Township Law E-Letter

2012 TOWNSHIP PROPERTY TAX UPDATE

This is the first of a two-part Township Law E-Letter series on recent developments in Michigan property tax law. There has been so much recent property tax activity at the Michigan Tax Tribunal and the Court of Appeals that we can’t cover it all in a single issue of the E-Letter. This month we address why tax appeals keep coming at such an extraordinary pace; the new procedures at the Tax Tribunal; and recent legal developments involving property tax exemptions. Also, as an added bonus in this issue, don’t miss the update at the end of this E-Letter on an important Supreme Court decision that will have a huge impact on township sanitary sewer responsibilities across the state.

Tax Appeals Keep Coming
Even though townships levy only a small portion of the local tax millage, they are responsible for defending all property tax appeals within their borders. Townships need to be aware of property tax issues and trends to make sure appeals are defended efficiently, economically and successfully.

With the economic downturn and falling property values since 2008, many people anticipated an increase in property tax appeals. But nobody could’ve guessed that the Tax Tribunal would receive a 300% increase in appeals. That’s exactly what happened, and it resulted in a backlog of 50,000 to 60,000 cases at the Tax Tribunal.

Reasons for More Appeals
High foreclosure rates and falling property values across the country are obvious reasons for the increase in tax appeals over the last few years. But another reason for the flood of tax appeals has been an increase in “creative” fee approaches by lawyers for property taxpayers.

Similar to past increases in the volume of personal injury lawsuits, which were driven in part by lawyers charging “contingent fees” based on a percentage of their clients’ recoveries, a new breed of property tax lawyers has been increasingly offering “contingent fee” agreements instead of billing their clients at an hourly rate. Since property taxpayers pay these lawyers a fee only if they achieve a reduction in their property taxes, taxpayers are signing up to appeal their property taxes at a record pace.

Contingent fee agreements work like this: while the client taxpayer is responsible for paying filing fees and other costs, there are no hourly or set attorney fees. All attorney fees are paid out of the client’s tax savings upon the appeal’s conclusion. Attorneys offering these agreements are obtaining contingent fees of up to 50% of the tax savings to their clients for each year under appeal. Since the property owners don’t pay any attorney fees up front, the number of appeals has increased dramatically.

How Can Townships Respond?
Townships cannot effectively use a similar contingent fee agreement, since they only collect a small amount of the total taxes due. For example, even though a township is responsible for collecting taxes and fighting the tax appeals, it may only receive 1 mill out of the total 50 mills or more being levied. A township does not have the same “skin in the game” as the taxpayer. To defend appeals successfully, townships need to find more efficient ways to litigate and reduce costs. From discovery and motion practice to valuation disclosures and hearings, increasing efficiency requires experienced counsel utilizing form-driven litigation practices. It may also mean hiring special counsel to handle your tax appeals at a lower cost if your general township attor-
ney does not handle many tax appeals.

New Procedures at the Tax Tribunal
To deal with the significant backlog of case and the continuing number of appeals, the Tax Tribunal has recently instituted new procedures and practices.

- **Small Claims**: Small claims in the Tax Tribunal include residential/agricultural property, special assessments under $20,000, and commercial or industrial property if the State Equalized Value in contention is $100,000 or less. The new policy is to schedule every new small claims appeal for a hearing within 12 months. Previously, small claims appeals would typically be heard after 2 or 3 years, and each passing year is automatically added to small claims appeals by Tax Tribunal rule.
- **Fees**: Filing fees in the Tax Tribunal continue to go up. Filing fees have increased for petitions, motions, and stipulations.
- **Entire Tribunal Hearings**: For all appeals not under the jurisdiction of the small claims division, the Tax Tribunal has returned to a process called the “prehearing general call.” Prehearing general call notices are sent by the Tax Tribunal about one year in advance of an estimated prehearing date. The notices can include over a hundred cases and address deadlines for discovery, valuation disclosures, and prehearing statements.
- **Forms**: The Tax Tribunal is now requiring stipulations, petitions and answers to be filed using its standardized forms.
- **Strict Deadlines**: The Tax Tribunal has been more strictly enforcing deadlines for submitting evidence, submitting valuation disclosures and holding hearings. It is becoming more common for the Tax Tribunal to deny a stipulation between the parties to adjourn a deadline, and failing to meet a particular deadline will often result in a default.

Charitable Tax Exemption
Michigan law exempts charitable institutions from property taxes. To qualify, an institution’s overall activities must be charitable in nature. The term “charity” is defined as a gift for the benefit of all, and the term “gift” is defined as something given voluntarily without payment in return. Courts look at six factors in determining whether an organization qualifies as a charitable institution. All of the following factors must be met for an organization to qualify:

- Must be a nonprofit institution.
- Must be organized chiefly, if not solely, for charity.
- Must serve any person who needs the particular type of charity being offered.
- Must bring people’s minds or hearts under the influence of education or religion; relieve people’s bodies from disease, suffering, or constraint; assist people to establish themselves for life; erect or maintains public buildings or works; or otherwise lessen the burdens of government.
- Must not charge more than what is needed for its successful maintenance.
- Does not need to meet any minimum monetary threshold of charity.

Several recent Court of Appeals decisions have examined a variety of entities to determine whether they qualify as “charitable institutions.” A “**Miss Dig**” call center does not meet the definition of a “charitable institution” because it only provides excavation information to paying utility members and participants and the benefit of the call center is limited to a definite number of users. In addition, such call center does not lessen the government’s burden because the Legislature required the utility companies to form the call center. The call center also usually generates a revenue surplus at the end of each year, suggesting that it charges more than what is needed for its successful maintenance. Therefore, “Miss Dig” is not exempt from property taxes. **Miss Dig System, Inc v Auburn Hills, Court of Appeals (May 10, 2012).**

A nonprofit organization primarily associated with the Muslim faith, using property for camps, retreats, and other philanthropic activities meets the definition of a “charitable institution.” Since the or-
organization is open to anyone and offers religious programming, it focuses on “bringing people’s minds or hearts under the influence of religion,” as required by the definition of a “charitable institution.” Even though the organization also offers recreational activities, such activities are inextricably interwoven into Islamic worship and observance. Therefore, the organization qualifies as a “charitable institution” and is exempt from property taxes. *Camp Retreats Foundation, Inc v Township of Marathon, Court of Appeals* (May 15, 2012).

A *gymnastics organization offering scholarships* to families unable to pay tuition fees does not meet the definition of a “charitable” organization. A non-profit corporation organized to cultivate and nurture the physical, mental, and emotional development of children and young adults, to educate, promote, and advance the interest of physical fitness, and to provide the opportunity for self-expression and recreation through gymnastics and dance claimed that it was “charitable” because it provided scholarships to eligible children (based on whether the student was enrolled in the public school lunch program) who could not afford the standard tuition rate. However, the group was organized to teach gymnastics, which was not chiefly a “charitable” purpose. Also, the organization’s overall nature was recreational, not charitable. The scholarships, although charitable, were incidental to the organization’s recreational purposes, so it was not exempt from property taxes. *Boyne Area Gymnastics, Inc v Boyne City, Court of Appeals* (May 15, 2012).

A *non-profit organization providing housing and services to mentally ill and developmentally disabled persons* meets the definition of a “charitable” organization. The group was organized chiefly for “charity” because its articles of incorporation specifically provided that its purpose was to operate an adult foster care facility, keeping residents from being homeless. The organization provided charity in a nondiscriminatory manner because it never turned away, for a discriminatory reason, any proposed resident recommended by the authorized agent of the Michigan Department of Community Health and Wayne County to place persons who qualify for services including community living support and personal care. The organization assisted people to “establish themselves for life” and relieved the government’s burden since it cared for persons with developmental disabilities and mental illnesses, and provided services such as teaching residents how to prepare meals, do laundry and make their beds. The organization also did not charge more than what was needed to successfully maintain itself, and residents were charged only what they received in benefits. The residents served by the organization, with their developmental disabilities and mental illnesses, would not have a place to live if it were not for the organization. Meeting the needs of people who have no other source for such services is “charitable.” Therefore, the adult foster care facility was exempt from property taxes. *Karen’s Helping Hands, Inc v Riverview, Court of Appeals* (April 26, 2011).

**Principal Residence Exemption**

Michigan’s principal residence exemption (PRE) (commonly called the “homestead exemption”) allows property owners to claim an exemption for their principal residence from taxes levied by a local school district for school operating purposes.

The time limits and deadlines involved in PRE appeals are somewhat complex. If a PRE is removed by an assessor, an appeal must be made directly to the Tax Tribunal within 35 days of notice. If a PRE was not present on the tax roll, then an appeal must be made to the Board of Review before 5 days prior to the December Board of Review. The Board of Review’s decision must be appealed to the Department of Treasury within 35 days. The Department of Treasury’s decision may be appealed back to the Department of Treasury within 35 days. The Department of Treasury’s second decision may be appealed to the Tax Tribunal within 35 days. PRE appeals may include up to three prior years, and will automatically include subsequent disputed years.

Since the Tax Tribunal is a court of limited jurisdiction, townships need to be keenly aware of dead-
Township Law E-Letter

Fahey Schultz Burzych Rhodes PLC

lines. Many deadlines are provided by statute, and if a party misses a deadline, the Tax Tribunal does not have jurisdiction to hear the appeal and the case must be dismissed. For example, when a petition was filed more than 35 days after the county’s notice of PRE denial was provided to property owner, the taxpayer’s later communications with the county did not extend the 35-day time limit, and the Tax Tribunal lacked jurisdiction over the taxpayer’s late appeal. *Bell v County of Berrien, Court of Appeals (February 9, 2012)*.

If the government gives the wrong notice, however, the taxpayer may rely on it. For example, where the county equalization department provided a PRE notice incorrectly indicating that the property owner must appeal to the county instead of the Tax Tribunal, the property owner’s deadline for appealing to the Tax Tribunal was extended. *Garratt v Township of Oakland, Court of Appeals (January 26, 2012)*.

A common scenario giving rise to PRE confusion in townships is when a person owns multiple parcels of property next to each other. Michigan law allows a person’s PRE to extend to all “unoccupied” adjoining or contiguous parcels that are also classified as residential. To be unoccupied, the property must be “without human occupants” (meaning no tenants or residents) but not necessarily vacant, empty, or void. For example, an adjoining parcel containing a garage would qualify for a PRE as long as the property is zoned residential and the garage is not inhabited or used as a dwelling. An in-use office building on an adjacent parcel, however, is “occupied” and does not qualify for a PRE. *Koester v County of Saginaw, Court of Appeals (November 10, 2011)*.

Townships near the state line or in areas where people from out of state own second homes need to be particularly informed about the ownership of properties before granting or rejecting PRE’s. One of the requirements to obtain a PRE is that the claimant and his or her spouse may not own property in another state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to a PRE, unless that person and his or her spouse file separate income tax returns. Where a husband owned property in Illinois, his wife owned property in Michigan, and they filed joint tax returns in Illinois, they were not entitled to claim the PRE on the Michigan property, even though the couple had a prenuptial agreement keeping ownership of the two properties separate. *Levenfeld v County of Berrien, Court of Appeals (January 12, 2012)*.

**Municipal Property Exemption**

Michigan law provides an exemption from property taxes for all property owned by a county, township, city, village or school district and used for public purposes. Mere ownership by a municipality is not determinative, and what constitutes a “public purpose” can sometimes be at issue.

Courts have determined that “economic development” constitutes a use for public purpose. However, for each year under appeal, the municipality must prove that it took steps to make economic development a “present use” of the property. Ongoing actions in acquiring, assembling, marketing, and preparing the land for resale can be considered a present use of economic development, since fully developing and selling property can take multiple years to accomplish.

Partially improving the land, obtaining permits and samplings to make private investment less burdensome, creating plats, maps and varying development plans, conducting innumerable meetings to discuss future strategy, offering financial incentives to prospective purchasers, and actively marketing the property are sufficient activities to establish that property is presently “used” for economic development, which is a “public purpose” and qualifies municipally-owned property as exempt. *Alpena v State Tax Commission, Court of Appeals (February 14, 2012)*.

**Housing Project Exemption**

Housing projects owned by nonprofit corporations, consumer housing cooperatives, limited dividend housing corporations, or mobile home park associations that are MSHDA or federally-aided are exempt
from property taxes. The housing project exemption remains in effect for 50 years, or as long as the MSHDA or federal assistance lasts (if less than 50 years), or for a time period as established by township ordinance. The Court of Appeals recently held that these exemptions can also be transferred without the new owner re-filing notice of the exemption. In other words, the mere transfer of tax-exempt property from one owner to another does not require the new owner to file notification of the exemption. *Nat’l Church Residences of Win Ypsilanti v Ypsilanti Township, Court of Appeals* (May 22, 2012).

**Federally Qualified Health Center Exemption**
Federal Qualified Health Centers (FQHCs) are exempt from Michigan property taxes. To be an FQHC and receive federal grants, an organization must meet the criteria set forth by the federal Social Security Act. However, organizations that meet the same criteria but do not receive grant funding can be considered FQHC “look-aliases.” If an organization meets the criteria to be an FQHC, but does not receive grant funding, thus making it an FQHC “look-aliases,” Michigan’s tax exemption for FQHCs still applies. *Wellness Plan v Oak Park, Court of Appeals* (April 14, 2011).

**We Can Help**
Fahey Schultz Burzych Rhodes PLC’s team of experienced attorneys is well-versed in property tax law. We use streamlined expert systems to efficiently litigate property tax appeals and keep township costs down while defending property assessments before the Tax Tribunal. Townships facing Tax Tribunal appeals need attorneys who have experience in trials, prehearing negotiations and appeals; stay up-to-date with recent Tax Tribunal and appellate opinions; and control costs. If you have any questions about Tax Tribunal litigation or wish to discuss any of the matters in this *E-Letter*, please contact us.

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**State Can Enforce Private Septic Violations Against Townships**
In a recent case important to all townships, especially those without existing municipal sewer systems, the Michigan Supreme Court held that townships are presumed responsible for and are required to prevent discharges of raw sewage from private individuals’ septic systems. Under the Court’s ruling, a township is presumed to have violated Michigan’s Natural Resources and Environmental Protection Act (NREPA) if a sewage discharge occurs within its borders, even if the township is not the discharging party.

Although the Court acknowledged that it did not have the authority to compel a township to construct a sewer system, it could compel a township to take action to stop a violation in order to comply with the NREPA. Such action by a township might include a number of measures, including building a new sewer system, connecting with another municipality’s existing sewer system, condemning structures that emit raw sewage, requiring the construction of sufficient on-site systems by private parties or requiring “pump and haul” processes. The Court reserved for a later date the question whether holding the township responsible for such violations may violate the Headlee Amendment’s prohibition on imposing “unfunded mandates” on local government. *MDEQ v Worth Township, Supreme Court* (May 17, 2012).

**Fahey Schultz Burzych Rhodes PLC, Your Township Attorneys**, is a Michigan law firm specializing in the representation of Michigan townships. Our lawyers have more than 130 years of experience in township law, and have represented more than 130 townships across the state of Michigan. This publication is intended for our clients and friends. This communication highlights specific areas of law, and is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.