

Navigating an Appeal in the Michigan Tax Tribunal

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Michigan Tax Tribunal Jurisdiction

- The Tax Tribunal has broad original and exclusive jurisdiction to review:
 - “A proceeding for direct review of a final decision, finding, ruling, determination or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization under the property tax laws of the state.” MCL 205.731.
- Jurisdiction of the Tribunal is invoked by a “Party in Interest” filing a petition within the statutory filing deadlines. MCL 205.735a(6).
- Statutory Deadlines:
 - Residential valuation appeal to Small Claims = July 31.
 - Agricultural valuation appeal = July 31
 - Commercial/industrial valuation or exemption appeal = May 31.
 - If otherwise not enumerated in statute, the deadline is 35 days after the final “decision, ruling, or determination” that is under appeal. MCL 205.735a(6).
- Untimely filings will be dismissed for lack of jurisdiction. See e.g., *Centerpoint Owner LLC v City of Grand Rapids*, unpublished opinion Docket No. 340710 (2019) (affirming dismissal of 80 petitions filed one day late by Ryan LLC).

Michigan Tax Tribunal Jurisdiction (cont.)

- Invoking Tribunal jurisdiction generally first requires the property owner to protest to the board of review. MCL 205.735a(3).
 - But commercial real property, industrial real property, and developmental real property need not protest first. MCL 205.735a(4)(a).
 - Commercial personal property, industrial personal property, and utility personal property need not protest first, if a statement of assessable property was filed in accordance with MCL 211.19. MCL 205.735a(4)(b).
 - Certain other exceptions to the board of review protest requirement apply to valuation disputes for properties subject to certain economic development acts. See MCL 205.735a(4)(c).
- Petitioner must be a “party in interest” to invoke the Tribunal’s jurisdiction.
- “Party in Interest” has been defined as “persons or entities with a property interest in the property being assessed.” *Spartan Stores v City of Grand Rapids*, 307 Mich App 565 (2014).
- Common parties in interest:
 - Property owners and commercial lessees.
 - May be represented by tax agents and/or attorneys.

Tax Appeal Case Initiation

- Tax appeal cases (valuation and exemption cases) are generally initiated either in the Spring/Summer, on or before the applicable deadline, given the category of property under appeal.
- Initial filing is referred to as the “petition.” See TTR 227.
- The Tribunal will issue a docket number for the petition, and service requirements are based off the date the Tribunal issues the docket number.
- The assessing unit must file an answer to the petition within 28 days of service of the petition that contains the docket number.
- Multiple parcels of real property may be covered by a single petition, provided the parcels are contiguous and located within a single assessing unit. TTR 227(2)(a).
- Multiple parcels of personal property may be covered by a single petition if all located on the same real property parcel or located on the real property also at issue in the appeal. See TTR 227(2)(b)-(d).

Scheduling Orders and Pre-Valuation Discovery

- Tribunal will issue what is termed a Prehearing General Call Order
 - Essentially a scheduling order that sets discovery deadlines and designates a case onto a prehearing general call to take place months later.
- Pre-valuation discovery
 - Governed by the Tax Tribunal Rules (both MOAHR General and Tax Tribunal specific rules), or, if no Tax Tribunal rule on point, the Michigan Court Rules.
 - Up to 20 interrogatories.
 - Requests for production of documents.
 - Site inspections.
 - Depositions only by leave of the Tribunal.
 - The Tribunal does not aggressively enforce creating difficulty obtaining information.
 - Goal is to obtain information needed by appraiser.

Valuation Disclosures

- For valuation cases, the Prehearing General Call Order will set a deadline for the parties to submit valuation disclosures.
 - For exemption cases, parties can indicate that no valuation disclosure will be filed.
- The intent of the valuation disclosure is to formally indicate the parties' respective contested valuations of the subject property after pre-valuation discovery has been conducted.
- Typically, a party to a valuation case will submit a formal written appraisal report from a certified appraiser as its valuation disclosure.
 - Typically, a certified appraiser's report is going to be considered the best and most convincing form of a valuation disclosure.
- It is not unusual for a party to a valuation dispute to submit other documents (either with or in lieu of an appraisal) as their valuation disclosure: such as property record cards, assessor reports, or other evidence of valuation.

Post-Valuation Discovery

- After the parties' valuation disclosures have been shared and filed with the Tribunal, the Prehearing General Call Order will provide for a period for the parties to conduct post-valuation discovery.
- Post-valuation discovery is limited in scope to only those issues and records that were addressed in the parties' valuation disclosures.
- This may involve interrogatories concerning the appraisers' methodologies, conclusions, or assumptions.
- It is not unusual for parties to ask for records contained in the real estate appraisers' "work file(s)" in post-valuation discovery.

Pre-Hearing General Calls

- Once the period for post-valuation discovery has concluded, the Tribunal will schedule a Prehearing General Call (PHGC).
 - Typically this is initially scheduled for a 2-week timeframe and then a subsequent order will set the final date and time.
 - These calls are usually handled by way of a conference call.
- The purpose of a Prehearing General Call is to determine what other issues/motions remain outstanding among the parties and to schedule the hearing on the appeal.
- Attorneys/representatives for both parties are required to participate in the Prehearing General Call.

Hearings

- Hearings before the Tribunal are conducted in a similar manner to a non-jury trial before a district or circuit court, but evidentiary standards are not as stringent as with a court.
- The petitioner will typically present its case first and the respondent will present its case second.
- The petitioner bears the burden of proof in an exemption appeal and both parties bear a burden of persuasion in a valuation appeal.
- Without leave from the Tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure signed by the witness which contains the witness' value conclusions and the basis for those conclusions. TTR 255(2).
 - Expert witnesses may only testify in rebuttal unless they have signed and submitted a valuation disclosure.
- At the conclusion of the evidence, the parties may make closing statements or may agree to submit post-hearing briefs.

Post-Hearing Issues/Appeals

- The decision from the hearing officer is usually rendered in writing, following the hearing, in the form of a Proposed Order and Judgment (“POJ”).
- A party may file “exceptions” to the POJ within 20 days after the entry of the decision. TTR 289(1).
- Exceptions are only supposed to be filed for “good cause” and are limited to the evidence submitted/admitted at the hearing and the matters addressed in the POJ.
 - “Good cause” means an error of law, mistake of fact, fraud, or any other reason the Tribunal considers sufficient and material.
 - Both parties may file their own exceptions to the POJ.
- A party may submit a response to the exceptions within 14 days after service of the exceptions. TTR 289(2).
- The Tribunal will consider any exceptions and either adopt the POJ or take some other action to modify the POJ for a Final Order.
- In our experience, the Tribunal will typically adopt the POJ if no exceptions are filed.

Post-Hearing Issues/Appeals (cont.)

- Appeals from a final order of the Tribunal proceed directly by right to the Court of Appeals. MCL 205.753(2).
- Appeals from interim orders of the Tribunal may only be appealed to the Court of Appeals by leave. MCL 205.753(3).
- Appeals from the Tribunal's orders are reviewed based on the standards provided in Article 6, Section 28, of the Michigan Constitution of 1963, for "fraud, error of law or the adoption of wrong principles" See *New Covert Generating Company, LLC v Twp of Covert*, 334 Mich App 24, 71; 964 NW2d 378 (2020).
 - Error of law or the adoption of wrong principles occurs when the agency's findings "are not supported by competent, material, and substantial evidence on the whole record." *Id.*

Remarks by Michigan Tax Tribunal Judge
Jason C. Grinnell

QUESTIONS?

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