LARA
LICENSING AND REGULATORY AFFAIRS

MICHIGAN TAX TRIBUNAL

Newsletter 2025-1 **March 24, 2025**

Jurisdiction of Special Assessment Cases

In the past, relying on the last sentence of MCL 205.762(1) and TTR 263(3), the Tribunal assigned all special assessment appeals, regardless of the property's classification, to the small claims division if they met the jurisdictional dollar amount (i.e., $20,000.00 adjusted annually by the inflation rate). Appeals exceeding this limit were assigned to the Entire Tribunal. Having re-examined the statute and the Tribunal's previous position that special assessments in excess of the statutory limit had to be filed in the Entire Tribunal regardless of the property's classification, it has been determined that this interpretation is incorrect. The statute refers to "any other tax" and special assessments are not a tax. Additionally, a special assessment appeal is not an appeal of a property's taxable value or state equalized value.

Given this, going forward, any petition involving a special assessment where the property at issue is defined as "residential" under MCL 205.762, can be filed in the small claims division, regardless of the amount in contention. Under MCL 205.762(6), residential property includes:

(a) Real property exempt under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc.
(b) Real property classified as residential real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.
(c) Real property with fewer than 4 rental units.
(d) Real property classified as agricultural real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.

Special assessment appeals for all other types of property *must* be filed in the Entire Tribunal division. Again, the $100,000 limit for non-residential property is not applicable because special assessment appeals are not taxes, and they do not involve disputes of taxable value or state equalized value.

May 31, 2025 Filing Deadline

The Tribunal would like to remind property owners and/or their representatives that the May 31st deadline to file an appeal at the Tribunal is approaching. This year, May 31, 2025, falls on a Saturday. Pursuant to MCL 205.735a(8), "[a] petition required to be filed by a day during which the offices of the tribunal are not open for business shall be filed by the next business day." Therefore, Entire Tribunal

petitions filed on or before June 2, 2025, involving property classified as commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property valuation appeals, will be considered timely filed. (See also TTR 219(5)).

Case Law of Interest

Mertz v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals issued June 13, 2024 (Docket No. 365480). (AFFIRMED)

Jeffery C. Mertz ("Petitioner") appealed the Michigan Tax Tribunal's ("MTT") order denying Petitioner's motion for summary disposition and granting summary disposition in favor of the Department of Treasury ("Respondent"). Petitioner contends that Respondent did not make a prima facie case that Petitioner was a "responsible person" when the default occurred or that Petitioner acted willfully or recklessly. Additionally, Petitioner contends that Respondent failed to assess the successor purchaser of the company as required.

In 2014, Petitioner was the controller of Howard Finishing and, in this capacity, signed annual withholding-tax returns for 2014 and 2015. Petitioner stated he believed someone else took care of the 2016 withholding-tax return. Petitioner eventually became Howard Finishing's president and manager in 2017. The company "filed none of the required 2015 or 2016 withholding returns until 2017, all of which [P]etitioner signed." However, the taxes were still not paid and thus the company had an outstanding tax balance. Petitioner attempted to sell the company and filed a tax clearance with Respondent in 2017. Respondent issued a number of Intent to Assess forms for the unpaid withholding taxes, and although a payment installment plan was set up with Howard Finishing, the taxes were not paid. Respondent then determined that Petitioner was "liable as a corporate officer for the unpaid taxes, and for the aggregate amount of more than $229,000, plus interest, for the unpaid 2016 taxes."

On appeal, the Court of Appeals affirmed the MTT's order granting summary disposition in favor of Respondent. The Court looked at MCL 205.27a(15)(b) which states that "[t]he signature…of any officer, member, manager of a manager-managed limited liability company, or partner on returns or negotiable instruments submitted in payment of taxes of the business during the time of default, is prima facie evidence that the person is a responsible person." Documents signed and submitted prior to the time of default can become prima facie evidence if additional "evidence showing that the person in question was an officer or manager during the time period of default." Since Petitioner admitted to having almost exclusive control over the company's finances, he was not a "mere data-entry" person but a "responsible person" according to MCL 205.27a(15)(b). Petitioner also acted willfully or recklessly because he testified that he knew the company was in "arrears" and struggling financially but provided no evidence as to why he thought someone else took care of the 2016 withholding-tax return. As a result, MTT's order granting summary disposition was appropriate.

Regarding Petitioner's argument that Respondent was required to assess the taxes to the successor purchaser, the Court looked at MCL 205.27(a)(5) and held that Respondent must assess the successor purchaser "only if [R]espondent is given information that 'clearly identifies' the purchaser and can establish that [R]espondent can collect the entire amount due from the purchaser." Petitioner's request for tax clearance did not provide any information about the purchaser, so Respondent was not required to assess the successor purchaser. Consequently, the Court ruled that the MTT did not err in granting summary disposition in favor of Respondent.

New Covert Generating Co, LLC v Covert Twp, ___ Mich ___; ___ NW2d ___ (2024) (Docket No. 364076). (REVERSED IN PART & AFFIRMED IN PART) MTT Docket No. 17-001737.

New Covert Generating Co, LLC (Petitioner) and Covert Township (Respondent) entered into a confidentiality agreement. After conducting an *in camera* review of the material subject to the parties' confidentiality agreement, the Tribunal issued a protective order. Thereafter, the Tribunal issued a newsletter stating it had erroneously utilized an *in camera* review process that misapplied the Court of Appeals' decision in *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78; 669 NW2d 862 (2003). Ultimately, the Tribunal issued an order holding that information subject to a protective order issued under MCR 2.302(C) would only be protected from disclosure if the information was also exempt from disclosure under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*. Petitioner appealed this ruling to the Court of Appeals.

On appeal, the Court considered its decision in *Herald Co,* wherein it held that since the Tribunal does not have an administrative rule governing protective orders, MCR 2.302(C)(8) and MCL 24.273 govern and provide "separate and distinct" paths to confidentiality aside from FOIA. In reversing the Tribunal's decision in this case, the Court held that the Tribunal's "unique position as a quasi-judicial agency with exclusive jurisdiction over tax appeal proceedings implies that information in the possession of [the Tribunal] that is protected under MCR 2.302(C)(8) should be protected from public disclosure regardless of whether an applicable FOIA exemption exists."

In addition, Petitioner argued that only a "public body" may determine whether a session or hearing may be closed to the public under the Open Meetings Act's (OMA) and that a single Tribunal member is not a "public body." The Court disagreed, relying both on the OMA's definition of "public body" and Section 26 of the Tax Tribunal Act, MCL 205.726, which states that the Tribunal "may appoint 1 or more hearing officers to hold hearings." The Court affirmed the Tribunal's ruling, holding that "the Tax Tribunal Act provides that while the Tribunal consists of seven members, one Tribunal member may hear and decide proceedings."