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DEPARTMENT OF TREASURY
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Bulletin 2 of 2019
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Boards of Review

TO: Boards of Review and Assessing Officers

FROM: State Tax Commission

RE: 2019 Boards of Review

This Bulletin contains information that Boards of Review need to be aware of for the 2019 assessment year. The State Tax Commission Frequently Asked Questions regarding the statutory obligations for Boards of Review can be found on the State Tax Commission website at www.michigan.gov/statetaxcommission. The State Tax Commission asks that all Boards of Review carefully review this document in order to fully understand their statutory obligations. Board of Review members are also strongly encouraged to attend an annual *Board of Review Member Training Program* to review updates on statutory and policy changes.

1) Key Dates for 2019 Boards of Review

- **March 5, 2019.** The March Board of Review begins their work on the Tuesday following the first Monday in March. On this day, the Board holds their organizational meeting and formally receives the assessment roll from the assessor. This is the meeting for the Board to “get organized”. They should elect a chairperson, discuss how they are going to conduct business, review any statutory or policy changes they should be aware of for the current year and receive any briefings they want from the assessor regarding the assessment roll. The Board will not hear appeals at this first meeting.
- **March 11, 2019.** Appeal meetings of the March Board begin on the 2nd Monday in March. Local units can set an alternative start date for the appeal meetings by adopting an ordinance or resolution, but that alternative start date can only be the Tuesday or Wednesday of that same week (i.e. the Tuesday or Wednesday following the 2nd Monday in March).

The required first appeal meeting on the second Monday in March must start no earlier than 9 A.M. and no later than 3 P.M. The Board must meet for a minimum of 6 hours that day. The Board must meet a total of at least 12 hours during that first week and at least 3 hours of the required sessions must be after 6 P.M.

- **April 1, 2019.** The March Board of Review must complete their work by the first Monday in April. Assessment rolls must be turned over to County Equalization by the

Wednesday following the first Monday in April or 10 days following the close of the March Board, whichever is first.

- **July 16, 2019.** If convened, the July Board meets on the Tuesday following the third Monday in July, unless an alternate start date is adopted by the local unit.
- **December 10, 2019.** If convened, the December Board meets the Tuesday following the second Monday in December, unless an alternate start date is adopted by the local unit.

2) Alternate Start Dates for the July or December Boards of Review:

Public Act 122 of 2008 amended MCL 211.53b to provide that July or December Boards of Review may have an alternate start date. The act requires that the governing body of the City or Township adopt by ordinance or resolution alternate start dates that must conform to the following: For the July Board, an alternate date during the week of the 3rd Monday in July. For the December Board, an alternate date during the week of the 2nd Monday in December.

3) Documentation of Board of Review Changes:

The State Tax Commission requires that all Boards of Review maintain appropriate documentation of their decisions including; minutes, a copy of the form 4035, form 4035a whenever the Board of Review makes a change that causes the Taxable Value to change and a Board of Review Action Report. Form 4035 must include a detailed reason why the Board made their determination. **Assessors please note, you are not required to file the Board of Review log or Action Report with the State Tax Commission.**

Minutes must include all the following items:

- Day, time and place of meetings.
- Members present, members absent, name of elected chairperson and notation of any correspondence received.
- A log that identifies the hearing date, the petition number, the petitioner's name, the parcel number, the type of appearance, type of appeal and decision of the board of review.
- Record daily the actual hours the Board was in session, and time of daily adjournments. Record the closing date and time of the final annual session.

4) Inflation Rate used in the 2019 Capped Value Formula:

MCL 211.34d defines the calculation for the Inflation Rate Multiplier. The statute states in part:

- (l) "Inflation rate" means the ratio of the general price level for the state fiscal year ending in the calendar year immediately preceding the current year divided by the

general price level for the state fiscal year ending in the calendar year before the year immediately preceding the current year.

Further, (f) states "General price level" means the annual average of the 12 monthly values for the United States consumer price index for all urban consumers as defined and officially reported by the United States department of labor, bureau of labor statistics.

Based on this statutory requirement, the calculation for 2019 is as follows:

1. The 12 monthly values for October 2016 through September 2017 are averaged.
2. The 12 monthly values for October 2017 through September 2018 are averaged.
3. The ratio is calculated by dividing the average of column 2 by the average of column 1.

The specific numbers from the US Department of Labor, Bureau of Labor Statistics are as follows:

Oct-16	241.729	Oct-17	246.663
Nov-16	241.353	Nov-17	246.669
Dec-16	241.432	Dec-17	246.524
Jan-17	242.839	Jan-18	247.867
Feb-17	243.603	Feb-18	248.991
Mar-17	243.801	Mar-18	249.554
Apr-17	244.524	Apr-18	250.546
May-17	244.733	May-18	251.588
Jun-17	244.955	Jun-18	251.989
Jul-17	244.786	Jul-18	252.006
Aug-17	245.519	Aug-18	252.146
Sep-17	<u>246.819</u>	Sep-18	<u>252.439</u>
Average	243.841	Average	249.749
		Ratio	1.024
		% Change	2.4%

Local units cannot develop or adopt or use an inflation rate multiplier other than 1.024 in 2019. It is not acceptable for local units to indicate to taxpayers that you do not know how the multiplier is developed.

5) County Multipliers:

It has come to the attention of the State Tax Commission that some Boards of Review believe it is appropriate to develop their own County Multipliers. It is not acceptable for a local unit or Board of Review to develop County Multipliers. The multipliers developed by the State Tax Commission must be used.

6) Qualified Errors:

The State Tax Commission continues to note a number of July and December Boards of Review making changes that are not allowed by the statute. **Boards of Review and**

assessors are cautioned to take great care to ensure that any changes made by the July or December Board meet the requirements of MCL 211.53b.

MCL 211.53b provides that the July or December Boards of Review can correct "qualified errors" for the current year and one prior year, unless additional years are specifically addressed by the statute.

A correction under subsection (6) regarding Principal Residence Exemptions may be made for the year in which the appeal was filed and the three immediately preceding years.

A correction under subsection (8) that approves a qualified personal property exemption contained in MCL 211.9o for small business taxpayers may be made for the year in which the appeal was filed and the immediately preceding tax year.

The July and December Boards of Review **have no authority** over the Eligible Manufacturing Personal Property Exemptions contained in MCL 211.9m and MCL 211.9n. If an assessor misplaces or missed a timely filed Form 5278, that **is not** considered a clerical error or mutual mistake and cannot be considered by the July or December Board of Review.

Regarding MCL 211.27a(4); if the taxable value of property is adjusted and the assessor determines that there had not been a transfer of ownership, the taxable value of the property shall be adjusted for the current year and for the three immediately preceding calendar years. An adjustment under this subsection shall be considered the correction of a clerical error.

Qualified Errors are defined in MCL 211.53b as:

- A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes
- A mutual mistake of fact.
- An adjustment under section 27a(4) – taxable value or an exemption under section 7hh(3)(b)– qualified start-up business exemption.
- An error of measurement or calculation of the physical dimensions or components of the real property being assessed.
- An error of omission or inclusion of a part of the real property being assessed.
- An error regarding the correct taxable status of the real property being assessed.
- An error made by the taxpayer in preparing the statement of assessable personal property under section 19.
- An error made in the denial of a claim of exemption for personal property under section 9o.

“Clerical Errors’ and ‘Mutual Mistakes of Fact’ are defined by the courts as follows:

Clerical Error was defined by the Court of Appeals in *International Place Apartments v Ypsilanti Township* 216 Mich App 104; 548 NW2d 668 (1996), as “an error of a transpositional, typographical, or mathematical nature.” July and December Boards of Review are NOT allowed to revalue or reappraise property when the reason for the action is that the assessor did not originally consider all relevant information.

Mutual Mistake of Fact was defined by the Court of Appeals in *Ford Motor Co v City of Woodhaven*, 475 Mich 425; 716 NW2d 247 (2006) as “an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.” This definition was clarified by the Michigan Supreme Court in *Briggs Tax Service, LLC v Detroit Public Schools*, 485 Mich 69; 780 NW2d 753 (2010). The Michigan Supreme Court indicated that to qualify, the “mutual mistake of fact” must be one that occurs only between the assessor and the taxpayer.

7) Disabled Veterans Exemption:

The State Tax Commission has issued significant guidance on the Disabled Veterans Exemption. This guidance can be found on the State Tax Commission website under “What’s New”. Boards of Review are encouraged to review all Disabled Veterans Exemption guidance issued by the State Tax Commission.

Boards of Review are strongly cautioned that the determination that a veteran is 100% disabled or individually unemployable is made by the U.S. Department of Veterans Affairs. Boards of Review **do not** have authority to make an independent determination that a veteran is 100% disabled or individually unemployable. Conversely, Boards of Review **do not** have the authority to determine a veteran is not 100% disabled or individually unemployable once the U.S. Department of Veterans Affairs has issued their determination.

Disabled Veterans Exemption for Unremarried Surviving Spouse: The State Tax Commission is aware that the Michigan Tax Tribunal in MTT Docket 16-004780, *Deborah E. Rabun v City of Farmington Hills*, held that a surviving spouse cannot qualify for the exemption when the deceased disabled veteran never owned or occupied the subject property as a homestead.

While the STC understands that is the position of the MTT, the STC does not agree or support that determination. It was never legislative intent that the unremarried surviving spouse be required to forever live in the original home. In fact, the STC in their original guidance indicated that: *the Disabled Veteran’s exemption is not an exemption for the benefit of the property. Instead, it is an exemption personal to the qualifying disabled veteran or the unremarried surviving spouse of the qualified deceased disabled veteran.*

Since the exemption is personal to the qualified individual the STC is advising assessors and Boards of Review that they can and should approve exemptions for unremarried surviving spouses that meet all other statutory requirements, regardless of if the disabled veteran ever owned or occupied that subject property as a homestead.

8) Personal Property Tax:

On May 3, 2018 Governor Snyder signed in law P.A. 132 of 2018. This act made changes to the Small Business Taxpayer Exemption (MCL 211.9o), specifically changing the filing requirements to provide that eligible taxpayers **do not** have to annually file to receive the exemption. Taxpayers who filed for the exemption in prior years still must file Form 5076, *Small Business Property Tax Exemption Claim Under MCL 211.9o*, in 2019 to claim the exemption. Once granted, the assessor will then continue to exempt the personal property until the taxpayer files a rescission indicating they no longer qualify for the exemption.

Assessors can implement an audit program to determine if taxpayers still qualify for the exemption.

As a reminder, Public Acts 261-264 of 2017 were signed into law on December 28, 2017. These Acts made several changes that affect both the Small Business Taxpayer Exemption and the Eligible Manufacturing Personal Property Exemption (EMPP).

P.A. 261 of 2017 changes the deadline for filing the Small Business Taxpayer Exemption to February 20 and changed Form 5076 from an Affidavit to a Statement. This allows the assessor to accept either a facsimile or electronic signature on Form 5076. Form 5076 has been updated to reflect these statutory changes.

P.A. 261-264 of 2017 also changed the statute to allow assessors to accept a postmark by February 20 for Form 5278 to claim the EMPP exemption. Form 5278 and Form 632 (Personal Property Statement) have been updated to reflect these statutory changes.

Finally, P.A. 261-264 of 2017 changed the appeal procedure for both the Small Business Taxpayer Exemption and the EMPP exemption. Taxpayers who miss the filing deadline for either exemption may file a late application directly with the March Board of Review. The March Board of Review should grant the exemption as long as the taxpayer otherwise qualifies for the exemption. Both the Assessors Guide to the Small Business Taxpayer Exemption and the Assessors Guide to EMPP and ESA have been updated to reflect these statutory changes.

The updated Guide to the Small Business Taxpayer Exemption and Assessors Guide to EMPP and ESA are available online at www.michigan.gov/propertytaxexemptions.

Further information and guidance on the Eligible Manufacturing Personal Property (EMPP) Exemption, Special Acts and the Essential Services Assessment (ESA) is available at www.michigan.gov/ESA. Additional questions should be sent via email to ESAQuestions@michigan.gov.

9) Poverty Exemptions:

The State Tax Commission issued Bulletin 6 of 2017 regarding Poverty Exemptions. This Bulletin reflects updates due to recent court decisions and legislative changes. Specifically:

The Michigan Court of Appeals ruled in *Ferrero v Township of Walton* (Docket No. 302221) that monies received pursuant to MCL 206.520 (homestead property tax credit) is a rebate of property taxes and is not income for purposes of MCL 211.7u.

Statutory changes to allow an affidavit to be filed for all persons residing in the residence who were not required to file federal or state income tax returns in the current year or in the immediately preceding year. This does include the individual filing for the exemptions.

Board of Review members are encouraged to review Bulletin 6 of 2017 prior to the start of March Board of Review meetings.

10) Property Classification and Transfer of Ownership:

Boards of Review are encouraged to review the *Property Classification and Transfer of Ownership Guidelines* available on the State Tax Commission website.

11) Public Act 660 of 2018:

Public Act 660 of 2018 was signed by the Governor on December 31, 2018. This Public Act made several changes to the General Property Tax Act. MCL 211.10d(7) was amended to allow a village located in more than 1 assessing district to request State Tax Commission approval that the assessment of property within the village be combined with the assessment of property in 1 of those assessing districts. Public Act 660 also amends MCL 211.28(6) to allow the governing bodies of 2 or more contiguous cities or townships to enter into an agreement to appoint a single board of review to serve as the board of review for each of those cities or townships.

The State Tax Commission will provide additional resources and guidance regarding changes to be implemented as a result of Public Act 660 of 2018.

12) Resources and Training:

The State Tax Commission has published a significant amount of resource information to assist Boards of Review in carrying out their statutory responsibilities. This information can be found on the State Tax Commission website at www.michigan.gov/statetaxcommission under the Board of Review Information heading.

The State Tax Commission recommends that all new and returning Board of Review Members annually attend training to receive updated information related to legislative and policy changes that have occurred during the past year.

For additional BOR resource and training information, please contact the State Tax Commission at (517) 335-3429.