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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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Michigan Tax Tribunal Personnel Changes

Holiday Office Closures

Recent Case Law of Interest

MTT Personnel Changes

The Tribunal welcomed **Sean Mulchay** on September 5, 2023, as the Tribunal's newest staff attorney. On October 30, 2023, the Tribunal welcomed **Kari Miles** as the Tribunal's Administrative Law Judge. Sean and Kari have longstanding professional relationships with the Tribunal, and both started their tax careers as law clerks at the Tribunal.

Most recently, Sean was employed as the Central Office Operations Manager for the Property Services Division of the Michigan Department of Treasury. Kari previously served as a manager and staff attorney for the Property Services Division of the Michigan Department of Treasury. Both Sean and Kari bring a wealth of state and local tax-specific knowledge and experience to the Tribunal.

Please join us in welcoming Sean and Kari!

Holiday Office Closures

With both Christmas Eve and New Years Eve occurring on Sunday this year, the Tribunal office will be closed on Friday, December 22, Monday, December 25, Friday, December 29, and Monday, January 1, 2024.

Recent Case Law of Interest

- *Jeff Properties, LLC v City of Warren*, unpublished per curiam opinion of the Court of Appeals, issued July 20, 2023 (Docket Nos. 362978; 362979).

John and Marvis Adler (the Adlers) formed Jeff Properties, LLC (Petitioner). The properties at issue include two residential rental properties. In 2014, the Adlers assigned 100% of Petitioner's interest to the Adlers' son, John Adler Junior (John Junior). In 2021, John Junior executed property transfer affidavits concerning these two properties at which time the City of Warren (Respondent) notified Petitioner the transfers constituted a "transfer of ownership" under the General Property Tax Act

which resulted in the uncapping of the properties' taxable value (TV). John Junior appealed to the Tribunal arguing the assignment of Petitioner's interest was a transfer between first-degree relatives under MCL 211.27a(7)(t) and was therefore exempt from uncapping. The Tribunal disagreed and held that the properties' TVs were subject to uncapping under MCL 211.27a(6)(h). Petitioner appealed from the Tribunal's decision to the Court of Appeals, and the Court affirmed the Tribunal's decision.

The Court determined that, pursuant to MCL 211.27a(3), when a "transfer of ownership" occurs, a property's TV becomes "uncapped" and the property is taxed at its state equalized value, which is generally 50% of the property's true cash value. Additionally, the Court noted MCL 211.27a(7)(t) states: "Transfer of ownership does not include . . . [b]eginning December 31, 2013 through December 30, 2014, a transfer of residential real property if the transferee is related to the transferor by blood or affinity to the first degree and the use of the residential real property does not change following the transfer." The Court held that while the Adlers and John Junior are certainly related by blood, the Adlers conveyed its interest in *Jeff Properties, LLC* to John Junior and not the property itself. Because the conveyance of the two properties was a transfer of ownership in the context of the limited liability company, the Tribunal correctly determined that the assignment of Petitioner's interest from the Adlers to John Junior constituted a "transfer of ownership" under MCL 211.27a(6)(h) and the properties were subject to uncapping under MCL 211.27a.

It is worth noting that Petitioner argued that the assignment of ownership fell under the exceptions noted in MCL 211.27a(7)(t). However, the Court held that there are no "exceptions" to the uncapping rules. Instead, the statute demonstrates when there *is* or *is not* a transfer of ownership and does not provide for any "exceptions."

- *Clifford W Winkler v Markey Township*, unpublished per curiam opinion of the Court of Appeals, issued August 24, 2023 (Docket No. 362586).

Clifford W. Winkler (Petitioner) appealed from the Tribunal's dismissal of his appeal after the MTT determined that the appeal was not filed within 35 days of the final, ruling, or determination as required under MCL 205.735a(6). On appeal, Petitioner argued that his "constitutional due-process rights were violated because the affidavits and reassessments he received failed to inform him of his right to appeal." The Court of Appeals noted that although Petitioner's due process claim was not raised at the Tribunal and was therefore not preserved, consideration of the issue was appropriate because Petitioner's claim involved a question of law and Petitioner presented the facts necessary to resolve the claim.

The Court reiterated that protections of constitutional due process apply to assessment and property tax collection, and that the fundamental requirement of due process is "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." In this case, the notices provided to Petitioner did not contain information concerning the appeal deadline, Petitioner's right to appeal, or the Tribunal's contact information. The Court stated that "there is no indication that respondent provided

petitioner notice that was reasonably calculated to alert petitioner to the avenues available for challenging the increase in the taxable value of petitioner's property, as required by the United States' and Michigan's Constitutions." As a result, the Court concluded that Respondent did not adequately notify Petitioner and Petitioner did not have a meaningful opportunity to be heard. Therefore, the Court vacated the dismissal and remanded the case back to the Tribunal for further proceedings, instructing the Tribunal to treat the case as though the appeal was timely.

- *Charles Saad v County of Emmet*, unpublished per curiam opinion of the Court of Appeals, issued October 19, 2023 (Docket No. 364250).

Charles Saad (Petitioner) appealed the Tribunal's determination that he did not qualify for a Principal Residence Exemption (PRE) for the 2018-2021 tax years because he did not occupy the property as his principal residence during these tax years. On appeal, Petitioner claimed that he was entitled to a PRE for the subject property, the Tribunal erred by determining he did not occupy the property, the statute requires a PRE to continue until the owner establishes a new PRE, and Emmet County (Respondent) failed to produce evidence showing a change in circumstances since the PRE was first granted.

While Petitioner was providing care for his elderly parents across the state, Petitioner began experiencing his own medical issues resulting in him staying away from the subject property for extended periods so that he could receive treatment. In some cases, he was absent for several months. Additionally, Petitioner changed his mailing address and his driver's license address and, in turn, his voter's registration card, to his parent's address. To support his claim that he was entitled to the PRE, Petitioner produced several statements that he occupied his property at least six months of the year, with four of the written statements primarily addressing Petitioner's health issues and his caretaker responsibilities rather that establishing how long or how often Petitioner occupied the property.

The Court of Appeals found that Petitioner's testimony and evidence did not show that he resided at his property permanently or continuously. To the contrary, Petitioner admitted to holding out his parent's property as his residence by changing his mailing address, driver's license, and voter registration, and Respondent demonstrated that Petitioner's businesses were also affiliated with his parent's property. The Court also noted that statements produced by Petitioner did not directly address how long or how often he resided at the property and described these statements as "self-serving." Additionally, the Court explained that Petitioner's argument "that the phrase 'shall continue as a principal residence until another principal residence is established' under MCL 211.7dd(c)2 suggests that the only way for an owner's previously established principal residence to lose its status is for the owner to establish a new principal residence, which would require the owner to own the new property" was rejected by the Court in *Estate of Schubert v Dep't of Treasury*, 322 Mich App 439; 912 NW2d 569 (2017). Finally, the Court held that, contrary to Petitioner's assertion, the "burden of proving entitlement to the exemption rests with the person claiming the exemption, the petitioner here, and not respondent." Given the above, the Court affirmed the Tribunal's final opinion and judgment of denial of Petitioner's PRE.