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Governor Whitmer appoints new Michigan Tax Tribunal Members

On March 23, 2023, Governor Whitmer announced the appointment of Mark Perry to the Tribunal. Mr. Perry is president of Perry & Co, a management consulting firm assisting with real estate transactions. He received his Bachelor of Science in business administration from Central Michigan University. Mr. Perry is appointed to represent members-at-large, for a term commencing April 3, 2023, and expiring June 30, 2023. He succeeds Christine Schauer who has resigned.

On April 13, 2023, Governor Whitmer announced the appointment of Joshua Wease to the Tribunal. Mr. Wease is a licensed attorney for the IRS. He previously served as a clinical professor of law at Michigan State University and the director of the Alvin L. Storrs Low-Income Taxpayer Clinic. He received his Bachelor of Science in Psychology, as well as his Juris Doctorate from Michigan State University. Mr. Wease is appointed to represent attorneys for a term commencing May 1, 2023, and expiring June 30, 2023. He succeeds Steven Bieda who has resigned.

Finally, the Tribunal wants to take this opportunity to acknowledge the contributions and hard work of former Chair Steve Bieda. The Tribunal wishes Mr. Bieda the best in his new position as a district court judge in the 37th District Court.

Changes to the Prehearing General Call and Order of Procedure

Beginning with the March 1-15, 2023 Prehearing General Call and Order of Procedure, the dates by which parties are to file valuation disclosures and prehearing statements, and to complete pre-valuation discovery have been extended by one month. Additionally, the date by which post-valuation disclosure discovery must be completed has been extended by one month. These extensions have been deemed necessary due to the number of motions to extend these deadlines and the issues in timely completing post-valuation discovery.

Also beginning with the March 1-15, 2023 Prehearing General Call and Order of Procedure, cases involving a claim of exemption will no longer be placed on a general call as these cases do not require valuation disclosures and, as such, there is no need for a post-valuation disclosure discovery period. Exemption cases will be handled in the same manner non-property tax cases are currently handled. Specifically, a status conference will be scheduled during which deadlines for discovery and summary disposition motions will be established, as well as a date for a prehearing conference.

Stipulation Tips Checklist

The Tribunal has created an informational checklist to facilitate efficient processing of Stipulations for Entry of Consent Judgment. The checklist will assist parties by providing general considerations, tips for specific case types, and information regarding stipulation filing fees. The Stipulation Tips Checklist is available on both the Tribunal's Entire Tribunal and Small Claims pages of our website.

Tax Tribunal Personnel Changes

On April 3, 2023, the Tribunal's administrative staff was transferred to the Administrative Support Division of MOAHR. Therefore, Tribunal Newsletters will no longer provide updates as to changes in administrative staff.

Recent Case Law of Interest

Mack C Stirling v County of Leelanau, _ Mich _; _ NW2d _ (2023). (REVERSED by the Court of Appeals; Supreme Court reversed the Court of Appeals and reinstated the Tribunal's decision).

The County of Leelanau ("Respondent") denied Mack C. Stirling's ("Petitioner") request for a Principal Residence Exemption (PRE) for the 2016-2019 tax years because his wife claimed a similar property tax exemption for a residence in Utah for the same tax years. Petitioner appealed to the Tribunal, wherein the Tribunal granted summary disposition in favor of Petitioner. The Tribunal held that the Utah exemption was not substantially similar to Michigan's PRE. Respondent appealed to the Court of Appeals (COA) and the COA reversed the Tribunal's decision. Petitioner appealed the COA's decision to the Michigan Supreme Court, which reversed the decision of the COA, holding that the Utah exemption was not substantially similar to Michigan's PRE, and as such, found that Petitioner was eligible to claim the Michigan PRE for the tax years at issue. Under MCL 211.7cc(3)(b), a taxpayer is not entitled to claim a Michigan PRE if they own property in a state other than Michigan for which they (or their spouse) claim an exemption, deduction, or credit substantially similar to the exemption under MCL 211.7cc(1). An exemption in another state is considered substantially similar if it is "largely but not wholly alike in its characteristics and substance to the PRE." The Supreme Court found that the Utah exemption claimed by Petitioner's wife was in substance and character a landlord tax exemption, whereas Michigan's PRE is in substance and character a homestead exemption, as it requires the property to be the owner's residence. Further, the Supreme Court found that the COA erred in treating Utah's landlord exemption and Utah's version of a homestead exemption as one

"indivisible" residential exemption. Given the foregoing, the Supreme Court reversed the judgment of the COA and reinstated the Tax Tribunal's order granting summary disposition in favor of Petitioner.

Wilson v City of Grand Rapids, _ Mich _; _ NW2d _ (2023). (REVERSED AND REMANDED).

Nancy Wilson ("Petitioner") appeals from the Tribunal's denial of her claim for a Principal Residence Exemption (PRE). Petitioner argues that renting a room in her home to a roommate and allowing the roommate access to common areas did not constitute renting 50% or more of the total square footage of her residence. The terms of the rental were governed by a roommate agreement. The Court of Appeals ("the Court") held that the Tribunal's interpretation of MCL 211.7dd(c) was erroneous and reversed and remanded the case for further proceedings. Under MCL 211.7dd(c), a residence loses its status as a principal residence if an owner rents or leases 50% or more of the total square footage of the living space in the residence. The Court found that the terms "rent" and "lease" imply both possession **and** use of the premises. Although Petitioner's roommate had exclusive possession of a designated area (i.e., the rented room), they had only a license to use the common areas of the residence. Petitioner's intent to retain possession over the common areas of the home was evidenced by the terms of the roommate agreement. The Court held that renting a room in one's home to a roommate with access to common areas is not the equivalent of renting 50% or more of the total square footage of the residence and therefore does not disqualify a homeowner from a PRE. As such, the Tribunal erred in its interpretation of MCL 211.7dd(c), and the Court found that Petitioner was entitled to a 100% PRE for the tax years at issue.

Elam v City of Detroit, unpublished per curiam opinion of the Court of Appeals, issued February 16, 2023 (Docket No. 360435). (AFFIRMED).

La'Aqua Elam ("Petitioner") appeals the Tribunal's order dismissing her case for lack of jurisdiction. Petitioner raises various arguments regarding why her failure to provide a letter of authorization to the Board of Assessors is not dispositive of her appeal. Petitioner's arguments are as follows: that the Board of Assessors was not properly established by the Detroit Charter; that the requirement of a letter of authorization to file an appeal with Board of Assessors frustrates state law; that her appeal to the Board of Assessors was properly and timely filed; that her failure to provide a written letter of authorization was a de minimis error; that a written letter of authorization was not necessary for the Board of Assessors to consider her appeal; that her protest to the March Board of Review (BOR) alone was enough to invoke the Tribunal's jurisdiction under MCL 205.735a(3); that the Tribunal violated its statutory duty to conduct a de novo review; and that the Board of Assessors, March BOR, and the Tribunal violated her due process rights. Petitioner, through the University of Michigan Property Tax Appeal Project (UMPTAP) submitted an appeal challenging the assessment of Petitioner's property to the City of Detroit Board of Assessors on February 22, 2021. The appeal did not include a signed letter of authorization from Petitioner. The Board of Assessors notified UMPTAP that it was required to submit a signed letter of authorization before close of business on February 24, 2021, or the appeal would not be

considered. A letter of authorization was not provided, and the Board of Assessors did not consider the appeal. Petitioner filed a subsequent appeal with the March BOR, who refused to hear the appeal because an appeal before the Board of Assessors was a prerequisite. Petitioner subsequently appealed to the Tribunal where the appeal was dismissed due to lack of jurisdiction. The Court of Appeals ("the Court") affirmed the Tribunal's decision, finding that Petitioner's arguments lacked merit. The Court held that the Detroit Charter provides authorization for the Detroit Ordinances to create procedures of the Board of Assessors, and the Detroit Ordinances did so in requiring an appeal with the Board of Assessors as prerequisite to an appeal with the March BOR. The Court found that the required letter of authorization does not frustrate state law as the ordinance does not conflict with the statute, but rather represents a difference in specificity. Further, the failure to provide a written letter of authorization is not a di minimis error, as it is an express requirement of the ordinance, and is further necessary to prove that UMPTAP was acting on behalf of someone with standing to challenge the assessment. As such, Petitioner's appeal was not properly and timely filed. Because Petitioner failed to properly appeal to the Board of Assessors, her protest to the March BOR was not sufficient to invoke the Tribunal's jurisdiction, as an appearance before the March BOR must be a proper appearance, not just any appearance. As it relates to Petitioner's due process arguments, the Court found that the Tribunal may decide jurisdictional issues at any time without violating the requirement that it conduct a de novo review, and any error in the Tribunal's sua sponte dismissal was rendered harmless by the Tribunal's consideration of Petitioner's motion for reconsideration. Further, the Court found that Petitioner was provided notice and a meaningful opportunity to be heard, yet she failed to take advantage of the opportunity. Therefore, the Tribunal correctly dismissed Petitioner's appeal for lack of jurisdiction based on Petitioner's failure to properly appeal to the Board of Assessors and the March BOR.

Butler v City of Detroit, _ Mich _; _ NW2d _ (2023). (REVERSED AND REMANDED).

Barbara Butler ("Petitioner") appeals from the Tribunal's Order of Dismissal based on lack of jurisdiction. Petitioner argues that she timely followed all appellate procedures, thereby properly invoking the jurisdiction of the Tribunal. Petitioner, through an authorized representative, timely appealed a Notice of Assessment for the subject property to the Board of Assessors. The Notice of Assessment was addressed only to Petitioner's late husband. The Board of Assessors refused to hear Petitioner's appeal as it did not have a signed letter of authorization from the taxpayer of record (i.e., Petitioner's late husband). Petitioner attempted to appeal to the March Board of Review (BOR). The March BOR would not consider Petitioner's claims, as the Board of Assessors did not issue a decision. Petitioner thereafter appealed to the Tribunal. The City of Detroit ("Respondent") argued that there was a jurisdictional issue resulting from Petitioner's failure to properly appeal the assessment with the Board of Assessors and/or the March BOR. As such, the Tribunal sua sponte dismissed Petitioner's case for lack of jurisdiction. The Court of Appeals ("the Court") found that Petitioner timely and appropriately filed her appeal with the Board of Assessors and reversed and remanded the Tribunal's decision. The Court found that a party can fail to invoke the Tribunal's jurisdiction under MCL 205.735a(3) by bringing a "wholly deficient" protest to the Board of Assessors when such is a necessary prerequisite to bringing a claim before the

March BOR. The Court found that Petitioner's protest to the Board of Assessors was not deficient in any sense, as Petitioner was the sole owner of the subject property following the death of her late husband. Thus, by filing a timely and proper appeal with the Board of Assessors and doing the same with the March BOR, Petitioner adequately invoked the jurisdiction of the Tribunal under MCL 205.735a(3).

Michigan Health and Wellness Center, LLC v Charter Township of Royal Oak, unpublished opinion per curiam of the Court of Appeals, issued March 2, 2023 (Docket No. 359952). (REVERSED AND REMANDED)

The Charter Township of Royal Oak ("Defendant") appeals an order from the trial court granting Michigan Health and Wellness Center ("Plaintiff") partial summary disposition. Defendant argues that Plaintiff's claims actually challenge the validity of certain special assessments, which are under the exclusive jurisdiction of the Tax Tribunal. Plaintiff filed a claim with the trial court alleging that Defendant was illegally levying taxes for general governmental funding in the guise of special assessments in violation of the Headlee Amendment to the Michigan Constitution. Plaintiff moved for summary disposition under MCR 2.116(C)(10), which the trial court partially granted. The Court of Appeals ("the Court") found that the trial court erred by determining it had jurisdiction over Plaintiff's claims that the special assessments amounted to an unconstitutional property tax in violation of the Headlee Amendment. The Court held that before the question of a Headlee violation can be considered, the underlying validity of the special assessment must first be addressed by the Tribunal under its grant of exclusive and original jurisdiction under MCL 203.371.

Frank Nali v City of Grosse Pointe Farms, unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023, (Docket No. 359338). (VACATED AND REMANDED).

Frank Nali ("Petitioner") appealed from the Tribunal's decision that he was not entitled to a poverty exemption for the 2020 tax year. The City of Grosse Pointe Farms ("Respondent") granted Petitioner a partial poverty exemption for the 2020 tax year, indicating that the reduction was due to "hardship." Petitioner appealed to the Tribunal seeking a 100% exemption. Petitioner argued that Respondent's poverty exemption guidelines provided that the income threshold for a household of one was $21,800. Absent any evidence showing that Respondent's alternative guideline was $21,800 for a household of one for the 2020 tax year, the Tribunal relied on the federal poverty guidelines. The Court of Appeals ("the Court") found that at the time of the assessment, MCL 211.7u(2)(e) provided for the application of "alternative guidelines adopted by the governing body of the local assessing unit . . ." Further, at the relevant time, MCL 211.7u(5) permitted a local board of review to deviate from the local taxing body's guidelines for "substantial and compelling reasons." The Court further held that even without a copy of Respondent's policy for 2020, it was clear that the city had adopted a higher poverty threshold than the one set by the federal government, as Petitioner had been granted a partial exemption despite the fact that his income exceeded the federal poverty threshold. The Court held that the Tribunal's decision to deny Petitioner's poverty exemption was not supported by competent, material, and substantial evidence.

As such, the Court remanded the case, and ordered that the Tribunal reinstate at least the partial poverty exemption grated by Respondent and further consider whether a full exemption was supported.