

**Letter No. 01-93**  
**Amending Special Assessments**

March 12, 1993

TO: County Treasurers, County Drain Commissioners, Michigan Townships Association  
and Michigan Municipal League

FROM: Richard L. Baldermann, CPA  
Administrator  
Local Government Audit Division

RE: Correcting Special Assessment rolls and July/December Board of Review

This office has received several inquiries as to the proper procedure for correcting special assessment rolls after the confirmation hearing is completed and the lapse of the appeal period. Most of these questions concern the correcting of special assessments for house to house collection of garbage and refuse pick-up within the local governmental unit.

Several units are using the authority granted by PA 188 of 1954 (Michigan Compiled Law [MCL] 41.721), which is known as the "Township Public Improvement Act," to establish a special assessment district to finance the garbage and refuse pick-up within the local governmental unit.

There are other statutes that grant authority to local government units to establish special assessment districts and special assessment rolls to pay for drainage, lake improvements, department of public works projects for sewer, water, streets, sidewalks and various other improvements that benefit property. Special assessment districts and special assessments tax rolls can be established only after the publication of public hearings and individual notices to property owners of record, confirmation of the assessment rolls and a ten to thirty day appeal period (applicable appeal periods are addressed in the specific statute) to contest the inclusion or exclusion of property within the special assessment district or the amount of the special assessment. Special assessment districts and the assessment rolls are final and conclusive after confirmation and the lapse of the appeal period. One must look to the applicable special assessment statute for the specific procedures and time for notices, public hearings and appeals. In addition to the notices of hearings in the special assessment proceedings specified in the statute, charter or ordinance, additional notice shall be given to each owner of property to be assessed as provided in PA 162 of 1962. (MCL 211.741) (General Act providing required notices for all special assessment hearings).

**Special Assessment Definition:**

The Michigan Supreme Court, in the decision of St. Joseph Township v. Municipal Finance Commission (351 Mich 532) stated there is a recognized distinction between a general tax and a special assessment in that a special assessment is confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity and levied with reference to special benefits to the property assessed.

The differences between a special assessment and a tax are that: (1) a special assessment can be levied only on land; (2) a special assessment cannot be made a personal liability on the person assessed; (3) a special assessment is based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality (a defined area).

The imposition of a charge on all property, real and personal, in a prescribed area, is a tax and not an assessment, although the purpose is to make a local improvement on a street or highway. A charge imposed only on property owners benefited is a special assessment rather than a tax notwithstanding the statute calls it a tax. "Blake v. Metropolitan Chain Stores, 247 Mich 73, 77 (63 ALR 1386), quoting 1 Cooley on Taxation (4<sup>th</sup> ed), sec. 31, pp 106, 107.

The general consensus is that a special assessment is not a general or ad valorem tax. The procedures specified in section 53b, PA 206 of 1893 (MCL 211.53b) (July or December Board of Review) authorizes the correction of only the ad valorem base and tax, not a special assessment levy.

The consensus theory that MCL 211.53b correction procedures (July/December Board of Review) does not apply to PA 188 of 1954 special assessment rolls are addressed by the provisions of sections 4, 6 and 13 of PA 188. These sections provide:

Section 4 (2); (MCL 41.724[2])

If periodic redeterminations of costs will be necessary without a change in the special assessment district, the notice shall state that such redeterminations may be made without further notice to record owners or parties in interest in the property.

Section 6 of PA 188 of 1954 (MCL 41.726) provides that a public hearing, after notice as provided in section 4a (MCL 41.724a) of this Act, will be held to hear objections to the special assessment roll and subsection 3 (MCL 41.726 (3) provides that if the special assessment roll is CONFIRMED, after a public hearing, . . . all assessments on that assessment roll shall be final and conclusive unless an action contesting an assessment is filed in a court of competent jurisdiction within 30 days after the date of confirmation. (Please note item b. 1., on page 3 of this letter)

Section 13 (MCL 41.733) specifies:

Whenever any special assessment shall, in the opinion of the township board, be invalid by reason of irregularities or informalities in the proceedings, the township board shall . . . have power to proceed from the last step at which the proceedings were legal and cause a NEW assessment to be made for the same purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for the original assessment, . . . .

WE BELIEVE THAT THESE STATUTORY PROVISIONS PROHIBIT ANY CHANGE OF A CONFIRMED ASSESSMENT ROLL EXCEPT AFTER NOTICE TO EACH OWNER OF RECORD, THE PUBLICATION OF AND THE HOLDING OF A PUBLIC HEARING AS SPECIFIED IN SECTION 4a (MCL 41.724a) AND SECTION 13 (MCL 41.733) OF PA 188 OF 1954 OR AN ORDER FROM THE MICHIGAN TAX TRIBUNAL.

Similar provisions addressing changes in special assessments are provided in most special assessment statutes. As always, there may be a few exceptions.

In summary, confirmed special assessment rolls:

- a) Cannot be amended or corrected by a March, July or December Board of Review.
- b) May be altered by the local unit only by following the procedures specified in the Act authorizing the special assessment, or other Acts pertaining to special assessments.

Payers of special assessments (except County Drain) may file protests (appeals) with the Michigan Tax Tribunal (MTT) without an appearance before the local Board of Review. Protests of special assessments by taxpayers must be filed with the MTT in writing within thirty days of the receipt of the confirmation notice. (MCL 205.701 et seq. as amended)

- c) Descriptions may be added to or deleted from the confirmed special assessment roll only by following the specified statutory procedures that are stated in the Act authorizing the special assessments or as otherwise provided by law. This includes the removal of unimproved parcels from a confirmed roll.
- d) May be changed upon order of the MTT or a court of competent jurisdiction.
- e) Containing county drain assessments under PA 40 (MCL 280.1 et seq.) may no longer be appealed to the Michigan Tax Tribunal, but shall be appealed to the Probate Court as specified by PA 172 of 1992. We suggest county drain commissioners consult with their legal advisor if the provisions of Attorney General's Opinion No. 2933, dated May 15, 1957 have been nullified by PA 172 of 1992. That opinion states that a PA 40 of 1956 drain assessment may be amended by resolution of the county board of commissioners.

Please call (517) 373-3227 or write our office if you have any questions at Michigan Department of Treasury, Local Audit and Finance Division, P.O. Box 30728, Lansing, Michigan 48909-8228.