STATE OF MICHIGAN
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GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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August 2, 2016

Dear Tax Tribunal Practitioner:

Stipulations

Tribunal Rules 249 and 281 provided that stipulations "shall be on a form made available by the Tribunal or shall be in a written form that is in substantial compliance with the Tribunal's form." Although the Tribunal has previously offered a number of stipulation forms, no form expressly applicable to exemption appeals has been developed by the Tribunal. The Tribunal has created a stipulation form for exemption appeals which can be found on the Tribunal's website in both the Small Claims and Entire Tribunal pages.

Small Claims Jurisdiction

MCL 205.762(1) provides that the Tribunal's Small Claims division has jurisdiction over non-property tax cases if "the amount of the tax in dispute is $20,000 or less, adjusted annually by the inflation rate." (currently, $23,052). Tribunal Rule 263(2) further provides that "a non-property tax appeal may be heard in the small claims division if the amount of tax in dispute is not more that the amount provided by Section 62 of the Tax Tribunal Act, MCL 205.762, exclusive of interest and penalty charges." Effective immediately, the Tribunal will interpret the statute and its applicable rules to view the "amount of tax in dispute" as the cumulative amount of tax at issue in a single docket. For example, if a taxpayer is appealing several assessments in a single appeal, each under $23,052, but cumulatively greater than $23,052, the Tribunal will not allow said appeal to proceed in the small claims division.

Non-Property Appeals

This is a reminder that effective March 18, 2016, appeals of Treasury assessments to the Tribunal must be made within 60 days of Treasury's assessment, decision, or order. Previously, appeals to the Tribunal were required to be made within 35 days of the date of the assessment, decision, or order. (MCL 205.22(1)).

Court of Appeals Decisions

Principal Residence Exemption

Talamore for Three Trust v Cascade Twp, unpublished opinion per curiam of the Court of Appeals, issued July 14, 2016 (Docket No. 327010).

In an appeal arising out of an exemption dispute, the Court of Appeal's held that the Tribunal's judgment was supported by competent, material, and substantial evidence on the whole record. There was no evidence to support a finding that the property at issue was Petitioner's

principal residence in 2014, and pursuant to the plain language of MCL 211.7dd(c), mere intent to use a property as a principal residence is not sufficient: "[T]he owner of the property must actually live at the property such that [it] is the owner's 'true, fixed, and permanent home . . . .'" The Court also held that the Tribunal did not err in considering statements that constituted hearsay, as "[i]n a proceeding before the MTT, '[t]he rules of evidence must be followed as far as practical,' but the tribunal 'may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.'"

Valuation

International Tennis Corporation v City of Southfield, unpublished opinion per curiam of the Court of Appeals, issued July 19, 2016 (Docket No. 326656).

Petitioner appealed the Tribunal's Final Opinion and Judgment, arguing that the Tribunal failed to make an independent determination of value and that its decision was not based on competent, material, and substantial evidence. The Court of Appeals held that Petitioner's arguments were without merit, as the Tribunal provided a thorough and reasoned analysis of the various methodologies presented by both parties, and its concluded value did not constitute a wholesale acceptance of Respondent's valuation. The Tribunal acknowledged the unique zoning of the property and the opinions of both experts regarding its highest and best use, and in its acceptance and use of the cost approach, impliedly asserted the highest and best use of the property to be its continued use. The Court found that this methodology accounted for the zoning variations and the consent agreement permitting use of the property as a commercial enterprise despite the smaller percentage of its acreage being zoned commercial.

Tribunal Jurisdiction

Mais v City of Plainwell, unpublished opinion per curiam of the Court of Appeals, issued July 19, 2016 (Docket No. 327026).

Petitioner appealed the Tribunal's dismissal of his assessment dispute, arguing that Respondent's failure to properly serve its answer, the Tribunal's failure to provide him with an opportunity to amend his petition in light of this failure, and the lack of notice of the assessments to the prior owner all deprived him of his constitutional right to due process. Petitioner also argued that the Tribunal impermissibly made findings of fact in ruling on a motion for summary disposition and in denying his motion for reconsideration. The Court of Appeals held that the Tribunal did not err in dismissing the matter, as Petitioner failed to protest the assessments to the Board of Review, as required by MCL 205.735a. None of the arguments presented by Petitioner changed this fact, or the resulting lack of jurisdiction. Further, the Tribunal is permitted to raise the issue of jurisdiction on its own, and Petitioner failed to cite any authority supporting a conclusion that it must ignore the parties' pleadings in doing so.

Dismissal of Appeal

Imperial Investments LP v Shelby Twp, unpublished opinion per curiam of the Court of Appeals, issued July 21, 2016 (Docket No. 327641).

Petitioner appealed the Tribunal's denial of its motion for reconsideration, arguing that its failure to comply with Tribunal rules and orders was not willful, and that dismissal was too drastic of a sanction given that its error had not caused any substantive delay or prejudice. On the facts presented, the Court of Appeals agreed. The Court held that the Tribunal erred in concluding that the seven factors set forth in *Grimm v Dep't of Treasury*, 291 Mich App 140 (2010) did not apply, and that the record did not support dismissal of the petition. Though Petitioner's actions went beyond the scope of *Grimm*, there was no evidence that its violations were willful; rather, they were the result of unintentional negligence. Further, Petitioner had cured its filing-fee deficit and complied with various orders issued contemporaneously in various other tax appeals, and had also attempted to have its service-related default set aside. Moreover, the township was aware of the allegations contained in the petition and had entered into negotiations in an attempt to settle the matter. Given the lack of deliberate action, prejudice, or delay, the Court found that the Tribunal abused its discretion in dismissing the appeal.

Michigan Business Tax

Int'l Bus Machines Corp v Dep't of Treasury, __Mich App__; __NW2d__(2016)

IBM appealed the Court of Claims order granting, on reconsideration, summary disposition in favor of the Department. The Court of Appeals, finding that the Court of Claims had no authority to re-examine the case, reversed and remanded for an entry of judgment in favor of IBM. The Court found the well-accepted, but newly-termed "rule of mandate" controlling: "[T]he Supreme Court mandated ministerial entry of judgment in favor of IBM, the mandate foreclosed all other possibilities and any renewed litigation over IBM's 2008 business taxes, and the Court of Claims erred in taking action that contradicted the mandate, effectively exceeding the remand's jurisdictional scope." The enactment of 2014 PA 282, which retroactively rescinded Michigan's membership in the Multistate Tax Compact and precluded foreign corporations from using its three-factor apportionment formula, effective January 1, 2008, did not alter this finding, as it is well-established that the Legislature may not reverse a judicial decision: "There is a distinction between applying 2014 PA 282, as upheld in *Gillette*, to alter the specific resolution in *Int'l Business Machines* of the apportionment-formula question pertaining to IBM's 2008 taxes, which is not permissible under the ruling and remand directive, and applying 2014 PA 282 to all other pending tax disputes, recognizing that the Legislature was free to change the law in response to *Int'l Business Machines*."