



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHAEL ZIMMER
EXECUTIVE DIRECTOR

STEVEN ARWOOD
DIRECTOR

June 9, 2014

Dear Tax Tribunal Practitioner:

Many of you may not know this, but the Tax Tribunal was created by statute effective July 1, 1973. Thus, at the end of this month, the Tribunal will celebrate its 40th anniversary as Michigan's administrative tax court. Although it has experienced some bumps in the road over the years, the Tribunal continues to strive to provide fair, consistent and effective resolution of tax appeals in Michigan. Our major goals for 2014 are to better communicate with the public and to improve the quality of the work product delivered by the Tribunal. We believe that these goals are being achieved through a redesigned web site, monthly GovDelivery, adoption of our new case management system and e-filing capability, and a more thorough review of the orders and opinions issued by the Tribunal. As always, we welcome your comments, questions and suggestions. Finally, we want to thank all former and current Members and staff of the Tribunal for their efforts over the past 40 years.

Caseload/E-Filing

As you are all aware, June 2, 2014, was the deadline for the filing of commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, and utility personal property valuation appeals. Many cases were filed using the Tribunal's new electronic filing system. In that regard, the Tribunal has received many inquiries that we thought would be beneficial to publish in this GovDelivery.

1. Can one e-filing user account be used by multiple people?

No. When you register for a user account, a specific person must be identified. When any pleadings or documents are filed, our system will reflect this specific person as the filing person. Each person within a firm or entity must have separate user accounts.

2. Can one e-mail address be used by multiple people?

No. When you create a user account, your e-mail address is your user name and every user must have a different user name.

3. Why don't my cases show up in the "My Cases" section?

The address, as reflected in your user account must match, exactly, the way the address is reflected in the Tribunal's case management system. One frequently found error is that the street address must be in Address Line 1. Please do not include any business, local unit, or firm names in any of the three address lines. If you need assistance in comparing

LARA is an equal opportunity employer/program.
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

MICHIGAN TAX TRIBUNAL
P.O. BOX 30232 • LANSING, MICHIGAN 48909
www.michigan.gov/taxtrib • (517) 373-4400

your account with the Tribunals, please call the Tribunals' main line and ask to speak with Connie or Cindy.

4. Will the e-filing system store my credit card information?

No. The State of Michigan's Centralized Electronic Payments Authorization System (CEPAS) will not record any credit card numbers.

5. Am I required to attach a formal petition or answer to an ET Case Information Sheet?

Yes, you MUST attach a formal petition or formal answer at the bottom of the ET Case Information form when e-filing either of these types of documents.

6. I owe additional filing fees, can I electronically pay them?

No. In some instances a party may be placed in default and ordered to file a Motion to Set Aside Default (with appropriate Motion fee) and to pay a deficiency in filing fees. You may file the Motion and required fee via the Tribunal's e-filing system. However, to pay the deficiency in filing fees, you must send a check to the Tribunal with a note referencing the reason for the payment and the docket number of the case.

Timeline for ET Cases

The Tribunal is considering changing the timeline for processing of Entire Tribunal cases. Currently, the Tribunal places cases on a Prehearing General Call approximately one year after an Answer to the Petition is filed. Valuation disclosures and prehearing statements are then due approximately 9 months after the Prehearing General Call is issued. Approximately 60 days after the due date for valuation disclosures and prehearing statements, files are pulled and assigned to Tribunal judges for the scheduling of a prehearing conference. Prehearing conferences are scheduled within 30 days of a case being assigned to a judge. Hearings are then typically scheduled to commence within 60 days of the conducting of the prehearing conference, with a final opinion issued within 90 days of the close of the hearing. Thus, on average, the Tribunal expects to close a case within 30 months of the filing of the petition. In an attempt to shorten this timeline, but still allow the parties adequate time for discovery, to secure appraisals, and conduct settlement discussions, the Tribunal is proposing to shorten the time between the filing of an Answer to when a case is placed on a Prehearing General Call from one year to three to six months; thus reducing the total time from initiation of the appeal to its close. The Tribunal is interested in your comments or suggestions regarding this issue, and would appreciate receiving any comments by July 31, 2014.

Recent Court of Appeals Decisions/Legislation

Lowe's Home Centers, Inc v Marquette Twp; Home Depot USA, Inc v Breitung Twp, unpublished opinion per curiam of the Court of Appeals, issued April 22, 2014 (Docket Nos. 314111 and 314301). The recent controversy regarding alleged "tax breaks for big box retailers" based on the purported valuation of such properties as vacant or abandoned was recently addressed by the Michigan Court of Appeals, which held that the Tribunal properly considered the evidence

submitted by the parties and affirmed the Tribunal's decisions on statutory and constitutional grounds. On June 3, 2014, the Court of Appeals denied Petitioners' request that this decision be published. Also on June 3, 2014, Respondent requested leave to appeal the Court of Appeals decision to the Michigan Supreme Court.

Autodie, LLC v City of Grand Rapids ___ Mich App ___; ___ NW2d ___ (2014). In this published decision, Petitioner appealed a decision by the Grand Rapids assessor to deny Petitioner's use of Form 4798 to report its personal property and, instead, independently calculate the value of Petitioner's personal property. Both the State Tax Commission and the Tribunal dismissed the case for lack of subject matter jurisdiction. The court reiterated that there are "four areas in which the Commission has original subject matter jurisdiction to hear and investigate petitions: (1) property fraudulently assessed under MCL 211.150(3); (2) property improperly assessed under MCL 211.150(3); (3) property omitted, under MCL 211.154; and (4) property improperly reported under MCL 211.154." Petitioner attempted to argue that the property was improperly assessed but failed to raise the issue before the Commission and because the Tribunal was reviewing the Commission ruling as an appellate body it could not hear an issue not raised before the original judicial body. Petitioner's added argument that the property was improperly reported under MCL 211.154 was rejected by the court, confirming the Tribunal's statement that "the taxpayer 'reports' and the taxing authority 'assesses.'" Furthermore, "improperly reporting and improperly assessing are distinctly different activities." Reporting "which is the activity of the taxpayer" is "to make the property known by making a statement of the property." On the other hand assessing "which is the activity of the assessor" is "more specific than simply making a statement of the taxpayer's personal property. The assessor must also estimate the property's value and make and complete the assessment role." Importantly, the assessor "processes the information and applies his or her judgment to determine the property's true cash value."

Deena Shotwell v Treasury ___ Mich App ___; ___ NW2d ___ (2014). In this published decision, Petitioner's husband owned and operated a tobacco distribution company subject to the Michigan Tobacco Product Tax Act. Following her husband's death, Petitioner was appointed by a Kentucky court as an administrator of his estate and ultimately helped operate her deceased husband's company. When the company failed to pay the required tax prepayments in 2006 and 2007, Petitioner was assessed as a responsible officer. Petitioner was appointed an officer of the corporation in October 2010, after the taxes had been assessed and the payment date had passed. However, when Petitioner was later elected a director of the company, the board of directors ratified all previous actions taken by Petitioner as if she had been an officer at the time such actions were taken. The Tribunal granted summary disposition to Petitioner, concluding that she was not a corporate officer when the taxes were assessed and due, and the Court affirmed the Tribunal's decision. The court concluded that "an officer may only be held personally liable when he or she controlled, supervised, or was responsible for filing returns or paying taxes during the 'time period of default,' which consists of the relevant tax period extending to 'the latter of the date set for the filing of the tax return or making the required payment.'" Furthermore, "an individual who did not control, supervise, or bear responsibility for filing returns or paying taxes during the relevant timeframe may not be held personally liable." In this case because Petitioner was not appointed a director until after the dates had passed she cannot be liable. The court also dismissed Respondent's *de jure* officer argument because even though

she was given the power to act on behalf of the corporation by the Kentucky District Court she was not formally appointed by the procedures set out in the corporate bylaws until after the relevant dates had passed and that until she was appointed by the bylaw procedures she was not truly a corporate officer. The court also dismissed Respondent's *de facto* officer argument even though she acted in the capacity as an officer and ratified her actions after the fact because the statute "makes no mention of 'de facto officers,' and we decline to read language into the statute that the legislature did not include. Had the legislature intended to include de facto officers as individuals who could be personally liable, it could have so specified." More important, the court concluded that amendments in 2014 to the Michigan Revenue Collection Act relating to officer liability issues are retroactive.