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MICHIGAN TAX TRIBUNAL

Newsletter 2025-3 **July 02, 2025**

Judge Jason C. Grinnell and Judge Michael R. Bannasch Reappointed

Governor Whitmer has reappointed Judge Jason C. Grinnell and Judge Michael R. Bannasch to the Tax Tribunal for four-year terms, expiring June 30, 2029.

Judge Grinnell has served as an attorney member of the Tribunal since 2021. Judge Grinnell previously served as an assistant city attorney for the City of Grand Rapids where he was responsible for handling all tax and exemption appeals. Judge Grinnell also worked in private practice where he specialized in corporate litigation, business law, civil litigation, tax law, and criminal law. Judge Grinnell holds a bachelor's degree in criminal justice from Saint Mary's University of Minnesota and a Juris Doctor degree from Thomas M. Cooley Law School. Judge Grinnell is a member of the State Bar of Michigan.

Judge Bannasch has served as the Tribunal's certified public accountant (CPA) member since September 2024. Judge Bannasch previously served as the state and local tax practice leader at RKL LLP. Prior to that role, he was a state and local tax senior manager at Rehmann and a tax manager at local CPA firms in Jackson, Michigan. Judge Bannasch holds a bachelor's degree in accounting and business administration from Spring Arbor University and a Master of Science in Taxation from Grand Valley State University. Judge Bannasch is a past member and chair of the Michigan Association of CPA's State and Local Tax Task Force.

Congratulations to our colleagues on their reappointments.

Retirement of Tribunal Member Mark Perry

On July 15, 2025, Judge Mark Perry will retire from the Tribunal as its assessor member and begin the next phase of his life. Judge Perry was first appointed to the Tribunal in March 2023 as an at-large member. In June 2024, Judge Perry was appointed to fill the assessor position previously held by Judge Victoria Enyart. Prior to his time at the Tribunal, Judge Perry served as an appraiser, a municipal assessor for the cities of Ann Arbor and Mt. Pleasant, and a corporate real estate and property tax director. Judge Perry worked for 30 years as director of property taxes and real estate services for MASCO

Corporation, where he was responsible for handling property tax assessment appeals, site selection, incentives, real estate transactions, construction, and property and facilities management. After retiring from MASCO, Judge Perry established a multi-state asset management consulting firm that represented multi-national clients with site selection, incentives, transactions, construction, and assessment appeals. Judge Perry holds a bachelor's degree in economics and real estate from Central Michigan University. Judge Perry is a Michigan licensed real estate broker specializing in commercial and industrial properties, a Michigan Master Assessing Officer IV, an International Association of Assessing Officers Certified Assessment Evaluator, and a Federal Aviation Administration instrument rated private pilot.

Judge Perry has been a valued Tribunal member, and he will be greatly missed. We wish him a long and happy retirement.

Tribunal Personnel Changes

The Tribunal has had many personnel changes thus far this year. Beginning with the changes and additions to our administrative staff:

- *Kate Campbell*: Ms. Campbell began her employment with the Tribunal in 2021 as a general office assistant. She was subsequently promoted to a legal secretary. In June 2024, Ms. Campbell received her paralegal degree from Oakland University. In December 2024, the Tribunal received approval to add a paralegal position to our staff. Ms. Campbell was the successful candidate and has now fully transitioned to that position.
- *Gina Cortez*: Ms. Cortez joined our legal secretary team in March. She comes to us from a dental practice where she was a scheduling and insurance coordinator.
- *Anna Martin*: Ms. Martin joined our legal secretary team in March. She was previously with Michigan's Department of State.
- *Stacy Bryson*: Ms. Bryson joined our legal secretary team in March. She was previously with Michigan's Department of Technology, Management & Budget.

Also, two new attorneys joined the Tribunal's staff:

- *Chloe Stone*: Ms. Stone received her Juris Doctorate Degree from the Michigan State University College of Law and is a member in good standing with the State Bar of Michigan. Ms. Stone was previously employed as a judicial law clerk at the 30th Circuit Court where she drafted orders and opinions on a variety of general civil and appellate cases. As an administrative law specialist, Ms. Stone will draft orders for Tribunal members and hold Small Claims hearings.
- *Nancy Klukowski*: Ms. Klukowski received her Juris Doctorate Degree from the Detroit College of Law and is a member in good standing with the State Bar of Michigan. Ms. Klukowski has been employed by the State of Michigan since 2003. For the last 14 years, she has worked for the Michigan Unemployment Insurance Appeals Commission, first as an administrative law specialist and then as an administrative law specialist manager. Ms. Klukowski fills the new Tribunal position of administrative law examiner. In this position, Ms. Klukowski will hold Small Claims hearings.

Changes to the Prehearing General Call and Order of Procedure

For the past several years, cases have been assigned to judges when the Prehearing General Call and Order of Procedure (PHGC) was issued. Beginning with the most recent exemption/non-property and valuation PHGCs, this process changed. Judges will now be assigned to cases when they are ready to be scheduled for a Prehearing Conference.

July 31, 2025 Filing Deadline

The Tribunal would like to remind property owners and/or their representatives that the July 31st deadline to file an appeal in the Tribunal's Small Claims Division is approaching.

Recent Case Law of Interest

- *Mall at Briarwood, LLC v Ann Arbor, Dep't of Treasury,* unpublished opinion per curiam of the Court of Appeals, issued February 25, 2025 (Docket No. 365726). (Reverse/Remand)

Mall at Briarwood, LLC (Petitioner) appealed the Tribunal's March 24, 2023 order, concluding that the confidential materials filed by Petitioner are not considered trade secrets under the Michigan Uniform Trade Secrets Act (MUTSA), thus denying the joint request for a closed hearing under the Open Meetings Act (OMA). Petitioner argued that the Tribunal erred in issuing this order as the confidential information is a trade secret, therefore the parties were entitled to a closed hearing. Following the issuance of a protective order related to confidential information, the parties requested that the Tribunal allow their valuation disclosures and other confidential materials to be filed under seal and that the hearing in this matter be closed. The Tribunal issued an order stating that while the documents included in their protective order were protected from disclosure, they were not considered trade secrets as "the information does not derive or could not derive independent economic value, as required by MCL 445.1902(d)(i) and, as such, are not trade secrets within the meaning of MUTSA." The Tribunal also issued an order stating that because the valuation disclosures and other confidential materials were not considered trade secrets, the parties request for a closed hearing under OMA was denied. Petitioner requested leave to appeal this ruling, which was granted by the Court of Appeals (COA).

The Court, relying on *Radiant Global Logistics, Inc v Furstenau*, 368 F Supp 1112, 1126 (ED Mich, 2019) outlined the six factors to review when considering whether the information was considered a trade secret under MUTSA. Here, the Court pointed out that the Tribunal erred in utilizing the factors as a required checklist rather than mere guidelines. In balancing the factors, the Court described the information as "an appraisal report containing confidential research, and confidential commercial information, such as tenant lease information, tenant sales volumes, tenant occupancy cost information, financial operating results for the Subject Property, and other Confidential Information covered by the Protective Order." The Court held that this information has value to Petitioner's competitors and is therefore a trade secret. The Court found that the Tribunal's issuance of a protective order on January 19, 2022, in accordance with MCR 2.302(C)(8), based on the information submitted by the parties, was considered

"confidential commercial information," hence a trade secret, and therefore shielded by that order. The Court rejected Respondent's argument that the information was not valuable and was not persuaded that the age of the information prevented it from being a trade secret, suggesting the information was similar to internal pricing information that could be an advantage to competitors.

In terms of the closed session, "[t]he fact that the confidential information qualifies as a trade secret under MUTSA—a state statute—and is, therefore, exempt from disclosure, means that the [Tribunal], as a public body, may meet in a closed session to consider such material." Judge Young dissented, stating: "I instead agree with the trial court that the independent value of the petitioner's information is 'speculative and inconclusive.'" However, the Court relied on MCL 15.268(1)(h), which states that "a public body may meet in a closed session" to "consider material exempt from discussion or disclosure by state or federal statute," and held the Tribunal erred in the entry of the March 24, 2023 order. The Court reversed the March 24, 2023 order and remanded the case for further proceedings.

- *Bodeco, LLC v Traverse City,* ___ Mich App ___; ___ NW3d ___ (2025) (Docket No. 370738). (Reverse/Remand)

Bodeco, LLC (Petitioner) appeals the decisions rendered by the Michigan Tax Tribunal dismissing Petitioner's tax appeal for the 2019 and 2020 tax years as untimely, and denying Petitioner's claim that the airplane hangar, built by Bodeco on leased land owned by the Northwest Reginal Airport Commission, is tax exempt under MCL 211.181. On December 9, 2021, the Tribunal issued an order partially dismissing the case with regard to the 2019 and 2020 tax years, stating that the appeal was filed after the filing deadline, thus the Tribunal had "no authority to grant Petitioner the relief requested. . . ." Concerning the 2021 tax year, Petitioner maintained that under MCL 211.181, the property was exempt as it was used to store a personal aircraft and was not used for commercial purposes. The City of Traverse City (Respondent) disagreed, arguing that the property did not qualify for exemption under MCL 211.181. Petitioner testified that the property was not used for profit; however, Respondent disagreed. The Tribunal found that Petitioner was not entitled to the exemption under MCL 211.181(1) as Petitioner did not meet its burden of proof, and used the property, in part, to earn a profit. After the Tribunal denied Petitioner's Motion for Reconsideration, Petitioner appealed the Tribunal's decision to the COA.

The Court agreed that the Tribunal did not have jurisdiction over the 2019 and 2020 tax years, indicating that the allegations made by Petitioner were mistakes of law, rather than mistakes of fact, and therefore was not subject to MCL 211.53a. The Court also found that the record did not include any verification of a qualified error made by the local assessing department and affirmed the Tribunal's dismissal of the 2019 and 2020 tax years under MCL 211.53b. For the 2021 tax year, the Court held that the Tribunal incorrectly placed the burden of proof on Petitioner under MCL 211.181(1) because this is not an exemption statute. Instead, MCL 211.181(1) is a statute that imposes a tax. Citing *Kalamazoo v Richland Twp*, 221 Mich App 531, 536-537; 562 NW2d 237 (1997), the Court concluded that Respondent had "the burden of proof to show that the tax-imposing statue, MCL 211.181(1), applied to [P]etitioner's property." Because MCL 211.181(1) was

misapplied, requiring Petitioner rather than Respondent to meet the burden of proof, the Court vacated the Tribunal's Final Opinion and Judgement and remanded for further proceedings.

- *Sixarp LLC v Byron Twp*___Mich___;___NW3d___(2025). (Affirmed).

Sixarp (Petitioner), operating as Praxis Packaging Solutions, appealed Byron Township's (Respondent) denial of its request for an eligible manufacturing personal property (EMPP) tax exemption to the Tribunal, alleging its constitutional rights to due process were violated because Respondent did not properly notify it of its right to appeal the decision. Petitioner applied for the EMPP exemption in February 2021. Respondent denied the request stating Petitioner's "qualified new personal property" or "qualified existing personal property" did not meet the statutes' definition of EMPP. The denial notice included a statement specifying that a taxpayer could appeal the denial of an EMPP exemption before the March Board of Review (MBOR), and that doing so was "necessary to protect the right to further appeal" with the Tribunal. Respondent simultaneously mailed a notice of assessment to Petitioner which indicated that to protest the values listed in the notice of assessment, Petitioner was required to appeal the denial to the MBOR and included the meeting times and contact information. Petitioner contacted Respondent via email, and Respondent advised Petitioner to email an appeal letter but failed to mention the filing deadline. Petitioner emailed the appeal letter one day past that deadline and was informed they were too late; thus, Petitioner never appeared before the MBOR. Petitioner appealed the denial to the Tribunal. The Tribunal granted summary disposition to Respondent and dismissed the case stating the Tribunal lacked jurisdiction because Petitioner never appealed to the MBOR.

Petitioner appealed the Tribunal's decision to the Michigan COA. The COA reversed the Tribunal's decision and remanded the case to the Tribunal, holding that Respondent's attempt to provide adequate notice to Petitioner about its appeal rights did not comport with MCL 211.9m(3) or MCL 211.9n(3) because the denial itself did not include the time and manner in which to appeal the denial. As a result, Respondent denied Petitioner of its right to due process. Respondent appealed this decision to the Michigan Supreme Court.

The Supreme Court, relying on MCL 205.731, 205.735a, MCL 211.9m and 211.9n, held that the Tribunal properly dismissed Petitioner's appeal as Petitioner never appealed to the MBOR. Pursuant to the statutes, the taxing authority is required to notify the taxpayer in writing of the exemption denial, including the reason for the denial. The taxing authority is also required to inform the taxpayer that to appeal the denial, a protest must be made to the MBOR by filing a combined document. MCL 211.9m(3). As explained by the Tribunal "the language used in the denial notice mirrors the statutory language that permits the assessor to deny an exemption request if the property is not qualified new or previously existing property. . . . MCL 211.9m(3); 211.9n(3)." Although the denial notice did not include the specific MBOR meeting times and the need for a combined document, the notice did indicate the need to appeal to the MBOR to preserve Petitioner's appeal rights. Furthermore, Petitioner's notice of assessment, sent the same month, included the dates the MBOR would meet and the filing deadlines. Based on the information listed in the denial notice, the notice of assessment, and the email correspondence with

Respondent, the Supreme Court held that Petitioner was given proper notice and was not deprived of its due process rights. The COA's decision was reversed, and the Tribunal's order of dismissal for lack of jurisdiction was reinstated.

- *Blake's Farm, Inc v Armada Twp*, ___Mich___;___NW3d___(2025). (AFFIRMED).

Blake's Farm, Inc. (Petitioner) appealed the Tax Tribunal's decision granting two parcels of property a partial Qualified Agricultural Exemption (QAE) for the 2023 and 2024 tax years.

Petitioner appealed to the Tribunal following Armada Township's (Respondent) assessor's grant of a partial QAE for the parcels at issue. Petitioner claimed that under Michigan's Right to Farm Act (RTFA), MCL 286.471, and Generally Accepted Agricultural and Management Practices, it was entitled to 100% QAE on both parcels. The parcels were comprised of a restaurant, gift shop, cider-retail area, storage buildings, processing buildings, snack bar, banquet area, seasonal ice rink, pavilion, parking lot, restrooms, business office and a residential home with garage. Petitioner asserted that "[a]ll of the operations, including the retail operations, parking lots, and agritourism activities-are all agricultural activities." Respondent disagreed, stating that in accordance with MCL 211.7ee, buildings and structures used for commercial or industrial purposes are not entitled to 100% QAE and submitted evidence to support the claim. As no evidence was filed by Petitioner attesting to the use of the buildings and structures, the Tribunal granted a QAE for one parcel at 25.3% and the second at 54% for the 2023 and 2024 tax years. Petitioner appealed to the COA, which found the statute to be unambiguous, and held that "agricultural operation" includes "[p]erforming any practices on a farm incident to, or in conjunction with, farming operations," but under MCL 211.34c(2)(a)(*ii*)(G), "[a] commercial storage, processing, distribution, marketing, or shipping operation is not part of agricultural operations." Furthermore, pursuant to MCL 211.7dd(d), an owner would not be eligible for a QAE for the "portion of the total state equalized valuation of the property that is used for a commercial or industrial purpose or that is a residence that is not a related building." The Court found no merit to Petitioner's claim that the use was agricultural based on the RTFA, and concluded that unlike Petitioner, Respondent had provided substantial evidence as to the use of the property. Therefore, the Court affirmed the Tribunal's decision granting partial QAEs for the parcels.