GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

June 16, 2022 MTT 2022-7

TRIBUNAL WELCOMES NEW TEAM MEMBERS
JUNETEENTH NATIONAL HOLIDAY OFFICE CLOSURE
RECENT CASE LAW OF INTEREST

Valued New Team Members Join Tribunal

The MTT is pleased to announce the recent hirings of three General Office Assistants, Tristyn Johnson, Tori Russell and Gabrielle (Gabby) Niska, as well as, law student Adam Salomon, who joins us for a summer clerkship position, and our newest Administrative Law Specialist, Jessica Kelly. All five have started within the last several weeks and fill positions that were vacant due to retirements and job transfers.

Tristyn Johnson fills one of the GOA positions and comes to the Tribunal from Treasury where she had served as a customer service representative providing support with income tax inquiries. Her prior positions have been with the Arkansas Public Service Commission (similar to Michigan's State Tax Commission) as a Tax Valuation Analyst processing ad valorem property tax forms and as a revenue processing technician for the Missouri Department of Revenue.

Tori Russell joins us from her most immediate position as a medical assistant with the Sparrow Medical Group. Tori has extensive experience with office administration as a secretary, receptionist, clerk, and typist. Tori is one of our new GOAs.

Gabrielle (Gabbi) Niska fills another of the GOA positions and joins us with an impressive background working in customer service. Her most recent experience immediately prior to joining us was as a professional nanny, caring for three children.

We also welcome our new law clerk, *Adam Salomon* who will be doing a summer internship. Adam was born and raised in Flushing and graduated from Michigan State University with a bachelor's degree in Finance. Adam will be going into his second year of law school at Michigan State. His previous experience includes work at a screen-printing company in Flint and an internship at an accounting firm.

Lastly, but certainly not least, *Jessica Kelly* joins the MTT Team as our newest Administrative Law Specialist. Jessica is a 2014 graduate of the Michigan State University College of Law, where she spent three semesters as a student

clinician/research assistant in the Alvin L. Storrs Low-Income Taxpayer Clinic. After graduation, Jessica spent six years in private practice, specializing in Social Security Disability Law. In private practice, Jessica's primary responsibilities were in preparing cases for hearings and representing individuals before federal Administrative Law Judges.

MTT to be Closed on June 20, 2022, in Observance of Juneteenth National Holiday

In observance of our newest national holiday, the offices of the MTT will be closed on Monday, June 20, 2022, in observance of Juneteenth. Regular office hours will resume on Tuesday, June 21, 2022.

Our newest national holiday has its origins on June 19, 1865, when Union soldiers arrived in Galveston, Texas and Gen. Gordon Granger issued "General Order No. 3" which informed the people of Texas that all enslaved people were now free. This occurred more than two years after President Abraham Lincoln issued the Emancipation Proclamation in 1863, which declared more than three million slaves in the Confederate states to be free. Texas was the last state in the Confederacy to maintain institutional slavery.

The announcement led to demonstrations of freed people and the anniversary of the event became known in many quarters as the United States' "Second Independence Day." It's been celebrated every year since, especially in Texas where it was first recognized by a gubernatorial proclamation in 1936. In Michigan, Gov. Jennifer Granholm signed legislation sponsored by Sen. Martha Scott in 2005 recognizing the third Saturday in June as Juneteenth National Freedom Day.

Recent Case Law of Interest

Mooney Real Estate Holdings v. City of Southfield, unpublished per curiam opinion of the Court of Appeals, issued May 19, 2022 (Docket No. 257611). (AFFIRMED).

City of Southfield ("Respondent") appealed from the Tribunal's granting of Summary Disposition in favor of Mooney Real Estate Holdings ("Petitioner") and denying Respondent's motion for Summary Disposition. Respondent argued the Tribunal erred in concluding that Petitioner was entitled to a pass-through exemption under MCL 211.7o(1). Petitioner is a nonprofit corporation, whose sole member is the Archbishop of the Archdiocese. Petitioner was formed to make the alignment of parish organizations consistent with Canon Law of the Roman Catholic Church. A dispute arose between Petitioner and Respondent over whether Petitioner was entitled to an exemption from taxation for the 2019 tax year regarding the property used by Our Lady of Albanians. The Court of Appeals ("The Court") affirmed the Tribunal's decision because it reached the correct result, but through different reasoning. The Court accepted Petitioner's argument that it qualified for an exemption in its own right under MCL 211.7o(3), since Petitioner is a nonprofit charitable organization under the *Wexford* test because

Petitioner was organized for religious purposes, indicating Petitioner was organized chiefly for charity. Petitioner occupied the property for the purposes for which it was organized, therefore qualifying for the exemption. Therefore, the Tribunal was correct in its holding that Petitioner was entitled to an exemption, but incorrect in its reasoning that Petitioner was not a charitable organization and only qualified for the pass-through exemption under MCL 211.7o(1) and not for the exemption under MCL 211.7o(3).

Jennifer G. Price v. Berrien County Treasurer, unpublished per curiam opinion of the Court of Appeals, issued May 19, 2022 (Docket No. 357370) (AFFIRMED IN PART, REVERSED AND REMANDED IN PART).

Jennifer G, Price ("Petitioner") appealed from the Tribunal's ruling that she was not entitled to a Principal Residence Exception ("PRE") with respect to her improved real property taxes for 2019 and 2020. Petitioner argued that for 2019, the Tribunal erred by focusing on one element of the PRE statutory scheme rather than considering other statutory elements, caselaw, and administrative guidelines. For 2020, Petitioner argued that she sufficiently established that the Michigan property was her principal residence under applicable Michigan law. Petitioner and her husband filed Federal and Illinois joint income tax returns in 2019 from an address in Chicago, Illinois, as Illinois residents, and her children attend Illinois schools (but were doing so remotely from Michigan in 2020). The Court of Appeals ("The Court") affirmed the Tribunal's ruling regarding tax year 2019 but reversed and remanded for the Tribunal's decision relative to tax year 2020. The Court cites MCL 211.cc(3)(d), which states "[A] Person is not entitled to a PRE in any calendar year in which he or she 'has filed an income tax return in a state other than [Michigan] as a resident.'" Since Petitioner filed a 2019 income tax return in Illinois as an Illinois resident, she is not entitled to a PRE for 2019. The Court stated that the Tribunal's ruling for 2020 was vague, thus the Tribunal must elaborate on its decision regarding the so-called conflicting evidence and do so in sufficient detail. The Tribunal also must address why the children's remote schooling in Michigan bodes against granting Petitioner a PRE. Therefore, the Tribunal was correct in its holding for the tax year 2019 but must supply more reasoning and analysis for tax year 2020 on remand.

Karen J. Bonzheim v. City of Wyoming, unpublished per curiam of the Court of Appeals, issued May 19, 2022 (Docket No. 357542). (REVERSED).

Karen J. Bonzheim ("Petitioner") appealed the Tribunal's decision denying her the poverty exemption for the 2020 property taxes on her home. Petitioner argued that the Tribunal erred in concluding food stamps are considered an asset for the purposes of calculating the poverty exemption. The City of Wyoming ("Respondent") adopted an "asset test" that provides for the maximum value of assets for the applicant of $2,500. With food stamps included, Petitioner's assets were $3,312, thus exceeding the $2,500 threshold to qualify for the property exemption. The Tribunal concluded that food stamps were an asset because they relieve a burden so petitioner can use the money saved to pay property taxes. In addition, the Tribunal stated if Respondent intended to not include food assistance as an asset, it would have. The Court of Appeals ("The Court") reversed the Tribunal's decision. The Court, since MCL 211.7u(4) does not

define “income” or “assets,” looked to the dictionary definition and found characterizing food stamps as an “asset” is contrary to the defined term. Also, Respondent’s asset lists violated the canon of *ejusdem generis*, which means a general term at the end of a series or list must be construed as similar to the prior items in the list. The Court stated the last item referring to federal non-cash benefits, which would include food stamps, is not of the same kind as other examples in the State Tax Commission Bulletin (“STC”) list, such as houses, buildings, vehicles, and jewelry. In the absence of a legislative definition of the term “asset,” the dictionary definition of the term should have been consulted. Therefore, the Tribunal erred in relying on the nonbinding STC bulletin to conclude food stamps was an asset.

Sue Lockhart v. Ontonagon Township, _ Mich App _; _ NW2d _ (2022). (AFFIRMED).

Sue Lockhart (“Petitioner”) appealed from the Tribunal’s determination that Petitioner was not entitled to a disabled veterans property tax exemption under MCL 211.7b for the 2020 tax year. Petitioner argued that under MCL 211.7b(2), a disabled veteran’s surviving spouse may claim the disabled veteran exemption even after the veteran’s death so long as the veteran would have been “otherwise eligible” for the exemption. Petitioner was deeded the subject property in 2010. It is undisputed that Petitioner’s husband was a disabled veteran, but the subject property was only deeded to Petitioner, as her husband was not named on the deed. The Court of Appeals (“The Court”) affirmed the Tribunal’s decision. Petitioner’s reliance on the interpretation of MCL 211.7b in the State Tax Commission Bulletin (“STC”), which states that the exemption is personal and not tied to any property, is not binding on the Tribunal or the Court. The Court relied on statutory interpretation to conclude that for a spouse to be eligible to receive the exemption under 211.7(b)(2), the disabled veteran must meet the requirements under 211.7(b)(1), which requires the veteran to own the property. Since Petitioner’s husband was not named on the deed of the subject property, he did not own the property. Therefore, Petitioner did not qualify for the disabled veteran exemption.

Priority Health and Priority Health Insurance Company v. Department of Treasury, unpublished per curiam opinion of the Court of Appeals, issued April 14, 2022 (Docket No. 356769). (AFFIRMED).

Department of Treasury (“Respondent”) appealed from the Tribunal’s decision that cancelled Respondent’s assessment of taxes owed by Priority Health and Priority Health Insurance Company (“Petitioners”) under the Health Insurance Claims Assessment Act (HICCA), MCL 550.1731. In addition, Respondent challenged the Tribunal’s order denying Respondent’s motion for reconsideration. Respondent argued that the Tribunal erred by finding that Petitioners sufficiently established that their pharmacy rebates were allowable recoveries and consequently cancelling Respondent’s assessments of additional HICCA tax liability. This case deals with Petitioners’ prescription drug coverage. In 2012, Petitioners contracted with third-party pharmacy benefit managers to administer drug benefits and manage rebates on prescription drugs. HICCA imposed a 1% tax on all “paid claims” made by health insurance providers in Michigan. “Paid claims” are defined as “actual payments, *net of*

recoveries, made to health providers or reimbursed to an individual by a carrier, third-party administrator, or excess loss or stop loss carrier." MCL 550.1732(s). Petitioners reported prescription drug rebates as "recoveries" that reduced their "paid claims" tax base. The Court of Appeals affirmed the Tribunal's decision. Petitioners' testimony showed the Tribunal's findings that Petitioners could match up rebate information with a claim had merit and was reliable, which shows Petitioners sufficiently established their pharmacy rebates were allowable recoveries. Therefore, the Tribunal's decision to cancel Respondent's assessment of taxes was upheld.

Keith W. Deforge v. Allouez Township, __ Mich App __; __ NW2d __ (2022). (REVERSED AND REMANDED).

Keith Deforge ("Petitioner") appealed from the Tribunal's decision that he was entitled to a 70% Personal Residence Exemption ("PRE"). Petitioner argued that the Tribunal erred in its reasoning that , Petitioner is only entitled to a 70% PRE because 30% of the property was used as an Airbnb. The subject property is located on Lake Superior. Petitioner resides in the home and rents out three rooms during the summer months. The Tribunal determined its ruling based on what portion of the house is used by Petitioner as a primary residence and which part is rented out during the summer. The Court reversed and remanded the Tribunal's decision for entry of judgment in favor of Petitioner. Under MCL 211.7cc(16), if a unit is a multiple-purpose structure, then an owner shall claim an exemption for only the portion used as a principal residence. The Court looked at this as a question of statutory construction and looked to the dictionary for a definition of a "multi-purpose structure." The Court concluded that allowing guests to stay in one's home is not a sufficiently distinct purpose that would lead to the conclusion a structure has more than one purpose. The Court also cited *Rentschler*, where the petitioner in that case rented out his home for more than 14 days a year. The Court held that renting one's home for more than 14 days does not disqualify a homeowner from the PRE. Therefore, the fact that a portion of the property is rented out for a portion of the year does not disqualify the property from a 100% PRE.

Campbell v Department of Treasury, _ Mich _; _ NW2d _ (2022). (REVERSED).

Department of Treasury ("Respondent") appealed from the Court of Appeals decision affirming the Tribunal's holding that Andrew P. Campbell ("Petitioner") was entitled to a PRE of 100% for the 2017 tax year. Respondent argued the Tribunal and Court of Appeals erred in relying on MCL 211.7cc(4) to conclude Petitioner was entitled to a PRE for 2017 since the PRE continued until December 31, 2017. In late 2016, Petitioner purchased property in Arizona. Without Petitioner's knowledge, Arizona automatically gave Petitioner a credit on his tax bill after he purchased the property. Petitioner then claimed a PRE in Michigan, and Respondent denied the exemption because Petitioner had received a substantially similar exemption in Arizona. The Supreme Court reversed the Court of Appeals' decision. The Legislature explicitly provided that a person is not entitled to an exemption in any year when the person claimed a substantially similar exemption in another state. The Tribunal and the Court of Appeals should not have relied on 211.7cc(4) because the Legislature amended the statute once in 2003 and

another time in 2017 indicating a clear intent to preclude property owners from benefiting from a similar exemption in another state. Subsection (4) should not be read as allowing a property owner the continuing benefit of a denied exemption claim through the end of the calendar year. Therefore, the Tribunal and the Court of Appeals should not have relied on subsection (4), and Petitioner is not entitled to a PRE for the 2017 tax year.

Comerica, Inc v Department of Treasury, _ Mich _; _ NW2d _ (2022). (AFFIRMED).

Department of Treasury ("Respondent") appealed the Court of Appeals decision, which reversed the Tribunal's determination that tax credits for brownfield and historic-restoration activity claimed by Comerica, Inc ("Petitioner") did not pass to a Texas bank in a 2007 merger, but were extinguished. The Court of Appeals reversed and remanded the Tribunal's determination, stating even though former MCL 208.38g(18) and 208.39c(7) prohibited any assignment of credits beyond the initial assignment, the credits passed to the Texas bank by operation of law as a result of merger, not by assignment. In 2005, KWA I, LLC, one of Petitioner's subsidiaries, assigned tax credits to another subsidiary, a Michigan bank. In 2007, that Michigan bank merged with another one of Petitioner's subsidiaries, a Texas bank. Comerica filed returns under the Michigan Business Tax Act ("MBTA") for tax years 2008 – 2011, identifying the Texas bank, but not the Michigan bank, among its subsidiaries, and claiming refunds based in part on the credits that were initially assigned to the Michigan bank from KWA I under the since repealed Single Business Tax Act ("SBTA"). The Supreme Court affirmed the Court of Appeals' decision. The Court concluded the credits passed to the Texas bank not by assignment but by operation of law – specifically, the Banking Code. MCL 487.13703(1) provides that if a consolidation agreement has been certified and approved, the corporate existence of each consolidating organization is merged into and continued in the consolidated bank. The consolidated bank then possesses all the rights interests, privileges, powers, and franchises of each of the consolidating organizations. Therefore, the Department of Treasury erred by not allowing Petitioner to claim these credits on its returns for tax years 2008 – 2011, and the Tax Tribunal erred by granting the department partial summary disposition.

I hope this MTT Newsletter finds you in good spirits. As we are currently experiencing temperatures in the 90s, I hope you are in a cool and comfortable place.

Sincerely,

Steven M. Bieda
Chairperson, Michigan Tax Tribunal