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DEPARTMENT OF TREASURY  
LANSING

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**BOARD OF REVIEW**

**TO: Boards of Review and Assessing Officers**

**FROM: State Tax Commission (STC)**

**RE: 2011 BOARD OF REVIEW**

This Bulletin contains information that Boards of Review need to be aware of for the 2010 assessment year. In 2010, the State Tax Commission updated a Question and Answer Document regarding the statutory obligations for Boards of Review. The STC asks that all Boards of Review carefully review this document in order to fully understand their statutory obligations.

**1) Qualified Errors:**

MCL 211.53b provides that the July or December Boards of Review can correct "qualified errors" for the current year and one prior year. A qualified error is defined as 1 or more of the following:

- (a) A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes.
- (b) A mutual mistake of fact.
- (c) An adjustment under section 27a(4) (erroneous uncapping of taxable value) or an exemption under section 7hh(3)(b) (application for an extension for filing the annual Single Business Tax or Michigan Business Tax Returns for a qualified start up business).
- (d) An error of measurement or calculation of the physical dimensions or components of the real property being assessed.
- (e) An error of omission or inclusion of a part of the real property being assessed.
- (f) An error regarding the correct taxable status of the real property being assessed.
- (g) An error made by the taxpayer in preparing the statement of assessable personal property under section 19.

“Clerical errors’ and ‘mutual mistakes of fact’ are defined by the courts as follows:

**Clerical Error:** International Place Apartments v Ypsilanti Township 1996 Mich App. 79.

On March 29, 1996 the Michigan Court of Appeals clarified the meaning of the term "clerical error" found in MCL 211.53b which authorizes the correction of a clerical error or mutual mistake of fact by the July and December Boards of Review. The Court of Appeals states that the July and December Boards of Review are allowed to correct clerical errors of a typographical or transpositional nature. The July and December Boards of Review are NOT allowed to revalue or reappraise property when the reason for the action is that the assessor did not originally consider all relevant information. The Court of Appeals decided that a 'clerical error', "...simply does not include cases where the assessor fails to consider all the relevant data, even if the root of the assessor's error may have been a ministerial mistake such as the filing of a document."

**Mutual Mistake of Fact:** On March 31, 2010, the Michigan Supreme Court clarified the meaning of the term "mutual mistake of fact" found in 211.53a which authorizes the recovery of excess payments not made under protest. The Court previously defined "mutual mistake of fact" in *Ford Motor Co v City of Woodhaven*, 475 Mich 425; 716 NW2d 247 (2006) as follows: "a 'mutual mistake of fact' is "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." To qualify under the statute, the "mutual mistake of fact" must be one that occurs only between the assessor and the taxpayer. The mutual mistake cannot be imputed to the assessor on an agency theory unless the assessor makes a mistake in performing his/her duties in spreading and assessing the tax.

## 2) Documentation of Board of Review Changes:

The State Tax Commission requires that all Boards of Review maintain appropriate documentation of their decisions including; minutes, a copy of the form 4035, form 4035a whenever the Board of Review makes a change that causes the Taxable Value to change and a Board of Review Action Report. Form 4035a must include a detailed reason why the Board made their determination.

Minutes must include all of the following items:

- Day, time and place of meetings.
- Members present, members absent, name of elected chairperson and notation of any correspondence received.
- A log that identifies the hearing date, the petition number, the petitioner's name, the parcel number, the type of appearance, type of appeal and decision of the board of review.
- Record daily the actual hours the Board was in session, and time of daily adjournments. Record the closing date and time the final annual session.

## 3) Inflation Rate used in the 2011 Capped Value Formula:

MCL 211.34d defines the calculation for the Inflation Rate Multiplier. The statute states in part:

(l) "Inflation rate" means the ratio of the general price level for the state fiscal year ending in the calendar year immediately preceding the current year divided by the general price level for the state fiscal year ending in the calendar year before the year immediately preceding the current year.

Further, (f) states "General price level" means the annual average of the 12 monthly values for the United States consumer price index for all urban consumers as defined and officially reported by the United States department of labor, bureau of labor statistics.

Based on this statutory requirement, the calculation for 2011 is as follows:

1. The 12 monthly values for October 2008 through September 2009 are averaged.
2. The 12 monthly values for October 2009 through September 2010 are averaged.
3. The ratio is calculated by dividing the average of column 2 by the average of column 1.

The specific numbers from the US Department of Labor, Bureau of Labor Statistics are as follows:

Oct-08	216.573	Oct-09	216.177
Nov-08	212.425	Nov-09	216.330
Dec-08	210.228	Dec-09	215.949
Jan-09	211.143	Jan-10	216.687
Feb-09	212.193	Feb-10	216.741
Mar-09	212.709	Mar-10	217.631
Apr-09	213.240	Apr-10	218.009
May-09	213.856	May-10	218.178
Jun-09	215.693	Jun-10	217.965
Jul-09	215.351	Jul-10	218.011
Aug-09	215.834	Aug-10	218.312
Sep-09	215.969	Sep-10	218.439
<b>Average</b>	<b>213.768</b>		<b>217.369</b>
		Ratio	<b>1.017</b>
		% Change	<b>1.7%</b>

**Local units cannot develop or adopt or use an inflation rate multiplier other than 1.017 in 2011. It is not acceptable for local units to indicate to taxpayers that you do not know how the multiplier is developed.**

#### **4) County Multipliers:**

It has come to the attention of the State Tax Commission that some Boards of Review believe it is appropriate to develop their own County Multipliers. It is not acceptable for a local unit or Board of Review to develop County Multipliers. The multipliers developed by the STC must be used.

#### **5) Alternate Start Dates for the July or December Boards of Review:**

Governor Jennifer Granholm signed into law Public Act 122 of 2008 on May 8, 2008. This act amends MCL 211.53b to provide that July or December Boards of Review may have an

alternate start date. The act requires that the governing body of the City or Township adopt by ordinance or resolution alternate start dates that must conform to the following:

For the July Board, an alternate date during the week of the 3<sup>rd</sup> Monday in July.

For the December Board, an alternate date during the week of the 2<sup>nd</sup> Monday in December.

## **6) Foreclosure Sales:**

The State Tax Commission issued guidance regarding the use of foreclosure sales in sales studies, through Bulletin 6 of 2007. The recent increase in foreclosures has caused those transactions to have an impact on the real estate market in some parts of the state. In hearing appeals, Boards of Review are cautioned that foreclosure sales should be scrutinized in the same way as foreclosure sales are considered for inclusion in these ratio studies. Boards of Review are strongly encouraged to familiarize themselves with Bulletin 6 of 2007 and the guidelines related to foreclosure sales.

## **7) Single-Year Sales Studies:**

The Commission has again for the 2011 year ordered the use of single year sales studies for the residential class.

The dates for the study periods are:

Two Year Study: October 1, 2008 through September 30, 2010

Single Year Study: October 1, 2009 through September 30, 2010

Note, the time period revisions apply to all equalization studies; sales ratio studies, land value studies and economic condition factor studies for appraisals. Also note, the revised time period for two year sales studies applies to all real property classifications.

## **8) Property Classification and Transfer of Ownership:**

The State Tax Commission updated the Q and A on Property Classification and Transfer of Ownership. Boards of Review are encouraged to review those two documents and familiarize themselves with the statutory requirements.