



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

Keith W. Cooley
DIRECTOR

April 15, 2008

Dear Tax Tribunal Practitioner,

The Tribunal is pleased to announce the appointment of Stuart Trager as a Tribunal member. Mr. Trager fills one of the Tribunal's at-large positions. The Tribunal is also pleased to announce the addition of Virginia (Ginny) Desgranges to our staff. Ms. Desgranges will be working as a clerk in the small claims division.

We are issuing today eight (8) new *Tribunal Notices*.

- Tribunal Notices 2008-1, 2008-2, 2008-3, 2008-4, 2008-5 and 2008-6 address the required payment of a motion fee for motions filed at the Tribunal. These Tribunal Notices will take effect May 12, 2008.
- Tribunal Notice 2008-7 modifies and replaces Tribunal Notice 2007-5 regarding the processing of proposed scheduling orders and the extension of dates proposed by the parties in such orders. This Tribunal Notice takes effect immediately.
- Tribunal Notice 2008-8 modifies and replaces Tribunal Notice 2005-7 regarding requests for oral argument. The payment of a "sitting fee" will no longer be required. Instead, the party requesting the oral argument will be required to provide a court reporter to transcribe the proceeding. This Tribunal Notice will take effect May 12, 2008.

Copies of these Notices are attached for your convenience. The notices will also be available on our website in the near future. To avoid confusion and add clarity to this process, the Tribunal is working on a method to clearly delineate which Notices have been modified and when.

The Tribunal has recently issued several precedential orders and decisions of note.

- In *Michigan Properties, LLC v Westland*, MTT Docket No. 337520, the respondent filed a motion for summary disposition based on the petitioner's failure to respond to requests for admission that allegedly established that the subject property was properly assessed. In denying the motion, the Tribunal held that such requests are improper as the purpose for such discovery requests is to narrow the facts in dispute and not avoid or otherwise eliminate the necessity for trial. See *Radtko v Miller, Canfield, Paddock & Stone*, 453 Mich 413; 551 NW2d 698 (1996).
- In *Williams v Detroit*, MTT Docket No. 322275, the respondent denied a claim for a poverty exemption because the petitioner had not owned the property for at least three years as required by paragraph 2 of respondent's Policy. In granting the exemption, the Tribunal held that such policies are not authorized by statute as:

...there is no express authority to disqualify an otherwise eligible person merely for failure to own the property for three years. The statute speaks to this issue, and only requires that the person be “an owner of and occupy as a principal residence the property for which an exemption is requested.” MCL 211.7u2(a). The statutory definition of ‘principal residence’ does not require occupancy for a specific period of time in order for a property to qualify as a person’s principal residence. MCL 211.7dd. The three year requirement places an additional burden on the taxpayer that is not imposed by the statute, with regard to an issue that is affirmatively addressed by the statute. The legislature indicated that occupancy and ownership is required for the tax year at issue, but did not include a time element.

The Tribunal further indicated that this case is similar to the Tribunal’s precedential decision in *Mandel v City of Oak Park*, MTT Docket No. 274378, in which the city adopted a policy denying the exemption for more than three years in a row. The Tribunal held that such a policy was also contrary to the intent and purpose of the statute and bore no relation to the person’s ability to contribute to the public charges.

Finally, the Tribunal held that the respondent’s:

...three year ownership rule is contrary to statute, is arbitrary, and effectively punishes home ownership. A person may acquire ownership of a home by gift or inheritance or other means unrelated to her ability to pay property taxes due to poverty. In this case, Petitioner acquired the property from her son for no consideration. She has lived in the subject property for many years. The restriction at issue here is contrary to the statutory intent to provide a property tax exemption to persons who “by reason of poverty, are unable to contribute to the public charges.”

- In *Michigan Department of Treasury and State Treasurer v City of Warren*, MTT Docket No. 333113, the respondent filed an offer of judgment pursuant to TTR 111(4) and MCR 2.405. The petitioner filed a motion to strike this offer. While petitioner’s motion was denied because it was not properly before the Tribunal, the Tribunal found that offers of judgment made pursuant to MCR 2.405 are not applicable in Tribunal appeals.

Specifically, MCR 2.405 defines an “offer” as a “sum certain.” As such, the Tribunal held that “...MCR 2.405 does not apply in cases in which a property’s value is under appeal because the offer of judgment culminates in something other than a ‘judgment for a sum certain.’ In a property valuation appeal, the offer to stipulate to an entry of judgment is not an offer to stipulate to a sum certain; instead, the offer to stipulate is, at a minimum, a stipulation as to the property’s taxable value.” Additionally, the Tribunal held that “a decision rendered by the Tribunal is not an ‘adjusted verdict’” as defined by MCR 2.405(5). “Under MCR 2.405(A)(4), interest is calculated pursuant to MCL 600.6013. On the other hand, interest in a Tribunal judgment is calculated pursuant to

MCL 205.737(4).” Moreover, “MCR 2.405(5) requires that interest be calculated from the date the complaint was filed to entry of judgment. On the other hand, in a judgment rendered by the Tribunal, interest is paid from the date the petitioner pays the tax to the date the refund is made. Therefore, in all Tribunal cases, the calculation of interest pursuant to MCR 2.405(5) is a meaningless calculation as it would never be utilized.”

The Tribunal has undertaken a review of all cases placed in abeyance. Having completed this review, the Tribunal has determined that the cases placed in abeyance pending a decision in *City of Southfield v Cranbrook Centre*¹, LP, 04-058112-CZ, and *Toll Northville LTD v Twp of Northville*², 272 Mich App 352; 726 NW2d 57 (2007), should be removed from abeyance. The *Cranbrook* cases have been removed from abeyance due to the fact that Oakland County Circuit Court has placed *City of Southfield v Cranbrook Centre*, LP, 04-058112-CZ, in abeyance pending the enactment of House Bill 4375 and House Bill 4376. While the purpose of this legislation is to resolve the “loss” issue, it covers tax years beginning with the 2008 tax year. Thus, there is no longer any reason to hold these cases in abeyance. The *Toll Northville* cases have been removed from abeyance due to the fact that an opinion has been issued by the Michigan Supreme Court. See *Toll Northville LTD v Twp of Northville*, 480 Mich 6; 743 NW2d 902 (2008). To the best of the Tribunal’s knowledge, all of the cases that were placed in abeyance pending resolution of *Cranbrook* and *Toll Northville* have now been removed from abeyance. If a party to one of these cases has not received notice from the Tribunal that the case has been removed from abeyance, along with a proposed scheduling order, the party or parties should file a motion to remove the case from abeyance. The Tribunal will review the motion and, if appropriate, remove the case from abeyance and provide to the parties a blank proposed scheduling order. The parties should complete and file the proposed scheduling order by the date indicated on the order. After it is received, the Tribunal will enter a scheduling order. Thereafter, prehearings and hearings will be scheduled as quickly as possible, depending upon the dates in the scheduling order.

As discussed in previous Listserve messages, there are a number of Bills pending before the legislature that impact that the Tribunal. Recently, these Bills have moved another step forward. House Bills 4433 through 4437 were passed by the Senate Finance Committee on February 14, 2008. The Bills are now pending on the Senate Calendar.

Finally, the Tribunal notes that the May 31st deadline for filing certain property valuation appeals is approaching. Because the Tribunal is unable to accept appeals via facsimile, the Tribunal will be disconnecting its fax machine at the close of business on May 30, 2008, and reconnecting it as of the opening of business on June 1, 2008. This brief interlude will allow the Tribunal to dedicate its efforts to the processing of new appeals and will ensure that petitioners do not incorrectly rely on an appeal filed via facsimile.

¹ The *Cranbrook* cases involve the definition of “loss,” as defined by MCL 211.34d(1)(h)(iii).

² The issue in the *Toll Northville* cases is whether “public service” improvements (such as water service, sewer service, utility service) are “additions” to the property.

MTT Listserve

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The Tribunal also reminds parties that no document is accepted as filed by fax or e-mail, other than emergency motions to adjourn upcoming hearings, which must be followed by a hard copy with the appropriate filing fee.

If you have members, colleagues or acquaintances that would benefit from keeping up-to-date with Tribunal developments, simply send an e-mail message to Marijo Wakley at wakleym1@michigan.gov with "SUBSCRIBE" in the subject line. To unsubscribe, simply reply to this e-mail with the word "UNSUBSCRIBE" in the subject line.