

# LEGAL ALERT

March 7, 2007

## FALLING PROPERTY VALUES MAY PROVIDE OPPORTUNITIES

By Ann-Mary Petroskey

**W**hile most would agree that the current state of the real estate market in Michigan is unfavorable for property owners, these falling property values may provide opportunities for tax savings. Under Michigan's "Proposal A," the annual increase in taxable value of real property is generally limited to the increase in the rate of inflation in the immediately preceding year or five percent, whichever is less, until ownership of a parcel of property is transferred.

Most taxpayers will see the standard inflation increase on their property this year. But what happens if the property that you just purchased in the past few years actually has a lower value now? In certain circumstances, an appeal to the local board of review in March may be in order. If the appraised value of the property is lower than the taxable value, the taxes on the property should be reduced.

The procedure for protesting tax assessments is detailed, and failure to follow these procedures can lead to dismissal of the matter before it is even considered by the courts. By following the proper procedures as set forth in the Michigan General Property Tax Act and in the Michigan Tax Tribunal Act, taxpayers can preserve their rights to protest assessments.

### The First Step – The Local Board of Review

The first step in the appeal process, and also the most important, is also mandatory in most instances to preserve the taxpayer's appeal rights. After receiving the notice of assessment from the local taxing authority, the taxpayer must protest the assessment before the local Board of Review. The local Board of Review is responsible for approving the tax assessment rolls and also hears protests of taxpayers on assessments, classifications of property and exemptions for qualified agricultural property. When a change is made in the assessment of property, the local assessing authority must provide notice of the change and of the opportunity to protest the change before the board of review.

After receiving the assessment the taxpayer must protest

his or her property's assessment to their local Board of Review. This is usually held in early March of each year. The dates for each local jurisdiction may vary and are set out in the actual notice. After the protest, if the taxpayer is not satisfied with the decision made by the Board of Review, he or she must then submit a written letter to the Michigan Tax Tribunal appealing the decision. The letter must be postmarked by first-class mail or delivered in person no later than June 30 of that tax year. A facsimile is not sufficient to invoke the Tribunal's jurisdiction!

While not common, there are, however, exceptions that may allow the Tax Tribunal to hear a case even though the assessment was not protested to the local Board of Review. These exceptions include, but are not limited to, a failure to receive notice of an assessment change in time to protest to the March Board of Review, the revision of the property's assessed or taxable values by a July or December board of review, or a clerical error or mutual mistake made by the assessing officer and the taxpayer resulting in an unlawfully excessive assessment. These are exceptions, however, and the general rule should be to protest the assessment before the local Board of Review.

### Appeal to the Michigan Tax Tribunal – How to Get Your Case Heard

The Michigan Tax Tribunal is a quasi-judicial administrative agency (i.e., tax court) in the Michigan Department of Consumer and Industry Services. The Tax Tribunal hears assessment appeals relative to both property and non-property tax matters. Like a court, to resolve such appeals, the Tax Tribunal conducts hearings and renders written decisions based on the evidence properly submitted by all parties to a appeal, both the taxpayer and the local taxing authority.

The Tribunal is divided into two divisions - the Entire Tribunal and the Small Claims Division. All property appeals may be filed in the Entire Tribunal, but only certain property appeals may be filed in the Tribunal's Small Claims Division. These appeals are any appeal exclusively involving homestead or other residential or agricultural real property; and any appeal involving

commercial or industrial real or personal property if the state equalized value in contention is not more than \$100,000.

After receipt of the initial appeal letter, the Tribunal processes the letter and sends the taxpayer a petition form. The petition form must be completed and returned to the Tribunal on or before the date specified on the form. Once the petition form has been completed and returned to the Tribunal, the Tribunal sends an answer form along with a copy of the petition to the assessor of the local unit of government. The answer form must also be completed and returned to the Tribunal on or before the date specified on that form. The case is then ready to be scheduled for a hearing.

The Entire Tribunal utilizes a formal hearing process to resolve the more complicated appeals filed with the Tribunal. There is a formal record of the hearing and attorneys typically represent the parties. Entire Tribunal hearings can range in length from one day to two months or more. The majority of such hearings, however, are conducted over a five-day time period. Entire Tribunal hearings are held in the Tribunal's Lansing office. The presiding judge is either a Tribunal member or a hearing officer (i.e., an administrative law judge).

Unlike the Entire Tribunal, the Tribunal's Small Claims Division utilizes an informal hearing process to resolve the majority of all appeals filed with the Tribunal. There is no formal record maintained of any Small Claims hearing and the parties typically represent themselves. In addition, Small Claims hearings are held in the county in which the property is located or in an adjoining county. The presiding judge is a hearing referee, an administrative law judge, or a Tribunal member.

The Tribunal typically sends both the petitioner (the taxpayer) and the respondent (the local unit of government) a notice at least 28 days prior to the scheduled date of the hearing indicating the date, time, and location of the hearing. If a petitioner or respondent cannot attend the hearing on the scheduled date, the petitioner or respondent must contact the Tribunal in writing to request an adjournment of the hearing. Adjournments are granted upon a showing of "good cause," if the request for adjournment is submitted more than 14 days before the date of the scheduled hearing. If the request for adjournment is submitted 14 days or less before the date of the scheduled hearing, adjournments are granted only upon a showing of extenuating circumstances.

If a petitioner or respondent cannot attend the hearing on the scheduled date, but does not want the hearing adjourned, the petitioner or respondent must contact the Tribunal in writing prior to the date of the scheduled hearing to request the Tribunal to hear the case "on the

file." If a petitioner or respondent requests the Tribunal to hear a case "on the file," the Tribunal will conduct the hearing to take the testimony of the opposing party and then render a decision based on that testimony and all documentary evidence and written statements timely submitted by both parties.

### **What Does the Taxpayer Have to Show? The Burden of Proof**

Once the taxpayer has properly filed with the Tax Tribunal the law provides that "[t]he petitioner has the burden of proof in establishing the true cash value of the property." To establish the property's true cash value, it is important that the taxpayer submit documentary or other tangible evidence in support of his or her contention as to the property's true cash value. Testimony by the property owner by itself is often insufficient to carry the burden. Also, a comparison of assessments is generally considered an unreliable indicator of a property's true cash value. Rather, the courts in this State recognize three approaches in determining a property's true cash value - the market/sales approach, the cost-less-depreciation approach, and the income approach. Of those three, the courts consider the market/sales approach as the best evidence of a residential property's true cash value. This approach compares the subject property to similar recently sold properties by making adjustments to the sales price of the other properties to reflect differences between the subject property and the other properties.

### **How Does the Taxpayer Submit Evidence?**

The Tribunal's Rules of Practice and Procedure require that "[a] copy of an appraisal report or other written evidence shall be submitted to the opposing party and the Tribunal not less than 14 days before the date of the hearing." The purpose of this rule is to avoid surprise, especially in an informal Small Claims Division hearing and the length of time allocated to such hearings. The rule is designed to provide both parties an opportunity to review and prepare an oral response to the other party's evidence prior to the hearing.

### **Getting a Decision – And Beyond**

The hearing referees are required to submit their proposed decisions to the Tax Tribunal within 60 days of the hearing date. The proposed decisions are reviewed by a supervising judge and then mailed to the parties. Most Small Claims decisions are mailed within 90 days of the hearing date. Matters before the Entire Tribunal may take longer. If unsatisfied with the decision, a party may request a rehearing of a decision issued by a hearing referee. The rehearing request must be in writing and state the reason or reasons in support of the request (i.e., "good cause"). The request must also be submitted to the Tribunal within 20 days of the issuance of the decision.

Additionally, a copy of the request must be sent to the opposing party, who then has 14 days within which to submit a response to the request. "Good cause" relative to a rehearing request is generally defined as an error of law, mistake of fact, or fraud. If a request for a rehearing is granted, the parties will receive another hearing and be allowed to submit additional evidence. If a request for a rehearing is denied, the decision may be appealed to the Michigan Court of Appeals as provided by the Michigan General Court Rules.

While many matters before the both the local Board of Review and the Tax Tribunal may appear simple to the

taxpayer, the procedures for filing protests and appeals may actually become quite complicated. Following those procedures makes the process more manageable and may be made easier with the assistance of an attorney, even if the taxpayer is representing themselves before the local Board of Review or the Small Claims Division of the Tax Tribunal. Representation by a lawyer can also prevent "simple" matters from becoming more complex than they need to be.

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