STATE OF MICHIGAN
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GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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May 1, 2014

Dear Tax Tribunal Practitioner:

Miscellaneous

Now that the Tribunal has moved to the Ottawa Building, please remember that if you are sending documents to the Tribunal by certified mail, overnight delivery, UPS, FedEx, etc, please send them to our new physical address: 611 W. Ottawa Street, Ottawa Building, 4th Floor, Lansing, MI 48933.

Also, if you e-mail the Tribunal with questions, comments, etc, please remember to include the MTT Docket Number. Identifying your docket number saves staff a substantial amount of time trying to determine the appropriate file you are referencing.

Our last GovDelivery informed you that the Tribunal would allow notification of settlements and uncontested withdrawals via e-mail. Please remember that if the property does not have a PRE of 50% or more, a motion fee is required ($25 – Small Claims, $50 – Entire Tribunal) and we will require a copy of the check faxed or e-mailed to us with the signed stipulation by 4:30 p.m. on the day prior to a hearing. Otherwise, the hearing will proceed as scheduled.

Recent Court of Appeals Decisions

Given the large number of Court of Appeals decisions issued recently related to the Tax Tribunal, we thought we would devote most of this GovDelivery to a summary of relevant decisions:

Lowe's Home Centers, Inc v Marquette Township; Home Depot USA, Inc v Breitung Township ("Dark Store" Decision) The recent controversy regarding alleged "tax breaks for big box retailers" based on the purported valuation of such properties as vacant or abandoned (i.e., "dark") was addressed by the Michigan Court of Appeals through the issuance of its decision in *Lowe's Home Centers, Inc v Marquette Twp* and *Home Depot USA, Inc v Breitung Twp*, unpublished opinion per curiam of the Court of Appeals, issued April 22, 2014 (Docket Nos. 314111 and 314301).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 Court of Appeals held that the Tribunal properly considered the evidence submitted by the parties and affirmed the Tribunal's decisions in both *Lowe's* and *Home Depot* on statutory and constitutional grounds. In its decision, the Court of Appeals stated:

- MCL 211.27 fulfills the constitutional mandate of Article 9, § 3 . . . .

- Because these properties were owner-occupied at the time of assessment . . . **the interest to be valued was the fee simple interest . . . as opposed to the leased fee interest**, which is the value of the property sold with a lease in place . . . . [and] by valuing the properties **as big box stores that were vacant and available**, rather than as occupied

properties, the tribunal **properly valued the fee simple interest** of the property **by considering the existing use** of the properties in compliance with the plain language of the statute. [Emphasis added.]

- . . . the comparables presented by . . . [Respondents' appraiser] . . . are all either "sale-leaseback transactions, sales of leased properties from one investor to another . . . [or] sales of leased properties from the landlord to the tenant." These transactions are all leased fee transactions, rather than fee simple transactions. **Had . . .** [**he**] **made appropriate adjustments for the difference in the property rights involved in his comparables** – the leased fee interest – as compared with the subject properties – the fee simple interest – **these comparables could have been appropriate**." [Emphasis added.]

- . . . the fact that the Lowe's and Home Depot businesses . . . had no intention of closing their doors is irrelevant . . . . Determining the TCV requires determining the fair market value of the property **as if the owner were to sell the property**, regardless of whether or not the operating business intended to remain in business. [Emphasis added.]

- Respondents' conceptualization of the HBU – use as a Lowe's and Home Depot store – makes the determination of TCV dependent upon the identity of the property owner . . . . "The Constitution requires assessments to be made on property . . . [which] means . . . [the] . . . *recognizable pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it*" . . . . [and, as such,] consideration of the existing *user* or owner of the property is not permitted. [Emphasis in original.]

- . . . by taking the position that the HBU of the properties is use as a Lowe's and Home Depot store, respondents confuse the distinct concepts of fair market value (i.e., value-in-exchange) and value to the owner (i.e., value-in-use) by treating them as one in the same. Our Supreme Court has expressly stated that "the constitution and the General Property Tax Act **require** that property tax assessments be based on market value, not value to the owner. . . ." [Emphasis added.]

Helen Flowers v Bedford Twp, __ Mich App __; __Nw2d __ (2014). The issue presented on appeal was whether Petitioner is an owner of the subject property for purposes of receiving a principal residence exemption ("PRE") under MCL 211.7cc. Petitioner's husband, Richard, owned the subject property prior to the marriage and his will granted Petitioner a life estate in the subject, with a future interest to his children. Richard passed away in August of 2011. The Tribunal found that Petitioner was not an owner under MCL 211.7dd(a)(v) and was therefore not entitled to a PRE. Although the Court of Appeals found that "[t]he tribunal's reasoning in regard to MCL 211.7dd(a)(v) is sound because petitioner's life estate was not preceded by a sale or transfer of the property to another" the Court of Appeals held that "petitioner is entitled to the PRE because she is a partial owner, along with Richard's children, under MCL 211.7dd(a)(ii). Further, petitioner is also an owner under MCL 211.7dd(a)(iii) because she 'owns property as a result of being a beneficiary of a will or trust or as a result of intestate succession.'"

Gordon Grossman Building Co v City of Melvindale, unpublished opinion per curiam of the Court of Appeals, issued April 10, 2014 (Docket No. 313405). Petitioner appealed the Tribunal's valuation decision, arguing that the Tribunal failed to consider the income approach in

valuing the subject, a rental duplex. The Court of Appeals found "the fact that a property produces income does not mean that an income-capitalization method of valuation **must be used to determine TCV** . . . Instead, any method recognized as accurate and reasonably related to fair market valuation is an acceptable means to determine TCV." [Emphasis added.] The Court of Appeals recognized that the Tribunal found Petitioner's proposed method of valuation to be flawed as the comparables were multi-unit apartment complexes whereas the subject was a duplex. The Court of Appeals upheld the Tribunal's determination of true cash value under the cost-less-depreciation approach, as such determination "was supported by competent, material, and substantial evidence because the property record card was presented as an exhibit . . . and petitioner agreed that the property record card was accurate." The Court of Appeals further indicated that Petitioner had offered "no principled reason" for the Tribunal to conclude that the 2002 purchase price should have been used as the TCV on December 31, 2010.

Star International Academy v City of Dearborn Heights, unpublished opinion per curiam of the Court of Appeals, issued April 17, 2014 (Docket No. 314036). Petitioner is a non-profit educational institution and owner of the subject property. The subject is occupied by Hamadeh Education Services, a for-profit management company providing management services to four public school academies ("PSA"), including Petitioner. Respondent appealed the Tribunal's determination to grant Petitioner an exemption from taxation under MCL 380.503(9), as a PSA for the 2010, 2011, and 2012 tax years, arguing that the statute requires a PSA to own and occupy the property in order to be exempt from taxation. The Court of Appeals determined that Respondent was isolating only a portion of a sentence within the statute and failed to read the statute in its entirety, finding that "[t]he plain language of the statute shows the Legislature's intent to exempt PSAs from taxation on all property it owns, **regardless of occupancy**." [Emphasis added.] Respondent next argued on appeal that the Tribunal's interpretation of MCL 380.503(9) is inconsistent with MCL 211.7n, which requires occupancy by an educational institution in addition to ownership. In addressing Respondent's argument, the Court of Appeals reconciled the statutes, finding that "MCL 211.7n acts as a general rule, while MCL 380.503(9) being an exception to that general rule in that the occupancy requirement does not apply to PSAs." The Court of Appeals held that the Tribunal's interpretation of MCL 380.503(9) was not inconsistent with MCL 211.7n. Lastly, the Court of Appeals found that the Tribunal did not err by declining to address Respondent's argument with respect to MCL 211.181(1), which relates to the lessee or user of real property being subject to taxation as though it owned the property, as the applicability of this statute would affect Hamadeh Education Services, which was not a party to the case.

Prophetic Word Ministries, Inc v City of Saugatuck, unpublished opinion per curiam of the Court of Appeals, issued April 17, 2014 (Docket No. 313706). Respondent filed an appeal following the Tribunal's determination to grant Petitioner an exemption for its real property as a parsonage pursuant to MCL 21.7s. Petitioner is a nonprofit, national and international ministry, which purchased the subject property located in Saugatuck on June 8, 2011, on a land contract. The Court of Appeals determined that the Tribunal did address the issue of enforceability of the land contract when it concluded that the seller, San Marino, had ratified the contract by accepting payments from Petitioner and San Marino was not disputing ownership; therefore, there was sufficient evidence that Petitioner owned the subject property. The Court of Appeals also found Respondent's argument with respect to the refusal to admit evidence in the form of a letter and circuit court pleading to have no merit, as the letter was admitted as part of Petitioner's exhibit

20 and was part of the record. The Court of Appeals further found no error in the Tribunal's ruling that the circuit court pleading lacked relevance, as there was sufficient evidence before the Tribunal to show that San Marino ratified the contract. The Court of Appeals did find that the Tribunal should have allowed Respondent to cross-examine Petitioner's witness with respect to the sale of the house and its value; however, the Tribunal mentioned that such evidence was needed on this exact issue during a subsequent hearing, and the Court of Appeals, in applying the deferential standard of review, found the "relevant factual findings made by the tribunal were supported by competent, material, and substantial evidence." The Court of Appeals also declined Respondent's hearsay argument with respect to an affidavit of an individual who did not testify, finding that the affidavit was relevant and offered to prove John Breen's state of mind and not to prove the truth of the matter asserted and therefore did not constitute inadmissible hearsay under MRE 801(c). "Moreover, the tribunal stated that it would only give the affidavit the weight and credibility it deserved, impliedly not admitting it to prove Breen in fact had authority." The Court of Appeals further stated "[e]ven if its admission was erroneous, reversal would not be warranted because the tribunal did not rely on the affidavit in its decision and the city cannot demonstrate any prejudice from its admission." Turning to the arguments with respect to the exemption as a parsonage under MCL 211.7s, the Court of Appeals reasoned:

> Ownership is proved when the religious society has possession, control, and dominion over the parsonage . . . [and that] the parsonage exemption applies to any church-owned house occupied by a minister ordained in that church . . . [with the ordained parson] responsible for the religious needs of the congregation in which he is ordained to qualify for the parsonage exemption.

The Court of Appeals, in affirming the granting of an exemption by the Tribunal, found that the record supported a determination that Petitioner was a religious society that owned the subject property, that Reverend Tackett was an ordained minister who resided at the property, and that Reverend Tackett was a parson who presided over a congregation.

Utah Company v City of Detroit; Nevada Corporation v City of Detroit; Orchard Company v City of Detroit; Rah Associates, LLC v City of Detroit; SFR Group LLC v City of Detroit; SFR Group LLC v City of Detroit, unpublished opinion per curiam of the Court of Appeals, issued April 17, 2014 (Docket Nos. 309203, 309205, 309224, 309296, 309298, and 309300). These consolidated cases involve Final Opinion and Judgments of the Tribunal essentially adopting the determination made in the Proposed Opinion and Judgments with respect to the true cash, state equalized and taxable values of the individual properties, all located within the City of Detroit. On appeal, Petitioners argue that the Tribunal's factual findings with respect to the appraiser's credibility and use of a single approach to value were not supported by the evidence. The Court of Appeals, in upholding the determination made by the Tribunal in all the consolidated cases, found "no identifiable error" in the Tribunal expressing an objective opinion with respect to the appraiser and the client agreeing to use a specific appraisal approach rather than leaving this determination to the appraiser's professional discretion. The Court of Appeals further disagreed with Petitioners' argument that their evidence concerning true cash value was disregarded, finding "Petitioner has identified no rule of law that *requires* the tax tribunal to accept its comparables in determining TCV because it performed a market study and reject respondent's comparables because it did not."

The Court of Appeals went on to state "[a]lthough the tribunal still has the duty to make an independent determination of the TCV of the property, it is not precluded from dismissing a party's evidence, including petitioner's, as irrelevant or immaterial." The Court of Appeals held that Petitioners, who have the burden of proof, did not establish that the cost less depreciation approach was not the most accurate determination of value, and the Tribunal made no errors of law, adopted no wrong legal principles, and the factual findings were supported by competent, material, and substantial evidence on the whole record.

Recent Supreme Court Decision:

Fradco, Inc v Dep't of Treasury; SMK, LLC v Dep't of Treasury, __ Mich __; __ NW2d __ (2014). In this consolidated appeal, the Michigan Supreme Court was asked to decide whether the Department of Treasury, when a taxpayer has an appointed representative, must issue notice to *both* the taxpayer and the taxpayer's representative before the 35-day appeal period prescribed in MCL 205.22(1) begins to run. In *Fradco, Inc*, the taxpayer requested that the Department send information with respect to tax matters to the designated CPA, to whom the Department did mail the January 22, 2009 preliminary decision and order of determination. However, the Department sent the September 17, 2009 Final Assessment only to *Fradco* and not to the designated CPA. The CPA ultimately received a copy of the Final Assessment, following inquiries to the Department, on July 20, 2010. In *SMK, LLC*, a CPA was designated as the representative for the sales tax audit, with the Department faxing the CPA a notice of April 23, 2010. The Department sent the final assessment to *SMK* only on June 15, 2010. Following inquiries from the CPA, the Department sent the final assessment on July 23, 2010. The Department sought summary disposition from the Tribunal, arguing that the Tribunal lacked jurisdiction as the appeal had not been filed within 35 days of the Department's Final Assessment, as required by MCL 205.22(1). The Tribunal denied the Department's motion and cancelled the assessment, finding that MCL 205.8 provided a parallel notice requirement when a request is properly filed regarding notices to be sent to a representative and that notice to *Fradco* alone was not sufficient to start the 35-day appeal period. The Court of Appeals affirmed the Tribunal's determination. The Supreme Court affirmed in part and vacated in part the Court of Appeals decision, holding that:

- Under the Revenue Collection Act, MCL 205.1 to 205.31, the Department has two notice obligations; MCL 205.28(1)(a), requiring the Department to give notice to the taxpayer, and MCL 205.8, requiring the Department to give notice to the taxpayer's designated representative.

- MCL 205.22 dictates procedures surrounding an appeal and does not make reference to either 205.28(1)(a) or 205.8. "Accordingly, there is no statutory indication suggesting that we hold MCL 205.8's taxpayer representative notice requirement in lower esteem than the MCL 205.28(1)(a) taxpayer notice requirement." The Supreme Court stated that MCL 205.22 "confirms the notice statutes' parity" and "[w]hen notice is required, the department must notify the taxpayer and any representative duly appointed by the taxpayer."

- The Supreme Court vacated a portion of the Court of Appeals' decision that read "Because Petitioner filed its appeal within 35 days after its representative received notice

from respondent, the Tax Tribunal had jurisdiction to hear petitioner's appeal" reasoning that "[t]o the extent that this can be read to mean the appeal period begins when a taxpayer's representative receives notice, we conclude it is erroneous." The Supreme Court stated that instead, the appeal period begins to run upon the Department's compliance with MCL 205.28(1)(a) by giving the taxpayer actual notice of a final assessment through personal service or certified mail and under MCL 205.8 by sending a copy of the notice of final assessment to the address of the taxpayer's representative as provided in the taxpayer's written request.

If you have colleagues or acquaintances that would benefit from keeping up-to-date with Tribunal developments, simply have them send an e-mail message to Cindy Maurer at maurerc@michigan.gov with "SUBSCRIBE" in the subject line. To unsubscribe, simply reply to this e-mail with the word "UNSUBSCRIBE" in the subject line.