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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

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DIRECTOR

January 14, 2022 MTT 2022-1

**MTT OFFICE WILL BE CLOSED ON JANUARY 17, 2022,
IN HONOR OF MARTIN LUTHER KING JR DAY
RECENT CASE LAW OF INTEREST
DESIGNATED DELIVERY SERVICES**

Welcome to the first 2022 edition of the MTT Newsletter. The offices of the Michigan Tax Tribunal will be closed Monday, January 17, 2022, in observance of the national holiday honoring Dr. Martin Luther King Jr. We will reopen on Tuesday, January 18, 2022. Please note that our e-filing option will not be affected by the holiday office closure.

Recent Cases of Interest

'Mohammed M. Alomari v City of Sterling Heights, unpublished opinion per curiam of the Court of Appeals, issued October 14, 2021 (Docket No. 355822). (AFFIRMED) Petitioner appealed from the Tribunal's judgment upholding Respondent's valuation of the subject property. A home was built on the subject property in 2018 and Petitioner purchased the property in 2019. The petition filed with the Tribunal argued that the subject property had been uncapped twice, in 2019 and again in 2020, in violation of MCL 211.27a. Respondent argued that the only uncapping occurred in 2020, the year following Petitioner's purchase, and the increase in taxable value in 2019 was due to additions, i.e., the home which was completed in 2018. On appeal Petitioner argued that the Tribunal erred by not using their market-approach argument that they attempted to introduce at the hearing. A Tribunal order indicates Petitioner's market approach evidence was not admitted at the hearing because it was not submitted and served on the opposing party at least 21 days before the hearing date. The court found the preclusion of Petitioner's evidence at the hearing consistent with the Tribunal's orders and the administrative rules that governed the proceeding. The court found that the Tribunal adopted Respondent's assessed valuation as its own independent finding of true cash value, as it was permitted to do so. See *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 640; 806 NW2d 342 (2011). The court found the Tribunal's decision was supported by competent and material evidence in the form of the 2018 through 2020 property record cards and valuation reports. In addition, the Tribunal did consider Petitioner's theory of valuation and rejected it in its order denying Petitioner's motion for reconsideration. Further, Respondent was not required to provide assessments of similarly situated neighboring homes as argued by Petitioner since the petition did not allege that the subject property was assessed differently from similarly situated neighboring homes.

James S. Kemper III, Trustee v Leelanau Township, unpublished opinion per curiam of the Court of Appeals, issued October 14, 2021 (Docket No. 355735). (AFFIRMED)
James S. Kemper v Leelanau Township, unpublished opinion per curiam of the Court of Appeals, issued October 14, 2021 (Docket No. 356449). (AFFIRMED)
In these consolidated appeals, Petitioner challenged the Tribunal's orders regarding their principal residence exemption (PRE). The Leelanau County Treasurer denied the PRE on February 25, 2020, for tax years 2017 through 2020, because Petitioner's spouse owned a home in Illinois and claimed the Illinois equivalent of a PRE until 2020. Petitioner and their spouse filed joint income tax returns in Michigan..
In Docket No. 355735 Petitioner appealed the Tribunal's order dismissing Petitioner's appeal because it was not filed within 35 days of the denial of the PRE. Prior to appealing to the Tribunal, Petitioner filed a petition with the July Board of Review (BOR) to restore the PRE for tax years 2017 through 2019, however, the BOR took no action because it lacked authority to hear the appeal. Petitioner argues that because the PRE was denied, the exemption was retroactively removed from the tax rolls, which permitted the July BOR to hear the appeal under MCL 211.7cc(19). In affirming the Tribunal's order of dismissal, the court found that while an exemption is removed from the tax rolls upon denial of the exemption, this does not create an avenue to bypass the appeal to the Tribunal in favor of appealing to the BOR, as that would render portions of MCL 211.7cc nugatory because the various sections requiring an appeal to the Tribunal within 35 days of a denial would be ineffective.
In Docket No. 356449, Petitioner appealed the denial of the PRE for tax year 2020. Petitioner argues the effective date of the Illinois rescission was the date Petitioner's spouse requested the rescission (April 30, 2020), not the date of the notice of lien for the recoupment of taxes (June 11, 2020), as stated by the Tribunal. Petitioner also argues they were entitled to appeal the PRE denial to the July BOR and that the PRE was effective until December 31, 2021, under *Campbell v Mich Dep't of Treasury*, 331 Mich App 312; 952 NW2d 568 (2020). The court found the Tribunal did not make an error of law when it used *Marie De Lamielleure Trust v Treasury Dep't*, 305 Mich App 282; 853 NW2d 708 (2014) to find that the effective date of the rescission of the Illinois exemption was the date that it was removed from the tax roll and not the date that Petitioner's spouse expressed the intention to have the exemption rescinded or the date that Cook County acknowledged receipt of the request. The court agreed with the Tribunal that because Petitioner filed the PRE affidavit on May 14, 2020, instead of between June 11, 2020 and June 30, 2020, the July BOR would have been unable to grant the PRE. Regarding Petitioner's reliance on *Campbell*, because the issue that the PRE remained in effect until December 31, 2020, was not raised before the Tribunal, it is unpreserved for appeal and the court declined to address the issue.

Melinda Hubbard v City of Northville, unpublished opinion per curiam of the Court of Appeals, issued October 21, 2021 (Docket No. 355390). (AFFIRMED)
Petitioner appealed from the Tribunal's order dismissing her petition for lack of jurisdiction. Petitioner purchased the subject property in 2019. After receiving the 2020 notice of assessment which provided information on filing a protest with the local Board of Review (BOR), Petitioner filed a petition with the Tribunal on August 11, 2020,

challenging Respondent's assessment of the property's taxable value for the 2020 tax year. Petitioner did not file a protest with either the March or July BOR. The Tribunal dismissed the petition after Respondent filed its answer indicating Petitioner failed to appeal the assessment to the BOR. Petitioner argues that MCL 205.731 gives the Tribunal original and exclusive jurisdiction over their challenge to Respondent's assessment of the property's taxable value. The court found the broad grant of jurisdiction provided by MCL 205.731 must be read in conjunction with other provisions of the Tax Tribunal Act, namely MCL 205.735a(3), which provides that "[e]xcept as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the [MTT] acquires jurisdiction of the dispute under subsection (6)." Thus, a property owner whishing to challenge the valuation or assessment of their property must first pursue a protest before the local BOR and failure to do so precludes a property owner from properly invoking the Tribunal's jurisdiction over the assessment dispute.

Walnut Creek Country Club v Lyon Township, unpublished per curiam opinion of the Court of Appeals, issued January 6, 2022 (Docket No. 351980) (AFFIRMED). Petitioner appealed the Tribunal's Final Opinion and Judgment, which determined the true cash and taxable values of Petitioner's golf course property. Respondent cross-appealed the Tribunal's order denying its motion for costs and attorney fees. The Court held that the Tribunal did not err in accepting Respondent's income-capitalization approach because it was supported by the evidence on the record. The Court held that the Tribunal's allowance of Respondent's undisclosed witness was not grounds for reversal because Petitioner did not allege any error that affects its substantial rights. The Court held that the Tribunal's determination of highest and best use is supported by competent, material, and substantial evidence and not based upon an erroneous principle of law. Finally, the Court held that the Tribunal did not err in denying Respondent's motion because the record supported the Tribunal's finding that Petitioner's error was not harassment.

Nali v City of Grosse Pointe Farms, unpublished order of the Court of Appeals, entered November 9, 2021 (Docket No. 359188). Petitioner's claim of appeal was dismissed for lack of jurisdiction because it was not filed within 21 days of entry of the order deciding the motion for post judgment relief, as provided by MCR 7.204(A)(1)(b).

Kyle Shaw Residential Properties, LLC v City of Lansing, unpublished per curiam opinion of the Court of Appeals, issued November 4, 2021 (Docket No. 354760). Petitioner appealed the Tribunal's true cash value determination for the 2020 tax year, arguing that it erred in failing to consider the purchase price of the property. The Court of Appeals held that the Tribunal did consider the purchase price, but correctly recognized that it was not required to accept it as conclusive evidence of true cash value. The Court further held that Tribunal offered an appropriate rational for not relying on the purchase price, and for its acceptance of Respondent's evidence. Petitioner also argued that the Tribunal (1) should have accepted its contentions of value based on its sales evidence, (2) overlooked certain characteristics of the property, and (3) failed to

consider the property's highest and best use. The Court held that the Tribunal was not required to employ a specific valuation method or quantify every possible factor affecting value, and that the assumed highest and best use was clear. Ultimately the Tribunal made an independent determination of value that was supported by competent, material, and substantial evidence.

Designated Delivery Service

MCL 205.735a(7) provides that a petition is considered filed on or before the statutory filing period if: (a) the petition is postmarked by the U.S. Postal Service on or before the expiration of the applicable time period, (b) the petition is delivered in person on or before the expiration of the applicable time period, or (c) the petition is given to a designated delivery service for delivery on or before the applicable time period. MCL 205.735a(11) provides that a "designated delivery service" means a delivery service provided by a trade or business that is designated by the Tribunal. For the 2022 calendar year, the Tribunal designates DHL Express (DHL), Federal Express (FedEx) and the United Parcel Service (UPS) as its designated delivery services.

I trust that you found this issue of the MTT Newsletter of interest. On behalf of our team at the Michigan Tax Tribunal, we wish you and your families a safe and healthy 2022.

Sincerely,

Steven M. Bieda
Chairperson, Michigan Tax Tribunal