



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RACHAEL EUBANKS
STATE TREASURER

MINUTES OF THE MEETING OF THE STATE TAX COMMISSION

For

Tuesday, November 14, 2023

**Okemos Conference Center, Okemos Ballroom
2187 University Park Drive, Okemos, Michigan**

And

Virtual Access via Microsoft Teams

**Peggy L. Nolde, Chairperson
W. Howard Morris, Member STC**

**David A. Buick, Executive Director
LaNiece Densteadt, Recording Secretary**

The item numbers referred to in the minutes correspond to the agenda items as numbered.

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the minutes of November 14, 2023. (Item 1 on agenda)

Public Comment – Agenda Policy Items 3-18 Only (Item 2 on agenda):

Peter Veldkamp spoke before the Commission regarding Agenda Item #3, 2023 Classification Appeals. Mr. Veldkamp stated the following: I work for Rhodes McKee and represent classification appeal number 23-004 Harbor Farmz North, LLC. Harbor Farmz is a well-known cannabis provider they both grow cannabis and act as a dispensary. They operate primarily in southwest Michigan including the City of Kalamazoo. Here with me today is the President of Harbor Farmz, Mr. Mark Millman. The reason we are here is to discuss the tax classification of Harbor Farmz personal property. The City of Kalamazoo initially classified Harbor Farmz personal property as commercial personal property; however, it is our belief that this initial classification was largely the result of Harbor Farmz operating in the cannabis industry which is new to the State of Michigan. Because of that guidance and a variety of complex issues such as this one for us today that is either still evolving or nonexistent. The assessor's office for the City of Kalamazoo initially stated they were unsure of how to classify Harbor Farmz personal property. Based on the plain language of the Michigan General Property Tax Act it is our belief that all of the Harbor Farmz personal property should be classified as either agricultural personal property or exempt industrial personal property. With respect to the personal property that should be classified as industrial we would assert that 36% of their property should be industrial. We have an appeal

currently pending before the Michigan Tax Tribunal regarding our client's eligibility for the eligible manufacturing personal property exemption. The equipment we believe should be classified as industrial falls squarely within the purview of MCL 211.9m. I would request the Commission to direct their attention to pages 4 & 5 of the attachment to the property owners petition for the relevant statutory language there. What I would really like to focus on this morning is really the agricultural classification and that would represent 64% of Harbor Farmz personal property which we believe should be reclassified from commercial personal property to agricultural personal property. Again, I would point out the statutory language here MCL 211.9(1)(j) states that property used in agricultural operations is exempt from taxation and it goes on to say that agricultural operations means farming in all of its branches which includes cultivation of the soil, the growing and harvesting of an agricultural, horticultural, or floricultural commodity. Under the Michigan Department of Agricultural and Rural Development worker protection standards cannabis is considered an agricultural commodity. Likewise, the same statute goes on to exempt machinery that is used in preparing agricultural crops for market which includes equipment used for cleaning, sizing, sorting, handling, and boxing. Again exhibit 5 to our attachment identifies every piece of Harbor Farmz personal property. We have included pictures and videos of Harbor Farmz agricultural operations. Exhibit A shows a floor plan that identifies every single room in the Harbor Farmz facility that is used for this growing and agricultural purposes. We don't have time to step through each of these exhibits this morning, but they can generally be described the same way. Our client Harbor Farmz takes a seed or a cutting of a cannabis plant, they put it in soil and provide it with UV spectrum light, they give it water and nutrients, they plant it, they harvest it, they sort it, and they sell it on the open market. Our client uses equipment to do this such as racks, lights, fans, watering systems. This is functionally no different than any traditionally farming operation which would have exempt agricultural equipment. The last point I would like to mention deals with is the emerging case law as I mentioned before this is a new issue of taxation of cannabis in Michigan. There is some guidance on this already emerging. One case I would like to specifically call out and you may already be familiar with this on June 29th the 43rd Circuit Court in Cass County handed down an opinion in HRP Cassopolis LLC vs. Michigan State Tax Commission that addressed a very similar classification issue involving real property used in the growing and cultivation of cannabis. The Court said cannabis cultivation falls squarely within the statutory definition of an agricultural operation because it involved the growing and harvesting of an agricultural commodity. The Court ruled in favor of the cannabis company in order to reclassify the cannabis company property as agricultural. I can provide the Commission with a copy of the opinion if that would be helpful with your ruling. To summarize we simply ask that the Commission examine the statutory language, review our attachments to property owners petition, consider the exhibits submitted by our client Harbor Farmz, and reclassify Harbor Farmz as agricultural and industrial as requested in our petition. Thank you for your time.

Seth O'Loughlin spoke before the Commission regarding Agenda Item #3, 2023 Classification Appeals. Mr. O'Laughlin stated the following: Hallahan & Associates represents Harrison Township, City of White Cloud and City of Muskegon with the requested classification changes. I want to thank the Commission for taking the time to review all the materials after the last meeting and put it on the next meeting. I know the Commission has a lot on its plate and to turn this around so quickly is something both myself and all of my clients appreciate. I am not going to repeat the things that I wrote in my filings or said at the last meeting. I wanted to simply say that my clients support the change to commercial real.

They think that is an appropriate change and good guidance for moving forward and unless the Commission has any questions about what I said last time or what I submitted in my filings I will conclude. Thank you.

Jackie Cook spoke before the Commission regarding Agenda Item #3, 2023 Classification Appeals. Ms. Cook stated the following: Good morning, I am an attorney for the law firm Novara Tesija Catenacci McDonald & Bass we represent taxpayers in 12 classification appeals pending before you today they include Fluersh LLC, 41160 Executive Drive, North Country Collection, Peninsula Developments, NWM Organic Farms, NTBS Properties, Laketon Strategic Holdings, RJB Enterprises, American Equipment Group, JSJ Partners, and 2300 E. 10 Mile Road. We are also grateful for the time the State Tax Commission is putting into this and the thoughtful consideration. It is important to a lot of taxpayers in the State of Michigan, so we appreciate the time you have been giving to considering the classification appeals. We have submitted multiple written submissions and I don't want to reiterate anything in those, and I was before you a month ago and I appreciate the time given I don't want to restate anything I said last month. I do want to highlight two things today. One is sort of coming from this thought I had since before we started with the classification appeals even before we were at the board of reviews, I spoke to assessors about this and tried to get a sense of where they were at and what I heard from a couple of them was that they just wanted clarity and they thought it should come from the State Tax Commission. It should be uniform guidance that applies to all, and they said they didn't really have a strong feeling one way or another whether it is agricultural, industrial, or commercial, but they thought there should be consistent guidance from the State. Two, if you follow the staff recommendation today, we still have the opposite we still have a lot of confusion and that comes in part because we have a final Circuit Court decision in HRP Cassopolis that the State Tax Commission was a party to finding that the operations were agricultural. We have the Michigan Department of Treasury which has published guidance saying the same operations are treated as agricultural for sales and use tax purposes. I was presenting at the MICPA Conference last week for the State Tax Conference and heard from representatives of the State, Michigan Department of Treasury and they are very consistent in that position that it is a grow operation, and it is treated as agricultural for sales and use tax purposes. What was sort of interesting in listening to them in their perspective is in the sales and use tax statute it speaks to things in the soil and even the hydroponic operations. So, you have plants grown in water those are still things of the soil it is still an agricultural operation and so regardless of whether they are growing in the soil or growing in water. You are growing cannabis it is a plant and it should be treated as agricultural. The State Tax Commission is charged with interpreting property tax laws and providing guidance to assessors and taxpayers. If the staff recommendation is adopted today, it just creates more confusion created because of the Circuit Court order and the Michigan Department of Treasury's position. The result you can give today that will provide clarity and finality is to treat all of the properties as agricultural. Further by following the staff recommendation to treat them as commercial it is just going to draw the State Tax Commission again into more litigation which you were in last year in Cass County that carried into this year. It would be litigation in Lenawee County, Macomb County, Muskegon County, Newaygo County, Oakland County, and the State Tax Commission will just be again in that position of trying to support that we classified it commercial when in each of those counties the judges are going to ask the State Tax Commission why aren't you following this order issued in Cass County. The cities and townships will say they weren't involved in that case, so they aren't bound by it, but the State Tax Commission is. When the

Attorney General represented your interest in Cass County, and they will in all the other counties they are going to be in this weird position of saying we are bound by this order but yet we are disagreeing with it. The only consistent way to resolve that and the clear way is to just treat them all as agricultural. Finally, the requested classification change doesn't pose any threat on the hundreds of millions of tax revenue generated from the legalization of marijuana in the State each year. There were some comments last month from one of the city or townships attorneys about the impact of revenue to the locals. First of all, property tax isn't something that any State or local agency is entitled to. There are laws the Michigan Legislature writes for us and that guides whose taxable, whose exempt, how much tax applies, what the value should be, we all are sort of governed by that body of law written by our Legislatures. So, there is an entitlement for these cities or townships to get that tax revenue we have to follow the law and this law that says properties where you are growing something is agricultural has been on the books before cannabis was legalized. There is a 10% excise tax that Michigan imposes since recreational cannabis was legalized and last year fiscal year 2022 it raised \$200 million in tax revenue from recreational marijuana and that was distributed as follows: \$70 million went to the School Aid Fund for K-12 education, \$70 million went to the Michigan Transportation Fund, and nearly \$60 million went directly to these local municipalities and counties. They are getting additional revenue that they never received before cannabis was legalized. Adrian and Muskegon are two of the municipalities that are involved in some of the classification appeals and they each received \$570,000 and \$622,000 respectively last year in tax revenue from the excise tax. The growers are an integral part of generating this additional new tax revenue. They grow the plants that are ultimately used to make the product sold by and at the local dispensaries. They are integral part to that growth of the additional tax revenue that the local municipalities are receiving directly. They are also involved in redeveloping vacant land and redeveloping abandoned buildings in these jurisdictions which could be part of the reason that the municipalities chose to welcome these businesses in their communities and provide them with licenses it creates jobs and develops the buildings so overall has a positive impact. In conclusion for all the reasons stated in our written submissions stated at the last meeting at the State Tax Commission and stated here today we ask the Commission provide clarity to the issue and reject the staff recommendation and classify our clients' properties as agricultural. Thank you for your time.

Nancy Olin spoke before the Commission regarding Agenda Item #3, 2023 Classification Appeals. Ms. Olin stated the following: I am from the Kelly Firm, and we represent Orion Township in three of the matters on agenda item #3. We just wanted to make sure the Township's position was clear. Marijuana is a controlled substance in spite of its legalization it requires a license it differentiates itself from any other type of agriculture it is not recognized as a crop even by EGLE. It is in the law more importantly literally defined when the law was passed to legalize for 21 and older it literally said when it was passed and I am quoting " to control the commercial production and distribution of marijuana under a system that licenses, regulates and taxes the businesses involved" that is MCL 333.27952. We view this as clear guidance that this is not a crop or traditional agricultural product that would fall under the same definition and guidelines for classification purposes. Also, to the point the law provides the assessor with the responsibility of classifying the property that has more than one use it is up to the assessor to determine what the most predominate use is and in this instance based upon even just the simple language of the law it is a commercial use and it is a commercial product and should not be given the agricultural classification. I know that you have received

lengthy briefs from our office in addition to a reply brief as we understand the Tax Commission is to arbitrate this matter just based on those written petitions and we appreciate your consideration. We would just like to reiterate we believe this appropriately classified as commercial and would not be an agricultural exemption. Thank you.

Chairperson Nolde stated the following: First of all, I would like to thank the parties for their comments on this topic from those that chose to be in the room and the one who chose to be online. As we can see there are different views of what the classification should be, and it is stated also within the Michigan Regulation and Taxation of the Marijuana Act that the permit for the taxation of the revenue derived from the commercial marijuana facilities. Information provided by the taxpayer to the difference of this is seems to be an inaccurate interpretation of the property classification procedures required by the General Property Tax Act. The taxpayers have not established that marijuana is an agricultural, horticultural, or floricultural commodity as defined in MCL 211.34c. The subject properties all of them possess a grower license which allows the sale of marijuana to a licensed processing facility and such grower licensed operations are more indicative of a commercial purpose. Last month we did have some come forward with commercial or industrial it went back to staff to be reviewed to be consistent and this point I believe our best classification for these marijuana facilities is commercial.

It was moved by Morris, supported by Nolde, and unanimously approved to adopt staff's recommendations for the 2023 classification appeal petition numbers 23-003, 23-004, 23-017, 23-018, 23-019, 23-020, 23-021, 23-022, 23-023, 23-024, 23-025, 23-026, 23-027 and 23-028 be classified as commercial. ([See attached link for file identification](#)) (Item 3 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved Bulletin 18 of 2023 Procedural Changes for 2024. (Item 4 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved Bulletin 19 of 2023 Disabled Veterans Exemption. (Item 5 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the revised Disabled Veterans Exemption Frequently Asked Questions. (Item 6 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the Disabled Veterans Exemption Forms: (Item 7 on agenda)

Form 5107 – State Tax Commission Affidavit for Disabled Veterans Exemption
Form 6054 – Request to Rescind Disabled Veterans Exemption
Form 6055 – Notice of Denial of Disabled Veterans Exemption

Executive Director Buick stated Form 607 – Report of Assessment Roll Changes and Classification had been removed from the agenda pending further review. (Item 8 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt Form 5076 – Affidavit to Claim Small Business Tax Exemption under MCL 211.9o. (Item 9 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the Taxable Valuation Forms: (Item 10 on agenda)

Form 1019 – Notice of Assessment, Taxable Valuation, and Property Classification
Form 3128 – Taxable Value Calculations Worksheet
Form 4093 – Notice of Assessment, Taxable Valuation (including Leasehold Improvements) and Property Classification.

It was moved by Morris, supported by Nolde, and unanimously approved to adopt Form 602 – State Tax Commission Analysis for Equalized Valuation of Personal Property. (Item 11 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt Form 603 – State Tax Commission Analysis for Equalized Valuation of Real Property. (Item 12 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the revised CAMA Data Standards. (Item 13 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the 2024 Nuclear Plant Composite Factors. (Item 14 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the Memorandum Regarding Multipliers for Valuation of Free-Standing Communication Towers. (Item 15 on agenda)

The Commission reviewed the staff recommendation regarding the complaint dated April 12, 2023 and June 2, 2023, filed against assessor Jacob Thurston that had proceeded to investigatory review pursuant to the State Tax Commission's Complaint Process Regarding Assessment Administration Practices approved by the Commission on August 22, 2023. Upon review of the response provided by the assessor, staff determined no further action was necessary and recommended the Commission dismiss the complaints. It was moved by Morris, supported by Nolde, and unanimously approved to adopt the staff's recommendation to take no further action and dismiss the complaint against Jacob Thurston. (Item 16 on agenda)

The Commission reviewed the staff recommendation regarding the complaint dated August 3, 2023, filed against assessor James Elrod that had proceeded to investigatory review pursuant to the State Tax Commission's Complaint Process Regarding Assessment Administration Practices approved by the Commission on August 22, 2023. Upon review of the response provided by the assessor, staff determined no further action was necessary and recommended the Commission dismiss the complaints. It was moved by Morris, supported by Nolde, and unanimously approved to adopt the staff's recommendation to take no further action and dismiss the complaint against James Elrod. (Item 16 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the staff recommendations on the **Exemptions Special Items Agenda**. (Item 17 on agenda) ([Exemptions Special Items Agenda Link](#))

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the staff recommendations on the **Exemptions Agenda**. (Item 18 on agenda) ([Exemptions Agenda Link](#))

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the MCL 211.154 petitions on the **Concurrence Agenda**. (Item 19 on agenda) ([Concurrence Agenda Link](#))

Public Comment (Item 20 on agenda):

Joe Habscheid spoke before the Commission regarding the status of his petition 154-23-0089.

Executive Director Buick indicated that he would have David Rowley the Manager of the 154's give him a call to discuss the status and what was needed.

Other Items for Discussion (Item 21 on agenda):

Executive Director Buick indicated they would be interviewing for a couple of positions and were working to get the additional vacancies posted within the Department.

Executive Director Buick indicated on November 8, 2023 Governor Whitmer signed into law Senate Bill 55 which became Public Act 191. The Act provides an amendment to the Poverty Exemption of the General Property Tax Act and amends the qualified error under 53b. We are working on the bulletins, forms and guidance for this law and will provide to Commission for their approval at their December 19th meeting.

Executive Director Buick indicated House Bill 4084 was enrolled that deals with ESA 2021 COVID fix which requires an application to be approved by the Commission however, this did not have immediate effect and further information will be provided at the February Meeting.

December 19, 2023, Commission meeting is scheduled to take place at the Okemos Conference Center in Okemos A, B & C, 2187 University Park Drive, Okemos. The meeting will also be available virtually via Microsoft Teams. The agenda along with a video and audio link to the virtual meeting will be posted on the State Tax Commission's website at www.michigan.gov/statetaxcommission one week prior to the meeting.

It was moved by Morris, supported by Nolde, and unanimously approved to adjourn the meeting of the State Tax Commission at 9:48 am.

DATE TYPED: November 15, 2023

DATE APPROVED: December 19, 2023

**Peggy L. Nolde, Chairperson
State Tax Commission**

**W. Howard Morris, Member
State Tax Commission**