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Dear Tax Tribunal Practitioner:

### **MAHS Uniform Rules Summary – Tribunal Impact**

The Michigan Administrative Hearing System (“MAHS”) has adopted a coordinating set of rules addressing all hearings conducted by MAHS (“MAHS Uniform Rules”). The MAHS Uniform Rules have gone through the promulgation process and will be effective January 15, 2015, as provided by MCL 24.245a.

The MAHS Uniform Rules are comprised of several parts. Part 1 addresses rules that are applicable to all hearing entities within MAHS, including the Tribunal (“Rules of General Applicability”). Part 2 (i.e., R 792.10201-R 792.10287) is the set of Rules that are specific to the Tribunal (the “Tribunal Rules”).

Although non-substantive revisions were made to the Tribunal Rules during the adoption of the MAHS Uniform Rules package, so as to make them consistent with the Rules of General Applicability, there were a few substantive revisions that were also made. Specifically:

**Scope of Rules** – The conflict provision in TTR 201 was clarified to indicate that the Tribunal Rules govern over any conflicts with the Rules of General Applicability.

**Tribunal Records** – TTR 207 was amended to recognize the paper record for all cases filed under the previous *Oracle* case management system and the current practice of maintaining a paper record for all cases filed under the new *CaseLoad* case management system in addition to the electronic record provided under that system.

**Filing of Entire Tribunal Petitions** – Given confusion with respect to the service of petitions, TTR 221 was amended to clearly indicate the required service of the petition after the issuance of the Notice of Docket Number by specifying that the petition to be served is the petition **with noted docket number**. [Emphasis added.] TTR 227 was also amended to include a reference to TTR 221.

**Motions** – TTR 225 was amended to clarify that stipulated requests are also motions (i.e., joint motions) that must be accompanied by the appropriate filing fee.

### **Defaults and Default Hearings**

- TTR 231(1) was amended to reduce the time frame for curing defaults from 21 to 14 days. The Tribunal does, however, still have the discretion to either lengthen or shorten

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that time frame depending on the circumstances of the case (i.e., “or as otherwise provided by the tribunal”).

- TTR 231(2) was amended to strike the language that permitted the Tribunal to allow a defaulted party to present testimony, submit evidence, or examine witnesses during a default hearing.

**Subpoenas** – TTR 253 was amended to clarify that the issuance of subpoenas was governed by the provisions of MCL 205.736.

**Small Claims Petitions** – TTR 277 was amended to require petitioners to submit with their petitions a copy of the decision being appealed (i.e., the Board of Review’s notice of action, the Final Notice of Assessment, etc.).

### **Small Claims Answers**

- TTR 279(1) was amended to strike the reference to the submission of a copy of the petition with the Notice of Docket Number given the access to electronic copies of such petitions through the docket lookup function on the Tribunal’s web site at [www.michigan.gov/taxtrib](http://www.michigan.gov/taxtrib).
- TTR 279(4) was amended to strike the required submission of property record cards with answers as the record cards constitute documentary evidence which must be submitted to the Tribunal and the petitioner, as provided by TTR 287.

### **Recent Court 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). In our May 1, 2014 GovDelivery, we discussed in detail the Court of Appeals decisions affirming the Tribunal in these “big box store” cases. In our October 9, 2014 GovDelivery, we informed you that: (i) the Court of Appeals denied Petitioners’ request that these decisions be published, and (ii) Respondents had requested leave to appeal the Court of Appeals’ decision to the Michigan Supreme Court. We would now like to inform you that on December 23, 2014, the Michigan Supreme Court denied Respondents’ application for leave to appeal “because [they] are not persuaded that the questions presented should be reviewed by th[e] Court.” Although these two Court of Appeals’ decisions are unpublished, the Tribunal intends to follow the reasoning of the Court in all future property tax appeals involving “big box stores.”

*Karen M. Morita Living Trust v Big Rapids Twp*, unpublished opinion per curiam of the Court of Appeals, issued December 16, 2014 (Docket No. 315212). Petitioner appealed the Tribunal’s valuation decision regarding Petitioner’s residential property for the 2012 tax year. At hearing, Petitioner and Respondent each presented an appraisal based on the sales comparison method and Respondent also presented its property record card. The referee found, and the Tribunal affirmed, that both appraisals were unreliable indicators of value as the house was the premier

home for the area, the property was unique and overbuilt, and the recent sales data relied upon were not similar to the subject property. As such, the hearing referee, and the Tribunal, adopted the property record card as the best indicator of value, but did so without making express findings regarding functional and economic obsolescence. Additionally, the property record card stated that the house contained a “commercial portion,” a multipurpose room or fitness area, and included adjustments for two different economic condition factors (“ECF”). The inclusion of the ECFs was not addressed by the property record card or the hearing referee. The Court of Appeals upheld the Tribunal’s rejection of the sales comparison method, but reversed the Tribunal’s adoption of the property record card as the best indicator of value. Upholding the Tribunal’s rejection of the parties’ appraisals the court found that “[w]ithout a meaningful amount of similar comparables to the property the Tribunal had competent, material, and substantial evidence to conclude that the sales comparison method was unreliable.” With respect to the adoption of the property record card, “the Tribunal may not accord presumptive validity to the respondent’s property record card where, although the decision at issue was within the range of valuations in evidence, the referee’s decision on the property’s true cash value is reached without an explicit finding on obsolescence.” *Forest Hills Coop*, 305 Mich App at 591-93. Specifically, in this case, there was “no evidence that either the referee or the Tribunal expressly addressed obsolescence in the independent determination of the TCV.”

*Senate Bills 1038, 1039 and 1040.* Many of you are aware that Sen. Bruce Caswell had been working for over a year on a legislative package that would have made substantive changes to the Tax Tribunal Act and the General Property Tax Act. Although these bills were approved by the State Senate in December, be advised that this legislation was not acted upon by the Michigan House prior to the close of the current legislative session. Therefore, these proposed changes to relevant statutes, or any other changes to the Tax Tribunal Act or the General Property Tax Act, will require new proposed legislation in the upcoming legislative session.