authorization number occurs when a customer purchases a PINless top-up, the sale is not taxable under MCL 205.52(2)(b)." The Court held that the negligence penalty must be adjusted accordingly on remand.