



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

NICK A. KHOURI
STATE TREASURER

BULLETIN 20 of 2016
December 13, 2016
Boards of Review

TO: Boards of Review and Assessing Officers

FROM: State Tax Commission (STC)

RE: 2017 Boards of Review

This Bulletin contains information that Boards of Review need to be aware of for the 2017 assessment year. At their November 29, 2016 meeting, the State Tax Commission updated their Frequently Asked Questions regarding the statutory obligations for Boards of Review. That document can be found on the State Tax Commission website at www.michigan.gov/statetaxcommission. The State Tax Commission asks that all Boards of Review carefully review this document in order to fully understand their statutory obligations. Board of Review members are also strongly encouraged to attend an annual *Board of Review Member Training Program* to review updates on statutory and policy changes.

1) Disabled Veterans Exemption:

The State Tax Commission has issued significant guidance on the Disabled Veterans Exemption. This guidance can be found on the State Tax Commission website under "What's New". Guidance issued includes Bulletin 22 of 2013 and FAQ's approved in 2014. Boards of Review are encouraged to review all Disabled Veterans Exemption guidance issued by the State Tax Commission.

Boards of Review are strongly cautioned that the determination that a veteran is 100% disabled or individually unemployable is made by the U.S. Department of Veterans Affairs. Boards of Review **do not** have authority to make an independent determination that a veteran is 100% disabled or individually unemployable. Conversely, Boards of Review **do not** have the authority to determine a veteran is not 100% disabled or individually unemployable once the U.S. Department of Veterans Affairs has issued their determination.

2) Qualified Errors:

The State Tax Commission continues to note a number of July and December Boards of Review making changes that are not allowed by the statute. **Boards of Review and assessors are cautioned to take great care to ensure that any changes made by the July or December Board meet the requirements of MCL 211.53b.**

MCL 211.53b provides that the July or December Boards of Review can correct "qualified errors" for the current year and one prior year, unless additional years are specifically addressed by the statute.

A correction under subsection (6) regarding Principal Residence Exemptions may be made for the year in which the appeal was filed and the three immediately preceding years.

A correction under subsection (8) that approves a qualified personal property exemption contained in MCL 211.9o for small business taxpayers may be made for the year in which the appeal was filed and the immediately preceding three tax years.

The July and December Boards of Review **have no authority** over the Eligible Manufacturing Personal Property Exemptions contained in MCL 211.9m and MCL 211.9n. If an assessor misplaces or missed a timely filed Form 5278, that **is not** considered a clerical error or mutual mistake and cannot be considered by the July or December Board of Review.

Regarding MCL 211.27a(4); if the taxable value of property is adjusted and the assessor determines that there had not been a transfer of ownership, the taxable value of the property shall be adjusted for the current year and for the three immediately preceding calendar years. An adjustment under this subsection shall be considered the correction of a clerical error.

Qualified Errors are defined in the act as:

- A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes
- A mutual mistake of fact.
- An adjustment under section 27a(4) – taxable value or an exemption under section 7hh(3)(b)– qualified start-up business exemption.
- An error of measurement or calculation of the physical dimensions or components of the real property being assessed.
- An error of omission or inclusion of a part of the real property being assessed.
- An error regarding the correct taxable status of the real property being assessed.
- An error made by the taxpayer in preparing the statement of assessable personal property under section 19.
- An error made in the denial of a claim of exemption for personal property under section 9o.

“Clerical Errors’ and ‘Mutual Mistakes of Fact’ are defined by the courts as follows:

Clerical Error: *International Place Apartments v Ypsilanti Township*, 216 Mich App 104; 548 NW2d 668 (1996). 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: *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69; 780 NW2d 753 (2010). 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.

3) Personal Property Tax:

A significant number of changes to the personal property tax went into effect for the first time in 2016. Beginning December 31, 2015 (for the 2016 assessment year) qualified new personal property and qualified previously existing personal property located on occupied real property is exempt from ad valorem taxation and is instead subject to the State Essential Services Assessment. Additionally, certain P.A. 198 (IFT) Property and New Personal Property (P.A. 328) are subject to the State Essential Services Assessment. The March Board of Review has the authority to hear the denial of an exemption by the assessor. This would include denial due to the filing of an incomplete Form 5278. If the taxpayer presents a fully completed Form 5278 to the March Board of Review and the Board believes the property meets the exemption requirements, then the Board may grant the exemption. The March Board of Review also has the authority to review and accept an amended filing by the taxpayer as long as the taxpayer properly claimed the exemption by timely and completely filing Form 5278.

If the March Board of Review approves the exemption, the Board is statutorily required to remove the personal property from the assessment roll and the Board of Review shall file an affidavit with the proper officials involved in the assessment and collection of taxes and all affected official records shall be corrected.

Given the significant changes to the personal property tax, Board of Review members are highly encouraged to review the *Assessor Guide to Eligible Manufacturing Personal Property Tax Exemption and ESA*, available on the State Tax Commission website. More information is also available at www.michigan.gov/ESA.

Board of Review members are also encouraged to review the *Personal Property Frequently Asked Questions* document available on the State Tax Commission website. More information is also available at www.michigan.gov/PPT.

4) 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 4035 must include a detailed reason why the Board made their determination. **Assessors please note, you are not required to file the Board of Review log or Action Report with the State Tax Commission.**

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 of the final annual session.

5) Inflation Rate used in the 2017 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 2016 is as follows:

1. The 12 monthly values for October 2014 through September 2015 are averaged.
2. The 12 monthly values for October 2015 through September 2016 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-14	237.433	Oct-15	237.838
Nov-14	236.151	Nov-15	237.336
Dec-14	234.812	Dec-15	236.525
Jan-15	233.707	Jan-16	236.916
Feb-15	234.722	Feb-16	237.111
Mar-15	236.119	Mar-16	238.132
Apr-15	236.599	Apr-16	239.261
May-15	237.805	May-16	240.229
Jun-15	238.638	Jun-16	241.018
Jul-15	238.654	Jul-16	240.628
Aug-15	238.316	Aug-16	240.849
Sep-15	237.945	Sep-16	241.428
Average	236.742		238.939
		Ratio	1.009
		% Change	0.9%

Local units cannot develop or adopt or use an inflation rate multiplier other than 1.009 in 2017. It is not acceptable for local units to indicate to taxpayers that you do not know how the multiplier is developed.

6) 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 State Tax Commission must be used.

7) Alternate Start Dates for the July or December Boards of Review:

Public Act 122 of 2008 amended 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 3rd Monday in July. For the December Board, an alternate date during the week of the 2nd Monday in December.

8) Poverty Exemptions:

The State Tax Commission in May of 2012 issued Bulletin 5 of 2012 regarding Poverty Exemptions. This Bulletin reflects updates due to recent court decisions and legislative changes. Specifically:

The Michigan Court of Appeals ruled in *Ferrero v Township of Walton* (Docket No. 302221) that monies received pursuant to MCL 206.520 (homestead property tax credit) is a rebate of property taxes and is not income for purposes of MCL 211.7u.

Statutory changes to allow an affidavit to be filed for all persons residing in the residence who were not required to file federal or state income tax returns in the current year or in the immediately preceding year. This does include the individual filing for the exemptions.

Board of Review members are encouraged to review Bulletin 5 of 2012 prior to the start of March Board of Review meetings.

9) Property Classification and Transfer of Ownership:

Boards of Review are encouraged to review the *Property Classification* and updated *Transfer of Ownership Guidelines* available on the State Tax Commission website.

10) Resources and Training:

The State Tax Commission has published a significant amount of resource information to assist Boards of Review in carrying out their statutory responsibilities. This information can be found on the State Tax Commission website under the Board of Review Information heading.

The State Tax Commission recommends that all new and returning Board of Review Members annually attend training to receive updated information related to legislative and policy changes that have occurred during the past year.

In an effort to assist Board of Review Members, the State Tax Commission has developed a *Board of Review Member Training Program*. Beginning in January 2017, the training program will be offered throughout the State by Property Services Division Field Operations Staff. In addition, any sponsoring organization (individual, local unit, county or organization) may request to receive the training material free of charge by completing and submitting Form 5511, *Application to Request Board of Review Member Training Program Material* to the State Tax Commission. The State Tax Commission will review the application and provide the course material to the approved sponsor for instruction by an MAAO or MMAO certified assessor.

For additional BOR resource and training information, please contact the State Tax Commission at (517) 335-3429.