

TAXATION SECTION

July 30, 2010

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Judicial Crossroads Task Force
c/o Elizabeth K. Lyons
Director, Governmental Relations
State Bar of Michigan
2306 Townsend Street
Lansing, Michigan 48933-2012

RE: JUNE 14, 2010 REPORT OF THE BUSINESS IMPACT COMMITTEE

Dear Ms. Lyons:

As the current Chair of Tax Council for the Taxation Section, Michigan's representative of the tax lawyers with regard to the federal, state and local tax systems, the following is the Section's response to the Request for Comment regarding the subject Report. Our comments specifically focus on the failure of the report to address within the proposed "business court" docket, the inherent inequality that exists within the judicial system regarding matters related to taxes (other than state tax commission cases). It is the opinion of the Tax Council, based upon the exposure of its members to business tax matters, that businesses keenly desire a state tax system that is molded by judicial results reached by judges that have the requisite legal training to expedite dispute resolutions and to promote confidence in, and respect for, the judicial system. Sadly, both are lacking in Michigan.

Our comments are focused on the two available avenues to resolving a tax dispute in the state: The Michigan Tax Tribunal, and the Michigan Court of Claims (Ingham County Circuit Court).

The Michigan Tax Tribunal

Currently, the Michigan Tax Tribunal is the primary administrative forum established to conduct hearings and render written decisions on tax disputes relating to both property and non-property tax matters. The Tribunal has exclusive jurisdiction for all real and personal property tax disputes. The non-property tax matters filed with the Tribunal involve other taxes levied by the state, such as individual income taxes, excise taxes, withholding taxes and business taxes. Although the Tribunal shares its jurisdiction over non-property tax matters with the Michigan Court of Claims, the prepayment requirement unique to the Court of Claims (which is addressed separately below), effectively makes the Tribunal the only venue for taxpayers unable to pay the disputed assessments before their case is adjudicated.

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Given the Tribunal's exclusive jurisdiction for property tax disputes, coupled with the depressed real estate market, a record number of appeals have been filed with the Tribunal as property owners appeal their property tax assessments and/or raise classification issues. Since 2006, filings more than doubled at the Tribunal, with a current property caseload of approximately 32,000 for claims of less than \$20,000 in value in dispute, and 11,100 for larger disputed values. This backlog will result in lengthy delays in resolving cases, preventing timely resolution to taxpayers.

Many members of the Taxation Section practice in the state and local area, and the Section has been actively engaged in seeking reform of the Tax Tribunal for the past two years. We have filed a position statement regarding Tax Tribunal reforms, including the need for an independent judicial process (as opposed to an administrative process), which we further elaborate on below. A copy of the Section's list of proposed reform measures is enclosed. As Chair of the Taxation Section, I have met with Tax Tribunal Chief Judge and other interested parties in Lansing to discuss these reform measures. There have been various legal articles and newspaper accounts detailing the situation at the Tax Tribunal, including a recent article published in the *Michigan Tax Lawyer* - Winter 2010 edition.

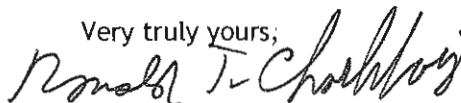
Elimination of the Prepayment Requirement to the Court of Claims or Creation of an Independent Judicial Process

The modern view of access to justice in this area is essentially based upon the availability to all taxpayers of an independent, fair and efficient tax adjudication system requiring all judges have legal training and tax expertise. Unfortunately, the prepayment of all disputed taxes (as well as interest and penalties) imposed as a jurisdictional requirement by the Michigan Court of Claims effectively denies access to justice for those businesses desiring to escape the inefficiencies of the backlogged Tribunal system but lacking the financial resources to make the required prepayment. Michigan is one of a small minority of states that makes the taxpayer pay (or provide bond) for the tax in issue. One of the stated objectives of the American Bar Association's Model State Administrative Tribunal Act ("Model Act"), as summarized in the aforementioned *Michigan Tax Lawyer* article, is to guarantee the right of every taxpayer to dispute a state tax assessment before paying the tax. In the absence of progress with needed Tribunal reforms as recommended by the Taxation Section (or a replacement patterned on the Model Act or other national template), the immediate elimination of the prepayment requirement of the Court of Claims is especially crucial to foster a more stable and expedient business environment in the state in regards to tax controversies.

The above indicates the need for reform in the weakest link in the state court system concerning Michigan businesses. A properly functioning independent tax court would have a significant impact on the business community, and greatly enhance the other proposals made by your Committee. On behalf of the Taxation Section of the Michigan State Bar, and the business clients that our members represent, I strongly urge you to incorporate our suggestions regarding reform at the Tax Tribunal, as well as consideration of elimination of the "pay-to-play" requirement at the Court of Claims with your other well-versed recommendations.

We appreciate the opportunity to comment and welcome the opportunity to further participate in this process to the extent the Committee may deem appropriate.

Very truly yours;



Ronald T. Charlebois
Chairperson, Taxation Section

State Bar of Michigan – Taxation Section

Outline of Michigan Tax Tribunal Reform Proposal – Michigan Tax Tribunal Reform Act

To alleviate the burdens on the Michigan Tax Tribunal (the “MTT”), to reduce the current backlog in the MTT docket, and to improve efficiency and consistency of the MTT legal process and decisions, the following reforms are proposed:

1. Reform the MTT to require that all appointed judges be licensed attorneys with specified competencies as further defined. There are specific circumstances under which a non-attorney special hearing judge, ALJ, or other non-attorney arbiter with specific tax training may be assigned to preside over a hearing and render a decision.
2. Bifurcate the entire Tribunal into two divisions.
 - A. Non-Property Tax Division (Revenue Taxes).
 - All non-property tax cases must be decided by an attorney-judge.
 - B. Property Tax Division
 - Property tax cases involving less than \$100,000 [**or some threshold amount tbd**] in disputed value may be heard by a non-attorney special hearing judge, ALJ, or other non-attorney arbiter if the non-attorney special hearing judge has specific property tax training or experience.
 - Property tax cases involving \$100,000 [**or some threshold amount tbd**] or more undisputed value must be decided by an attorney judge, but hearings, fact findings and a recommendation can be made by a non-attorney judge, ALJ, or other special hearing judge if the non-attorney special hearing judge has specific property tax training or experience. The appointed judge would be required to adopt or modify the recommendation made by the special hearing judge.
 - Property tax cases involving issues other than issues of valuation shall be assigned by the Chief Judge based on the complexity of the issue.
3. Retain the Small Claims Division, with minor adjustments, continuing to use either Administrative Law Judges, Certified Public Accountants, appraisers or other professionals as special hearing judges to decide small claims cases.
4. Eliminate the prepayment of tax, penalty and interest requirement as a jurisdictional prerequisite to filing a case regarding the assessment of tax in the Michigan Court of Claims.

TAXATION SECTION

August 30, 2010

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2306 Townsend Street
Lansing, Michigan 48933-2012

**Re: June 14, 2010 Report of the Business Impact Committee
("Report")**

Dear Ms. Lyon:

This is to supplement our July 30, 2010 letter to you with respect to the Report. That letter set forth the Tax Council's ("Council") recommendations for reforms at the Michigan Tax Tribunal ("Tribunal"), as well Court of Claims reform on the prepayment requirement. We believe both these recommendations would foster a judicial system governing state tax disputes consistent with the recommendations of the Report pertaining to non-tax judicial environment concerns affecting Michigan businesses. By this letter, and the exhibits attached, we are addressing subsequent requests made by the Judicial Crossroads Task Force ("Task Force") in order to finalize the Report with Council's recommendations included.

First, we would like to confirm Council's financial commitment whereby the Taxation Section would share with the State Bar the costs to engage an independent firm to conduct a cost-benefit study on the reforms set forth in Tax Council's prior letter.

Second, attached as Exhibit A, is a list of articles, reports and other written materials regarding the history and perennial areas of concern at the Tax Tribunal.

Third, attached as Exhibit B, is a proposed draft revision to implement the Council's recommendation regarding the Michigan Tax Tribunal.

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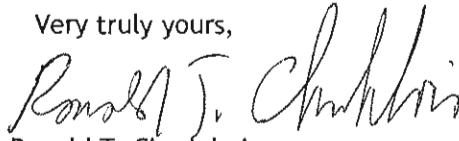
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Fourth, attached as **Exhibit C**, is a proposed draft revision to the statutory language to implement the Council's recommendation regarding the pay-to-play requirement at the Court of Claims.

We would like to again express our appreciation in participating in this important endeavor. If you should have any further requests, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald T. Charlebois". The signature is written in a cursive style with a large, prominent initial "R".

Ronald T. Charlebois
Chairperson, Taxation Section

RTC/gv

EXHIBIT A

State Bar of Michigan – Taxation Section

Document List re Michigan Tax Tribunal

(In Chronological Order)

- A-1 1991 Committee Report
- A-2 History of Tax Tribunal (last updated August 23, 2006)
- A-3 December 8, 2004 Letter from Chief Judge, Michigan Tax Tribunal to Chair, State and Local Tax Committee, Taxation Section of the State Bar of Michigan
- A-4 2008 Explanation of Taxation Section Position for First Draft of Proposed Tax Tribunal Legislation (posted on the Taxation Section website under Public Policy Developments)
- A-5 FY 2009 Annual Program Performance Measures
- A-6 “The Model State Tax Tribunal Act: Measuring Fairness and Efficiency in Michigan’s State Tax Appeal System”, Volume XXXVI, Issue 1, *Michigan Tax Lawyer*, Winter 2010
- A-7 February 2010 - Performance Audit of the Michigan tax Tribunal by Michigan Office of the Auditor General (finding that Tribunal had not established a process to ensure efficient and timely resolution of tax appeals)
- A-8 Article from Detroit Free Press May 29, 2010 (“Business, Homeowners Appeal Michigan Tax Bill”)



MICHIGAN TAX TRIBUNAL COMMITTEE REPORT

BACKGROUND

On February 22, 1991, State Treasurer Douglas Roberts appointed Lawrence W. Morgan, Francis Moss and Howard Ledbetter, (designee of the state Chamber of Commerce), as a committee to review the operations of the Michigan Tax Tribunal (MTT).

The charge to the committee was to review the MTT and to make recommendations as to necessary revisions that would improve operations. The committee was also advised to be mindful that fiscal conditions in the state necessitate significant cost reductions in all departments.

The committee met 5 times between March 7, 1991 and May 1, 1991. In addition, the committee interviewed or corresponded with persons or groups knowledgeable of matters within the jurisdiction of the committee. (See Appendix A for a list of persons contacted.)

The MTT is a quasi judicial agency created by the Michigan Legislature in 1973 (86 PA 1973), charged with the responsibility of hearing and deciding contested tax cases. The MTT has exclusive jurisdiction over property tax cases, and share jurisdiction with the Court of Claims over state (non-property) taxes.

The Committee has made certain Findings of Facts which are attached to this report as Appendix B.

PROBLEMS WITH THE TRIBUNAL

Our review of the MTT indicates that poor internal structure and lack of aggressive caseload management are its major operational deficiencies. More specifically:

- Lack of administrative control and management.
- No clear administrative structure or responsibility; no one in charge.
- Lack of trial and pretrial management in Entire Tribunal Cases.
- Failure to manage the volume of appeals in Small Claims.
- Unnecessary delays caused by MTT's failure to set and meet deadlines.
- Election of Chief Judge by other judges weakens internal structure; leave the MTT without a strong manager.

- Too slow to get to trial and to render opinions.
- Lack of adequate resources, funds, staff and support services.
- Transcription of the record is slow.
- Failure to manage paperwork and computerization.
- Failure to coordinate Detroit and Lansing offices.
- Perception of conflict of interest since the MTT is under the authority of the State Treasurer, who also has supervision over the Revenue Department and the Tax Commission.
- Internal dispute over how discovery should be carried out.
- Compensation is inadequate and inconsistent, relative to responsibilities.
- Performance of judges leaves much to be desired.
- The qualification of the judges set forth in the statute limits the flexibility to obtain competent people.
- Judges who are lawyers intimidate members who are not lawyers by virtue of their knowledge of the law and judicial procedures.
- Judges who are not lawyers lack understanding of the legal and judicial procedures, resulting in delays and confusion.
- Lack of tax expertise on the part of some judges and hearing officers.
- Lack of legal expertise on the part of some judges.
- Perception that some judges and hearing officers are not knowledgeable and are uncomfortable in handling non-property tax cases.
- Failure of the judges and the staff to work together as a team (the staff is permanent, while the judges are temporary).
- Morale of professional staff is low.
- Petty internal politics destroy unity and morale.
- Political pressures imposed to influence decisions.

CONCLUSION

The State of Michigan has an obligation to provide taxpayers with a “plain, speedy and efficient” mechanism to contest tax matters. It is a constitutional dimension. Article I, Section 17 of the Michigan Constitution of 1963 provides:

“No person shall . . . be deprived of life, liberty or property, without due process of law.”

Due process of law certainly requires that the state will refund a system to the extent those charged with adjudicating tax matters will be supplied with the human and physical resources to give tax paying citizens a “plain, speedy and efficient remedy.” Conversely, this committee cannot recommend a tax mechanism that fails to meet that standard.

This committee is convinced that the state needs an independent specialized body to perform the tax adjudication function. Indeed, no person contacted recommended a return to the pre-MTT Circuit Court of State Tax Commission system of tax adjudication. The Circuit Courts lack the expertise that a specialized court system can bring to complex valuation issues and the State Tax Commission, because of its supervision position over assessors, lacks the objectivity expected of an independent trier of fact.

RECOMMENDATIONS

- **Create a Michigan Tax Court**

The Committee recommends the creation of an independent Tax Court as part of the judicial system of Michigan. This Tax Court would function as any other Court with the exception that the judges of the Court would be appointed by the Governor for a staggered term of 10 years, with an appointed Chief Judge. The Committee felt that the New Jersey Tax Court was the model for a Michigan Tax Court (See Appendix E). The chief advantages of a Tax Court are the independence and the impartiality that comes from being in the Judicial Branch of government, rather than the Executive, and the imposition of tax expertise as well as traditional judicial prestige, rules, and procedures to tax matters.

We recognize that this proposal would involve long term planning, statutory drafting, and perhaps even constitutional changes. In the meantime, we recommend the following changes to the Michigan Tax Tribunal.

- **Appoint a Chief Judge with overall authority to administer and manage the MTT.**

Shall be appointed by the Governor; lawyer with 10 years experience in tax matters.

- **Create the position of Tribunal Judges.**

Shall be lawyers with 10 years experience; selected from the Classified Executive Service; shall report to and be responsible to the Chief Judge.

- **Create the position of Hearing Referees.**

Shall be persons with valuation experience; shall hear small claims cases only and be selected through the Civil Service process; shall report to and be responsible to the Chief Judge.

- **Appoint sufficient Tribunal Judges and Hearing Referees.**

We make no recommendation as to number of professionals needed to carry out our recommendation on case load. We attach as Appendix D the report of the State Court Administrative Office on the Circuit Court as an indication of the workload and output of Circuit Court Judges. (See particularly pp 20-29 on Case Disposition). We assume a well organized MTT can match those figures.

- **Chief Clerk shall be responsible to the Chief Judge.**

- **New Organizational Chart.**

Attached as Appendix C is a suggested organizational chart for the MTT.

- **Require substantial annual reports** on caseload management technique and output. Judges and referees should be accountable for case output.

- **Establish a management plan** to reduce all MTT backlogs to 18 months from filing to trial.

- **Consolidate all MTT operations into one main office in Lansing, Michigan.**

- **Increase Small Claims jurisdiction to \$10,000 for state taxes and \$200,000 of SEV in dispute for property taxes.**

- **Compensation for Tribunal Judges, Hearing Referees, and Chief Clerk** should be sufficient to attract competent tax lawyers and other professionals.

- **Compensation for Chief Judge** should be commensurate with that of a Circuit Court Judge.

- **Filing fees should be no more than those imposed in Circuit Court matters.**

The concept that the MTT should “finance itself” through fees should be abandoned.

- **All MTT Judges and Referees** should be provided with formal judicial training.

- **Provide funds to allow the State Court Administrative Office to provide one time only consulting services to the MTT in caseload management and control techniques.**

- **Create a MTT Advisory Committee.**

Composed of Circuit Court Judges, State Bar Representatives, State and Local Government Tax Administrators, and Taxpayers Group Representatives; annually review the Administration and Operation of the MTT and recommend legislative changes.

- **Assign cases, monitor progress, coordinate decisions, hold judges individually accountable for cases and workload.**
- **Computerized inventory of cases and decisions.**
- **Recall retired judges to assist with overload.**
- **Provide for oral argument, depositions, mediation process, manage relevancy of discovery, impose and enforce time limits, manage cases and encourage resolutions and settlements.**
- **Gather statistics, set standards, assign cases, keep track of dockets, require accountability.**



www.michigan.gov
(To Print: use your browser's print function)

Release Date: March 28, 2006
Last Update: August 23, 2006

History of the Tribunal

July 1, 2004 was the 30th anniversary of the creation of the Michigan Tax Tribunal, the State's tax court. As the State's tax court, the Tribunal has original and exclusive jurisdiction over property tax matters. The Tribunal also has concurrent (i.e., shared) jurisdiction over State non-property tax matters.

Prior to the creation of the Tribunal, the State Board of Tax Appeals and other boards and agencies, as well as Michigan's courts, provided review of local property tax and non-property tax matters.

In 1969, an advisory board consisting of members of the State Bar of Michigan and representatives of the Michigan Department of Treasury, the Michigan State Tax Commission, and the Michigan Department of Attorney General reviewed administrative and judicial procedures utilized in resolving state tax questions and issued a report ("the 1969 Report") recommending both changes in those procedures and the creation of a "specialized" administrative tribunal with jurisdiction "over all tax disputes."

As a result of that report, the Tax Tribunal Act (MCL 205.701 et seq) was enacted in July, 1974 to both create the Tribunal and abolish the boards and agencies that had been responsible for review of various tax matters. The Act specifically provided that, as of January 1, 1976, any person or legal entity which was entitled to proceed before any "quasi-judicial body, court of claims, probate court...or circuit court for determination of a matter relating to [various taxes]...shall proceed only before the tribunal."

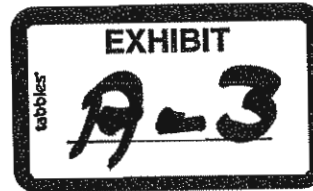
In 1991, a committee was appointed by Governor Engler to review the operations of the Tribunal and make recommendations to improve those operations ("the 1991 Report"). Based on the committee's recommendations, Governor Engler issued on August 28, 1991, Executive Reorganization Order No. 1991-15, compiled at MCL 205.800. The ERO transferred the Tribunal to the Department of Commerce to avoid "the appearance of conflicting objectives with respect to the current location of the...Tribunal in the Department of Treasury." The ERO also transferred to the Governor the power to designate a member of the Tribunal as chairperson.

The Tribunal initially consisted of five members, with two additional members appointed in 1976 and 1977. Since that time, 35 people have served as members of the Tribunal. These members are appointed by the Governor, with the advice and consent of the Senate, to serve terms of four years, with one member appointed to serve as chairperson. Pursuant to the Tax Tribunal Act, the Tribunal's members are required to be citizens of the United States and residents of Michigan. They are also required to be from various walks of life with at least two members being attorneys, one being a certified level IV assessor, one being a professional real estate appraiser, and one being a certified public accountant. The Act further states that not more than three members shall be members of the same professional discipline, and that the members who are not attorneys, assessors, appraisers, or CPAs must have at least five years' experience in state or local tax matters. These requirements ensure that the decisions issued by the Tax Tribunal are made by people having extensive knowledge and expertise in their respective fields.

Practice before the Tribunal is governed by the Tribunal's Rules of Practice and Procedure, which are similar to the Michigan Court Rules that govern practice before the courts in Michigan. The Tribunal's Rules were revised in 1981 and again in 1996. The Tribunal is once again in the process of revising its Rules to better reflect its current practices and amendments made to the Michigan Court Rules. The Tribunal encourages input by parties who appear before it in order to improve its practices and procedures. Public meetings are being held to gather information and suggested revisions to the Tribunal Rules.

- [MTT 1969 Report.pdf](#) PDF
- [MTT 1991 Committee Report.pdf](#) PDF
- [Tribunal Appointments](#) PDF

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GOVERNOR

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December 8, 2004

Mr. Wayne D. Roberts, Chair
State and Local Tax Committee
Taxation Section of the
State Bar of Michigan
Raymond & Prokop, P.C.
Bank One Building
200 Ottawa Street, Suite 400
Grand Rapids, MI 49503

Dear Mr. Roberts:

Thirty-five years ago the State Bar of Michigan and the Michigan Law School submitted to Governor Milliken recommendations from a four-year study of Michigan taxes, tax administration and litigation. The State Bar's recommendations remain unique: a Governor-appointed administrative court, jurisdiction spanning all state taxes, members representing the appraisal, accounting and legal professions, procedures blending court rules with administrative rules, and, a small claims division permitting taxpayers to represent themselves. In 1974, the recommendations were enacted into law. This past summer the Michigan Tax Tribunal celebrated its thirtieth anniversary.

As Chairman of the Tribunal, I am inviting you to renew the State Bar's 30-year tie and join us in re-examining the future direction of the path set in 1974. I see two areas of partnership. The first is Governor Granholm's request that the Director of the Michigan Department of Labor and Economic Growth (DLEG) form a commission to study the Tribunal with a vision of crafting a tax court that can serve as a model for other state tax courts. The second is expanding the State Bar of Michigan's educational outreach to taxpayers in this state.

The Director's Commission would re-examine the Tax Tribunal from a national perspective and with a vision of crafting a tax court that can serve as a model for other state tax courts. Much has changed in terms of the frequency and complexity of Tribunal litigation since 1973. Tax litigation has far greater multi-state, constitutional and international impact. Over the same period of time, state experience and knowledge of court management methodologies (i.e., the National Center for State Courts) and the use of technology have substantially improved. The

ABA's State and Local Tax Section, for example, has a working group examining the characteristics of a model state tax court.

The Commission would serve four general purposes:

1. Utilizing the expertise of practitioners that appear in other dispute resolution forums, and legal scholars' research and evaluation of resolution procedures, etc.
2. Reaching findings of fact and recommendations that includes input from all significant stakeholder groups (i.e., tax administrators and taxpayers, resident and multistate businesses);
3. Establishing an inclusive process for reviewing potential rules and statutory changes and generating support for any legislation, rule change or budget adjustment;
4. Educating the public regarding the value, the proper role and the most acceptable price of state tax adjudication, etc.

Composition of the commission will include a broad-based national and state-wide membership of roughly twenty representatives from academic and professional groups, such as, for example, representatives from the State Bar of Michigan, law schools in the state, the National Center for State Courts, the American Institute of Certified Public Accountants, the International Association of Assessing Officers, the National Conference of State Tax Judges, the Michigan Supreme Court, etc. Representatives are being selected based on their experience and expertise, excluding any representative having cases in litigation at the Tribunal. The Director and I envision a two-year commission term. The commission would be funded by the representative organizations and other private funds.

I am in the process of contacting these other organizations but offer the State Bar of Michigan the opportunity of participating first. Participation will include the provision of an agreed-upon representative. It also involves financial assistance and any in-kind assistance that the State Bar is able to provide.

The second area of partnership involves the State Bar's assistance in crafting educational outreach opportunities for taxpayers. Currently, the Tribunal conducts continuing education classes regarding Tribunal practice and procedure for assessors. We would like to extend these classes to the public and develop special classes that introduce taxpayers to the basics of property tax and of appeal procedures. Another idea would be to make the taxpayer-specific classes available via CD and other media. Other classes for different types of taxpayers—accountants, small businesses, etc.—could also be developed. The Tribunal's goal is that access to the Tribunal will be expanded and be made more meaningful if taxpayers are better educated. We

December 3, 2004

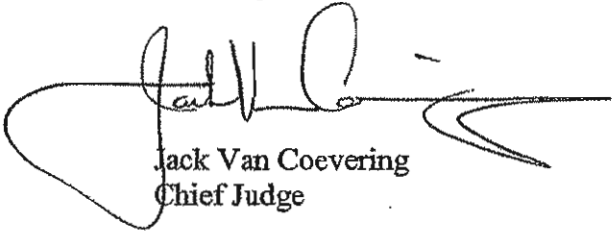
Mr. Wayne D. Roberts

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realize that some of the education involves more partisan or "ombudsman" advice and for that reason we are pursuing private partners.

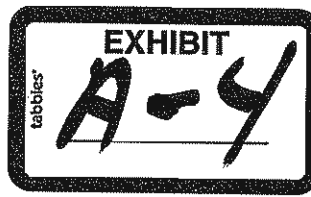
Obviously there is much more to discuss. I would like that opportunity. Even if the State Bar is unable to participate, it would be helpful to discuss other areas in which we might bring back the tie that formed thirty years ago. Feel free to contact me by phone or e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Van Coevering". The signature is stylized with a large, sweeping initial "J" and a long horizontal line extending to the right.

Jack Van Coevering
Chief Judge

cc: James H. Novis
John M. Neberle



Explanation of the position, including any recommended amendments:

It is recommended that the Tax Tribunal be modified so that its judges are not selected through only a political process without proper oversight (along with its resulting political pressures), and all judges should have BOTH legal and tax backgrounds. Toward this end, the statutory language set forth below is recommended. An advisory board with some members who are not attorneys is recommended to assist with judge selection.

REASONS FOR PROPOSED LEGISLATION:

- 1) Judges reviewing Tax Tribunal decisions at the Appeals Court and Supreme Court levels are attorneys who generally do not have tax backgrounds. Such judges expect that legal decisions be written and organized in a certain manner, in order to properly resolve issues raised upon appeal. It is better that Tax Tribunal judges be licensed Michigan attorneys who are subject to the Michigan rules of professional conduct. Attorneys are trained in how to properly write legal opinions. If litigating parties are provided a proper record for review and a well reasoned opinion, more appeals from the Tax Tribunal can be avoided, which saves the State of Michigan significant tax dollars that are otherwise used for expensive and needless litigation. Consequently, it is recommended that only attorneys with legal training take part in writing Tax Tribunal decisions. The Tax Tribunal is very much like any other court where matters are litigated and its decisions should be written and determined consistent with procedures followed in other courts.
- 2) The proposed legislation ensures that the judges have proper legal backgrounds as well as experience in the field of taxation. A committee must determine the applicant for a judge position has proper experience; alternatively, the candidate must pass a test confirming basic knowledge.
- 3) The fact that most states within the U.S. require lawyers to act as judges for tax litigation matters is persuasive. Consequently, Michigan's Tax Tribunal statutes should be modified to be consistent with how other states resolve their tax controversies. Businesses desire certain commonality among state tax systems. Michigan is in the minority of states with its current system and beliefs, and this detracts from the credibility and fairness of tax administration in Michigan.
- 4) Other reforms should be considered, such as allocating additional funding to the Tax Tribunal. A properly staffed and functioning Tax Tribunal will minimize potential large refunds of government tax dollars with burdensome interest liabilities. Reform and additional funding should thus increase state revenues rather than deplete them.
- 5) The proposed statutory language is similar to the statute that governs the appointment of worker compensation judges. The worker compensation appointment statute does not select doctors rather than lawyers even though many of the issues involve predominantly medical matters over legal matters.
- 6) Because the Michigan Court of Claims requires prepayment of the tax in controversy, prior to use of its forum, it is not a realistic venue for many taxpayers who desire legal training for their issue but cannot afford to immediately pay the disputed tax. The current prepayment requirement acts as a limitation to judicial access in Michigan. The Michigan Court of Claims should be available to taxpayers without the need to first pay the tax, especially if the backlog of cases and other issues with the Tax Tribunal are not addressed in the near future by the legislature.

FY 2009 Annual Program Performance Measures

DEPARTMENT:

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT:

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Tribunal

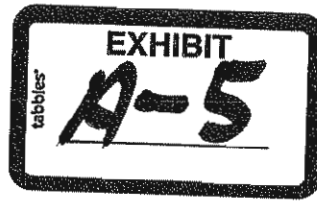
PROGRAM: Michigan Tax

TABLE A
Small Claims Filings/Dispositions

FISCAL YEAR	Property Appeals	PRE & Qualified Ag	Non-property Appeals	TOTAL FILINGS	Decisions	Consent Judgments	Dismissals & Withdrawals	Total Dispositions	Active Cases	Pending Appeals	Clearance Rate
06-09 (As of 9.30.09)	11,002	792	289	12,083	1,339	1,748	4,201	7,288	22,850	24,445	60%
07-08 (As of 9.30.08)	10,343	910	313	11,566	1,811	1,497	4,221	7,529	15,750	16,998	65%
06-07 (As of 9.30.07)	8,336	652	420	9,408	1,183	889	2,610	4,682	11,640	12,896	50%
05-06 (As of 9.30.06)	4,926	804	309	6,039	1,691	980	3,105	5,776	6,678	7,987	96%
04-05 (As of 9.30.05)	4,671	1,036	288	5,995	892	1,088	3,431	5,411	6,865	7,488	90%
03-04 (As of 9.30.04)	4,066	1,771	343	6,180	1,174	741	3,420	5,335	6,439	6,842	86%
02-03 (As of 9.30.03)	5,453	295	318	6,066	1,092	603	3,608	5,303	1,682	6,669	87%
01-02 (As of 9.30.02)	5,215	402	305	5,922	1,366	1,023	3,781	6,160	3,526	5,117	104%
00-01 (As of 9.30.01)	6,001	579	417	6,997	1,809	1,915	4,132	7,856	3,840	5,355	112%
99-00 (As of 9.30.00)	4,163	397	422	4,982	1,297	701	2,628	4,626	2,841	3,419	93%
98-99 (As of 9.30.99)	5,427	740	506	6,673	1,904	1,664	5,698	9,266	4,250	4,664	139%
97-98 (As of 9.30.98)	4,958	1,118	448	6,524	998	2,350	4,518	7,866	6,898	7,263	121%
96-97 (As of 9.30.97)	6,767	N/A	313	7,080	N/A	N/A	N/A	7,814	N/A	N/A	110%
95-96 (As of 9.30.96)	N/A	N/A	N/A	7,149	N/A	N/A	N/A	N/A	N/A	N/A	N/A
94-95 (As of 9.30.95)	7,860	N/A	334	8,194	N/A	N/A	N/A	N/A	N/A	N/A	N/A
93-94 (As of 9.30.94)	13,746	N/A	491	14,237	7,919	5,616	14,874	28,409	N/A	N/A	200%
92-93 (As of 9.30.93)	27,331	N/A	361	27,692	4,837	2,019	3,977	10,833	N/A	N/A	39%
91-92 (As of 9.30.92)	4,782	N/A	181	4,963	3,578	3,001	6,857	13,436	N/A	N/A	270%
90-91 (As of 9.30.91)	15,609	N/A	203	15,812	1,877	1,040	8,345	11,262	N/A	N/A	71%
89-90 (As of 9.30.90)	8,180	N/A	340	8,520	928	596	1,434	2,958	N/A	N/A	35%
88-89 (As of 9.30.89)	7,781	N/A	452	8,233	2,006	927	3,869	6,802	N/A	N/A	87%
87-88 (As of 9.30.88)	6,952	N/A	452	7,404	3,080	891	4,323	8,294	N/A	N/A	112%
86-87 (As of 9.30.87)	5,513	N/A	438	5,951	2,141	737	4,050	6,928	N/A	N/A	116%
85-86 (As of 9.30.86)	4,961	N/A	390	5,351	1,987	769	2,502	5,258	N/A	N/A	98%
84-85 (As of 9.30.85)	5,159	N/A	175	5,334	3,551	1,071	4,514	9,136	N/A	N/A	171%

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FY 2009 Annual Program Performance Measures

DEPARTMENT:

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT:

(Leave Blank)
Tribunal

PROGRAM: Michigan Tax

83-84 (As of 9.30.84)	5,312	N/A	224	5,536	2,469	1,067	4,401	7,937	N/A	N/A	143%
82-83 (As of 9.30.83)	8,191	N/A	556	8,747	2,773	1,741	7,166	11,680	N/A	N/A	134%
81-82 (As of 9.30.82)	13,675	N/A	382	14,057	2,237	1,166	1,040	4,443	N/A	N/A	32%
80-81 (As of 9.30.81)	7,248	N/A	501	7,749	2,881	1,056	4,534	8,471	N/A	N/A	109%
79-80 (As of 9.30.80)	7,275	N/A	8	7,283	1,809	724	2,775	5,308	N/A	N/A	73%
78-79 (As of 9.30.79)	4,080	N/A	50	4,130	2,111	606	1,907	4,624	N/A	N/A	112%
77-78 (As of 9.30.78)	4,566	N/A	529	5,095	3,320	743	3,776	7,839	N/A	N/A	154%
76-77 (As of 9.30.77)	N/A	N/A	N/A	16,559	N/A	N/A	N/A	14,926	N/A	N/A	90%
75-76 (As of 9.30.76)	N/A	N/A	N/A	4,806	N/A	N/A	N/A	5,520	N/A	N/A	115%
74-75 (As of 9.30.75)	N/A	N/A	N/A	6,086	N/A	N/A	N/A	5,174	N/A	N/A	85%

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FY 2009 Annual Program Performance Measures

DEPARTMENT:

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT:

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Tribunal

PROGRAM: Michigan Tax

Table B
Entire Tribunal Filings/Dispositions

FISCAL YEAR	Property Appeals	Non-Property Appeals	TOTAL FILINGS	Decisions	Consent Judgments & Withdrawals		Dismissals	TOTAL DISPOSITIONS	Active Cases	Pending Cases	Clearance Rate
					CJs	WDs					
08-09 (As of 9.30.09)	6,808	125	6,933	81	1,640	978	359	3,058	10,048	11,999	44%
07-08 (As of 9.30.08)	4,394	107	4,501	37	1,807	851	215	2,910	6,460	8,455	65%
06-07 (As of 9.30.07)	2,912	101	3,013	70	1,622	957	414	3,063	4,473	6,724	102%
05-06 (As of 9.30.06)	2,746	125	2,871	86	2,292	N/A	931	3,309	3,848	6,837	113%
04-05 (As of 9.30.05)	2,131	86	2,217	74	1,552	N/A	974	2,600	5,403	6,544	117%
03-04 (As of 9.30.04)	1,886	70	1,956	62	1,143	N/A	1,265	2,470	5,675	6,971	126%
02-03 (As of 9.30.03)	2,380	65	2,445	29	591	N/A	843	1,463	1,426	5,495	60%
01-02 (As of 9.30.02)	1,592	69	1,661	39	702	N/A	811	1,552	2,066	6,272	93%
00-01 (As of 9.30.01)	1,168	130	1,298	70	1,098	N/A	1,081	2,249	1,862	6,070	173%
99-00 (As of 9.30.00)	1,286	108	1,394	36	649	N/A	784	1,469	2,138	6,146	105%
98-99 (As of 9.30.99)	2,077	132	2,209	48	613	N/A	766	1,427	2,932	6,465	65%
97-98 (As of 9.30.98)	2,727	112	2,839	32	675	N/A	510	1,217	3,913	5,569	43%
96-97 (As of 9.30.97)	3,409	102	3,511	N/A	N/A	N/A	N/A	1,502	N/A	N/A	43%
95-96 (As of 9.30.96)	1,293	101	1,394	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
94-95 (As of 9.30.95)	1,293	101	1,394	N/A	N/A	N/A	N/A	N/A	N/A	N/A	154%
93-94 (As of 9.30.94)	2,460	175	2,635	332	N/A	N/A	1,034	4,054	N/A	N/A	82%
92-93 (As of 9.30.93)	2,186	136	2,322	70	N/A	N/A	590	1,915	N/A	N/A	136%
91-92 (As of 9.30.92)	1,412	165	1,577	139	N/A	N/A	694	2,145	N/A	N/A	66%
90-91 (As of 9.30.91)	2,355	182	2,537	102	N/A	N/A	889	1,674	N/A	N/A	43%
89-90 (As of 9.30.90)	1,966	95	2,061	40	N/A	N/A	294	884	N/A	N/A	74%
88-89 (As of 9.30.89)	1,368	166	1,534	98	N/A	N/A	346	1,137	N/A	N/A	97%
87-88 (As of 9.30.88)	1,130	201	1,331	233	N/A	N/A	558	1,296	N/A	N/A	25%
86-87 (As of 9.30.87)	930	145	1,075	70	N/A	N/A	148	271	N/A	N/A	141%

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FY 2009 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: (Leave Blank) **PROGRAM:** Michigan Tax Tribunal

85-86 (As of 9.30.86)	669	232	901	110	N/A	N/A	485	1,268	N/A	N/A	167%
84-85 (As of 9.30.85)	863	190	1,053	96	N/A	N/A	652	1,760	N/A	N/A	96%
83-84 (As of 9.30.84)	1,186	334	1,520	83	N/A	N/A	506	1,452	N/A	N/A	103%
82-83 (As of 9.30.83)	1,222	333	1,555	118	N/A	N/A	580	1,598	N/A	N/A	68%
81-82 (As of 9.30.82)	1,711	274	1,985	138	N/A	N/A	403	1,357	N/A	N/A	69%
80-81 (As of 9.30.81)	1,244	229	1,473	89	N/A	N/A	301	1,015	N/A	N/A	83%
79-80 (As of 9.30.80)	1,323	5	1,328	143	N/A	N/A	340	1,999	N/A	N/A	112%
78-79 (As of 9.30.79)	711	58	769	110	N/A	N/A	231	859	N/A	N/A	101%
77-78 (As of 9.30.78)	746	137	883	75	N/A	N/A	277	895	N/A	N/A	71%
76-77 (As of 9.30.77)	N/A	N/A	543	N/A	N/A	N/A	N/A	388	N/A	N/A	70%
75-76 (As of 9.30.76)	N/A	N/A	1,414	N/A	N/A	N/A	N/A	983	N/A	N/A	61%
74-75 (As of 9.30.75)	N/A	N/A	1,499	N/A	N/A	N/A	N/A	911	N/A	N/A	N/A

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THE MODEL STATE TAX TRIBUNAL ACT: MEASURING FAIRNESS AND EFFICIENCY IN MICHIGAN'S STATE TAX APPEAL SYSTEM

By Jack L. Van Coevering

Some 40 years ago, the Taxation Section conducted a study of Michigan's administrative and judicial tax procedures. Led by Michigan law Professor L. Hart Wright, the "Michigan Tax Procedure Project" produced a report that, over time, led to the elimination of an array of complex appeal and regulatory mechanisms and to the development of new processes: the Department of Treasury's Letter Ruling, the Department's Revenue Administrative Bulletin, the Informal Conference, and the Michigan Tax Tribunal.¹ More than these changes, the report injected into Michigan's administrative processes a concept of taxpayer rights and an expanded view of the procedural safeguards necessary to ensure fairness in resolving tax disputes in Michigan. By any number of measures, the project was a success.

The report's most prominent feature was a proposal to consolidate a number of appellate procedures into an independent tax tribunal. As the study was, in part, informed by the American Bar Association's Model State Tax Court Act,² the report proposed a tribunal that shared many of the features of the United States Tax Court: a tribunal created within the executive branch of government, existing independent of tax enforcing agencies, and staffed with experienced tax professionals. The Michigan Tax Tribunal was a substantial improvement from Michigan's past state and local tax adjudicatory processes.

Professor Wright's report, however, did not end the discussion of state and local adjudication in Michigan. Calls to eliminate the prepayment requirement in the court of claims periodically emerge. Evaluations of the tribunal and proposals for change continue. In 1991, the state treasurer appointed a committee to review the tribunal and recommended that the tribunal be replaced with a tax court.³

The recent interest in Michigan's state and local tax adjudication comes at a time when other states are considering the American Bar Association's (ABA) proposal for a Model State Administrative Tax Tribunal Act (Model Act). The proposal received the endorsement of the Committee on State Taxation and significant interest from the National Conference of State Legislatures and the American Legislative Exchange Council. It was recommended for consideration last year by California Governor Schwarzenegger's blue-ribbon panel, the "Commission on the 21st Century Economy."⁴ Versions and aspects of the proposal are under consideration in Georgia, Ohio, Oklahoma, Pennsylvania, and Louisiana.

Much of the ABA's earlier Model State Tax Court served as a template to create the Michigan Tax Tribunal. The ABA's Model State Tax Tribunal Act provides an updated template of state tax "best practices" to evaluate state and local tax litigation in both Michigan forums, the court of claims, and the Michigan Tax Tribunal.

THE MODEL STATE ADMINISTRATIVE TAX TRIBUNAL ACT

The Model Act represents an evolution in the ABA's view of state tax adjudication. Initially, the ABA proposed a state tax court that was placed in the judicial branch of government.⁵ Several states, including Oregon, Indiana, Hawaii, and New Jersey, enacted versions of a judicial state tax court. However, adoption by states was slim. Many state constitutions do not permit legislatures to establish a court, or they (like Michigan⁶) require that judges be elected.

Over time, a number of executive-branch tribunals developed in Minnesota, New York, Maryland, Ohio, and Massachusetts. While, unlike judicial courts, these tribunals lacked the ability to address the constitutionality of tax statutes and lacked the degree of institutional independence found in judicial courts, executive-branch tribunals developed a number of shared features that restored public confidence in the state's tax system. Like judicial courts, they developed meaningful mediation and settlement processes and developed operational features that gave them independence from taxing agencies.⁷

The ABA's proposed Model Act was based on this learned experience. It is not detailed legislation, like a "uniform act." It is intended instead to be, and is best understood as, a "legislative template and rationale" for an independent tribunal system, incorporating the best practices from states' experimentation with different tax adjudication models. Regardless of the forums provided in a state, the Model Act distills four essential elements of a successful system of state tax adjudication: "Before payment [of the tax] (1), a taxpayer who receives a tax assessment must be able to make a record for appellate review (2) before an independent tribunal (3) with expertise in tax matters (4)."⁸ Those elements support a broader aspiration relevant to the tax system itself.

To increase public confidence in the fairness of the State tax system, ... This Act provides taxpayers with a means of resolving controversies that insures both appearance and the

reality of due process and fundamental fairness.

Jurisdiction

The Model Act provides that the tribunal shall be "the sole, exclusive and final authority for the hearing and determination of questions of law and fact arising under the tax laws of this state" and further prohibits any actions in courts of general jurisdiction in the state. Model Act Section 7 (a) (b). Under this broad grant of jurisdiction, states would specifically exclude various taxes, actions, courts, or other matters from the tribunal's jurisdiction. By example, the Act suggests that workers' compensation laws, racing laws, and collections matters would likely be specifically excluded.⁹ The commentary suggests that property taxes could also be excluded.

However, any tax that is included is subject to the requirement that the tax assessment need not be paid as a prerequisite to appeal.¹⁰ Similarly, if the state provided multiple forums, taxpayers would not be required to pay the disputed taxes as prerequisite to appeal.¹¹ The Act would excuse timely but erroneous filings in another court by permitting the dismissal of the matter without prejudice of the taxpayer if filing in the tribunal.¹² If a matter involves the constitutionality of a statute, the Model Act generally would require taxpayers without access to a judicial court to file both in the tribunal and in a judicial court or reserve the issue of constitutionality for an appellate court. Despite the different forums, the ability to appeal without the prerequisite of paying the disputed tax would remain.

Independence

The Model Act proposes both operational and structural independence from tax enforcing agencies, requiring that the tribunal operate independent of taxing agencies and that it operate in buildings that are separate from taxing agencies.¹³ The Act designates the tribunal as the sole authority to appoint its own clerk, reporter, and other contract employees and to determine its own budget expenditures.¹⁴ It excludes appellate review of the tribunal's decisions from any entity other than the state's appellate court.¹⁵ Review is nondiscretionary and by right, similar to appeals from independent judicial courts.

However, other structural features support the tribunal's operational independence. For example, the Act proposes that judges be appointed by the governor for a 10-year term of appointment, rivaling the United States Tax Court Judges. The drafters of the Model Act explained that the 10-year term was intended to

[Exceed] that of most governors, thereby making it less likely that a Tax Tribunal judge will be viewed as just another political appointee, and giving the judge some protection against the enmity, or sense of accountability, to a single governor.¹⁶

For similar reasons, the Model Act proposes that tribunal judges be paid the same as general court judges "to insure that the position of the Tax Tribunal judge will have sufficient prestige, freedom from political pressure and job security to attract and retain experienced and knowledgeable tax experts."¹⁷ This rationale also informs the Act's proposal that while a judge *cannot* hold any other office in state government and *cannot* engage in other gainful employment, a judge may "earn income from incidental teaching and scholarly activities;" that is, activities typical of judges that lend prestige and independence to the position may be compensated, provided they do not constitute the judge's full-time employment.¹⁸

Minor variations from this template are included in the Act. The Model Act proposes that a governor would designate one of the members to be a chief judge who would serve as chief judge at the pleasure of the governor. The governor could also appoint temporary judges for a period not to exceed six months for the purpose of addressing case backlogs, filling temporary vacancies, or for any reason that the governor sees the need for additional judges.¹⁹

Qualification of Tax Tribunal Judges

A very important goal of the ABA project was to ensure that tribunal judges have expertise in tax matters.

No person shall be appointed as a judge unless at the time of appointment the individual has substantial knowledge of the tax law and substantial experience making the record in a tax case suitable for judicial review.

The purpose of this requirement was, according to the drafters, "to increase the likelihood that the Tax Tribunal decisions will be well reasoned, ...over time ...provide a rational body of precedent [and]...make it more likely that the Tax Tribunal will achieve institutional reputation for fairness and excellence that is crucial to the public's perception of fairness."²⁰

Notably, the Act is silent as to whether the individuals with "substantial knowledge of the tax law and substantial experience making the record in a tax case" must be attorneys. This was intentional.²¹ The Act specifically sanctions the practice before the tribunal of "an attorney, ...an accountant, or ...an enrolled agent."²² The Act is also silent as to the process from which qualified judges would be selected. Commentary to the draft provides some general suggestions:

In states with a tax certification program, such as Louisiana and its Board Certified Tax Specialist program, consideration should be given to adding such a requirement to the qualifications of a tax tribunal judge. Consideration should also be given to including a provision authorizing the Governor to request a list of qualified, potential judges from the governing boards of appropriate professional organizations.²³

While there may not be a professional designation in the Act, the Act does require "substantial experience in making a record in a tax case suitable for review." Minimally, "making a record" involves some experience taking evidence, conducting hearings, and writing orders and opinions.²⁴ The Model Act requires written decisions and that they be issued within six months after submission of the last brief or after completion of the event, whichever event occurs later.²⁵ Taxpayers are given the right to compel the issuance of a decision in courts of general jurisdiction.²⁶

Litigation and Procedure

Litigation in the Model Act assumes a form similar to the United States Tax Court. Taxpayers are given 90 days in which to file a petition, and responding government units are given 75 days. Filing is evenly enforced. The failure to timely file, whether by the taxpayer or the government unit, automatically results in either dismissal of the petition or admission of all material facts contained in the petition should the government be responsible for failing to file an answer.²⁷

Discovery is broad but mostly informal. Stipulations are required.²⁸ The ABA drafters regarded both of these features as aspects of the model tribunal's independence.

[S]tate [taxing] agencies defeat taxpayer challenges simply by not cooperating with the taxpayer to stipulate the relevant facts, by not divulging its audit methods or findings, or by not disclosing its prior enforcement pattern with respect to the determination in dispute. Such practices increase the burden on the taxpayer by expanding what the taxpayer must prove to win his case, thereby making the dispute resolution process more expensive and time-consuming and less fair.²⁹

The concern about the unfairness of litigation expense is reflected in the Model Act's fee structure. The Model Act proposes a simple flat fee structure for filing the petition.³⁰ No other fees for any other motions are contained in the proposal.

Section 8 of the Model Act mandates a feature that has become commonplace in most general jurisdiction courts³¹ and has been fully implemented with great success by the Internal Revenue Service and other state tax agencies, notably California, Illinois, and New York: settlement and mediation.³²

The Model Act describes the settlement option as "an independent administrative appeals function" offered to taxpayers within the department of treasury *before* the department finalizes any assessment. The Act describes this function as

a program of holding conferences and negotiating settlements that is designed to resolve the vast majority of tax controversies without litigation on a basis that is fair and

impartial to the State and the taxpayer that enhances voluntary compliance and public confidence in the integrity and efficiency of the [department of treasury].³³

The appeals personnel must be independent of the department's auditing function *and* must have the authority to "exercise independent judgment with the objective of settling as many disputed issues as possible," whether the "disputed issues" involve facts, law, or the "hazards of litigation."³⁴ *Ex parte* communications with other policy or enforcement personnel within the department are generally prohibited.³⁵ While informal, the appeals personnel are permitted to consider evidence and testimony.³⁶ Should the taxpayer exercise the option for a settlement conference and concessions are proposed, both parties are prohibited from appealing those issues.³⁷ An exception exists permitting the department to establish a standard for designating particular issues that are not subject to compromise.³⁸ No settlement may be considered as precedent.³⁹

Hearings envisioned in the Model Act appear much like administrative hearings generally. They are not bound by the rules of evidence, though general administrative evidentiary standards apply, and require written decisions that are officially reported at the State's expense.⁴⁰ For cases that result in a written decision, the decision is subject to appellate review.⁴¹ Much like the United States Tax Court, the Model Act also proposes a small claims division for tax disputes, exclusive of penalty and interest, that exceed \$25,000 in controversy. Small claims proceedings are informal, and their decisions are conclusive, non-precedential and not subject to appeal.⁴²

CONSTITUTIONAL AND STATUTORY CONTEXT FOR STATE AND LOCAL TAX LITIGATION IN MICHIGAN

While the Model State Tax Tribunal Act was written primarily to address state tax disputes, the Michigan Tax Tribunal was formed largely to address property tax litigation.⁴³ The Michigan difference has a constitutional basis. Article VI, section 28 of the 1963 Constitution provided

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law.

* * *

In the absence of fraud, error of law or the adoption of wrong principles, **no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.**⁴⁴

Under this standard, property tax taxpayers can only appeal from a decision of a "final agency provided for the administration of

THE MODEL STATE TAX TRIBUNAL ACT

property tax laws." Until the creation of the tax tribunal, the "final agency" was the State Tax Commission.⁴⁵ The State Tax Commission provided the only pre-payment remedy for property tax disputes. The obvious importance of the "final agency" for the uniform administration and equal treatment of property tax laws is a substantial reason supporting the continued existence of a tax tribunal. It was the primary reason for rejection of a court model in property tax litigation, since, barring a constitutional change, were the tax tribunal eliminated as an administrative tribunal in property tax appeals, the "final agency" might very well be local boards of review.⁴⁶ State tax litigation does not suffer this constitutional limitation. The "final agency" will always be the Michigan Department of Treasury. Appeals to judicial courts in Michigan (the Michigan court of claims) have always existed.

There are a wide range of similarities between the proposed Model Act and the Tax Tribunal Act. Both acts, conceptually at least, represent a consensus of what would constitute "best practices" for state and local tax adjudication. A number of these "best practices" exist in the court of claims and in the tribunal. The Model Act provides some guidance as to areas within these forums that could still see reform.

Prepayment Remedies

Michigan does not uniformly offer pre-payment remedies. While intended to replace the then existing pre-payment appeal remedy for property taxes that had existed in the State Tax Commission, the Tax Tribunal Act conditioned property tax appeals on the payment of the disputed tax.⁴⁷ In some cases, the tribunal has permitted tax appeals to proceed only when the undisputed portion of property taxes has been paid. Formalizing that practice in rule or statute would ensure all taxpayers receive the same treatment.

The state remedy for non-property taxes is also incomplete. The state continues to require that all tax, interest, and penalty be paid prior to an appeal in the Michigan court of claims.⁴⁸ The Department of Treasury aggressively asserts this payment requirement in the court of claims as a procedural defense.⁴⁹ There is no requirement for prepayment of disputed non-property taxes in the tax tribunal. However, the department has successfully argued that failure to pay an undisputed portion of the tax deprives the tribunal of jurisdiction.

The standard for fairness, the "best practices" standard based on a 40-year national state-tax experience, the standard recommended by the ABA's Model Act is the elimination of the requirement that disputed state and local taxes be paid before a taxpayer obtains its constitutional right to appeal a wrongful assessment. An even playing field is one where taxpayers pay the undisputed taxes but reserve payment of those tax liabilities that remain disputed; it is a field on which there is no strategic or financial difference to litigants in resolving a tax dispute.

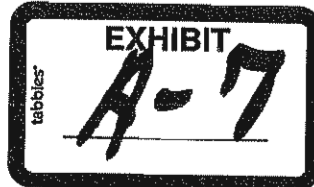
While it is obvious that forcing taxpayers to pay a disputed tax assists local and state government units fiscally, it is also obvious that the requirement is unfair to taxpayers. Prepayment establishes additional steps before filing the appeal.⁵⁰ It encourages gamesmanship by taxing units in an attempt to deny taxpayers access to the refund. It encourages local and state taxing units to delay resolution of a matter as they have a greater financial stake in keeping the money than an administrative and policy stake in obtaining legal direction on the issue. Prepayment lacks any correlation to the policies underlying judicial adjudication. Indeed, it has an inverse relationship to the importance of the legal issue and its impact across the state. The more the issue involves important legal and constitutional claims, the more the taxpayer incurs substantially greater costs to litigate. The taxpayer cannot litigate in the tax tribunal but must maintain two actions in both the tax tribunal and the court of claims. Prepayment is only relevant based on the taxpayer's financial solvency, determined largely by the amount of disputed over-assessment. Businesses that cannot afford to pay the tax have no viable appellate remedy to over-assessment.

The elimination of prepayment in the court of claims is particularly timely. The State has a substantial interest in obtaining quick court decisions regarding a range of disputed issues involving the Michigan Business Tax. These issues arise not only because the tax is new but also because the MBTA aggressively challenges a range of unique constitutional issues. Quick court decisions assist higher rates of compliance, improve tax administration, and, by settling disputes, make the state a more attractive business environment. There is little rationale for subjecting the range of MBT cases that will arise in the next few years to a backlog of residential and commercial property tax appeals in the tribunal.

Independence

The court of claims is widely regarded as independent from the Michigan Department of Treasury. Taxpayers and the department are subject to the same rules and receive the same consequences for failure to abide by the rules. The parties litigate independently of the court under well-established rules and have a degree of control in planning and litigation cost. Motion practice and hearings follow a regularized and transparent practice. Decisions are promptly issued.

The Michigan Tax Tribunal's independence is more complex. By Executive Order 1991-15, the tribunal was taken out of the Michigan Department of Treasury and placed in the Department of Commerce. Nevertheless, some inter-agency cooperation within the same administration can be expected. The degree of structural independence thus depends in large part on the separate treatment given the tax tribunal within the executive branch.⁵¹ If there is no independent source of advice on the tribunal (i.e., the State Court Administrative Office), the executive branch might naturally seek advice from the Department of Treasury, a larger



MICHIGAN

OFFICE OF THE AUDITOR GENERAL

AUDIT REPORT

PERFORMANCE AUDIT
OF THE

MICHIGAN TAX TRIBUNAL

DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

February 2010



THOMAS H. McTAVISH, C.P.A.
AUDITOR GENERAL

The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

– Article IV, Section 53 of the Michigan Constitution

Audit report information can be accessed at:
<http://audgen.michigan.gov>



Michigan
Office of the Auditor General
REPORT SUMMARY

Performance Audit

Report Number:
641-0207-08

Michigan Tax Tribunal

Department of Energy, Labor & Economic
Growth

Released:
February 2010

The Michigan Tax Tribunal is a quasi-judicial agency that resides for administrative purposes only within the Department of Energy, Labor & Economic Growth. The Tribunal consists of 7 members appointed by the Governor, with the advice and consent of the Senate, for a term of four years. The Tribunal's jurisdiction includes property tax appeals as well as nonproperty tax matters as provided by law. The Tribunal is divided into two components: the Entire Tribunal, which utilizes a formal hearing process, and the Residential Property and Small Claims Division, which employs an informal hearing process.

Audit Objective:

To assess the efficiency and effectiveness of the Tribunal's processing of tax appeals.

Audit Conclusion:

We concluded that the Tribunal was not efficient and effective in its processing of tax appeals. We noted one material condition (Finding 1) and three reportable conditions (Findings 2 through 4).

Material Condition:

The Tribunal had not established a process to ensure that it resolved tax appeals in an efficient and timely manner (Finding 1).

Reportable Conditions:

The Tribunal needs to enhance training for new Tribunal members and establish a continuing education program for Tribunal members and hearing officers (Finding 2).

The Tribunal had not fully analyzed the efficiency or administrative effectiveness of using hearing officers from the State Office of Administrative Hearings and Rules (SOAHR) (Finding 3).

The Tribunal was not successful in its efforts to establish an interagency agreement with SOAHR (Finding 4).

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Audit Objective:

To assess the effectiveness of the Tribunal's efforts to ensure that State agencies were provided notice of tax disputes that significantly affected School Aid Fund payments and State education tax revenues.

Audit Conclusion:

We concluded that the Tribunal's efforts to ensure that State agencies were provided notice of tax disputes that significantly affected School Aid Fund payments and State education tax revenues were moderately effective. We noted one reportable condition (Finding 5).

Reportable Condition:

The Tribunal had not established administrative rules of practice and procedure that required petitioners to serve

notice to an agency of the State regarding property tax appeals affecting School Aid Fund payments, State education tax revenues, and the State's property assessment process (Finding 5).

~ ~ ~ ~ ~

Agency Response:

Our audit report contains 5 findings and 6 corresponding recommendations. The Tribunal's preliminary response indicated that it agrees with all of the recommendations.

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A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: <http://audgen.michigan.gov>



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February 9, 2010

Ms. Patricia L. Halm, Chair
Michigan Tax Tribunal
and
Mr. Stanley F. Pruss, Director
Department of Energy, Labor & Economic Growth
Ottawa Building
Lansing, Michigan

Dear Ms. Halm and Mr. Pruss:

This is our report on the performance audit of the Michigan Tax Tribunal, Department of Energy, Labor & Economic Growth.

This report contains our report summary; description of agency; audit objectives, scope, and methodology and agency responses; comments, findings, recommendations, and agency preliminary responses; a history of appeals filed, presented as supplemental information; and a glossary of acronyms and terms.

Our comments, findings, and recommendations are organized by audit objective. The agency preliminary responses were taken from the agency's responses subsequent to our audit fieldwork. The *Michigan Compiled Laws* and administrative procedures require that the audited agency develop a formal response within 60 days after release of the audit report.

We appreciate the courtesy and cooperation extended to us during this audit.

AUDITOR GENERAL

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DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH**

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Description of Agency

The Michigan Tax Tribunal was created by Act 186, P.A. 1973. The Tribunal is a quasi-judicial agency consisting of 7 members appointed by the Governor, with the advice and consent of the Senate, for a term of four years. The statute requires that the members include at least 2 attorneys, 1 certified assessor holding the highest level of certification granted by the State assessors board, 1 professional real estate appraiser, and 1 certified public accountant. For administrative purposes only, the Tribunal resides within the Department of Energy, Labor & Economic Growth.

The Tribunal has exclusive and original jurisdiction over property tax appeals relating to assessment, valuation, rates, special assessments, allocation, equalization refund, or redetermination under State property tax laws. Also, the Tribunal adjudicates appeals of nonproperty tax matters as provided by law.

The Tribunal defines its mission as follows: "To provide all citizens with the opportunity to resolve state and local tax disputes at a fair and impartial hearing and to receive a timely written, quality decision that is based on the evidence submitted and the law."

The Tribunal is divided into two components: the Entire Tribunal* and the Residential Property and Small Claims Division*. The Entire Tribunal utilizes a formal hearing process to resolve more complex tax appeals. However, with the exception of principal residence and qualified agricultural property exemptions, any case may be filed in the Entire Tribunal. A formal record of the hearing is prepared, and attorneys typically represent the parties. The hearing is presided over by either a Tribunal member* or a hearing officer* appointed by the Tribunal to hold hearings.

The Residential Property and Small Claims Division employs an informal hearing process. Informal hearings may be presided over by a hearing referee*, a hearing officer, or a Tribunal member. A formal record of the hearing is not prepared, and parties usually represent themselves. The hearings typically require a half hour or less. Only certain cases may be filed in the Residential Property and Small Claims Division: disputes involving principal residence, poverty, and qualified agricultural property exemptions; disputes involving taxes other than property when the amount in dispute is

* See glossary at end of report for definition.

under \$20,000; and disputes involving property taxes when the State equalized value in contention is less than \$100,000.

For the fiscal year ended September 30, 2008, the Tribunal expended \$1.6 million and collected \$1.0 million in filing fees. In addition, in fiscal year 2007-08, the Tribunal was appropriated \$519,900 from corporation fees and security fees and recognized another \$773,618 in deferred revenue from filing fees that were collected in fiscal year 2006-07. Effective May 9, 2008, Act 126, P.A. 2008, amended Section 205.749 of the *Michigan Compiled Laws* to allow the Tribunal to deposit all fees collected in a newly created Michigan Tax Tribunal Fund, to be used solely for the operation of the Tribunal. Under the amendment, money remaining in the Fund at the close of the fiscal year does not revert to the General Fund.

As of September 30, 2009, the Tribunal had 18 full-time equated employees.

Audit Objectives, Scope, and Methodology and Agency Responses

Audit Objectives

Our performance audit* of the Michigan Tax Tribunal, Department of Energy, Labor & Economic Growth (DELEG), had the following objectives:

1. To assess the efficiency* and effectiveness* of the Tribunal's processing of tax appeals.
2. To assess the effectiveness of the Tribunal's efforts to ensure that State agencies were provided notice of tax disputes that significantly affected School Aid Fund payments and State education tax revenues.

Audit Scope

Our audit scope was to examine the Michigan Tax Tribunal's processing of tax appeals and related notice procedures. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit procedures, conducted from June 2008 through March 2009, included examination of Tribunal records and activities primarily for the period October 1, 2005 through September 30, 2008.

Audit Methodology

Our methodology included a preliminary review of the Tribunal's activities and functions. As part of our preliminary review, we interviewed various Tribunal staff and reviewed applicable statutes, policies and procedures, reports, management plans, and other reference materials.

To accomplish our first objective, we obtained and analyzed selected data regarding the Tribunal's processing of tax appeals. We reviewed the Tribunal's process for assigning cases to Tribunal members and hearing officers and procedures for scheduling, hearing, and deciding cases. We also reviewed the costs and benefits associated with

* See glossary at end of report for definition.

appointing hearing officers and contracting hearing referees to preside over cases on the Tribunal's behalf.

To accomplish our second audit objective, we obtained and reviewed the Tribunal's rules regarding notice to parties. Also, we evaluated the impact that select Tribunal decisions had on School Aid Fund payments and State education tax revenues.

When selecting activities or programs for audit, we use an approach based on assessment of risk and opportunity for improvement. Accordingly, we focus our audit efforts on activities or programs having the greatest probability for needing improvement as identified through a preliminary review. Our limited audit resources are used, by design, to identify where and how improvements can be made. Consequently, we prepare our performance audit reports on an exception basis.

Agency Responses

Our audit report contains 5 findings and 6 corresponding recommendations. The Tribunal's preliminary response indicated that it agrees with all of the recommendations.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion subsequent to our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require DELEG to develop a formal response to our audit findings and recommendations within 60 days after release of the audit report.

COMMENTS, FINDINGS, RECOMMENDATIONS,
AND AGENCY PRELIMINARY RESPONSES

PROCESSING OF TAX APPEALS

COMMENT

Background: The Michigan Tax Tribunal reported that 37,386 new tax appeals were filed by taxpayers during the audit period (October 1, 2005 through September 30, 2008). According to the Tribunal's docket reporting system, the Tribunal resolved 25,913 appeals during this period, which included new appeals filed (pending appeals) and appeals pending from prior years (backlogged appeals). Pending and backlogged appeals totaled 25,451 as of September 30, 2008.

Small Claims Cases

Of the 25,913 tax appeals resolved by the Tribunal during our audit period, 17,392 (67%) were small claims appeals*. Small claims appeals include the following: residential property and exemptions; nonresidential property and exemptions in which the State equalized value or taxable value in dispute is \$100,000 or less; and nonproperty tax matters and special assessment appeals of \$6,000 or less (\$20,000 or less effective May 2008). Such appeals consist of an informal hearing process of typically 30 minutes or less in which a formal record is not prepared and the parties usually represent themselves.

Entire Tribunal Cases

The remaining 8,521 (33%) tax appeals resolved by the Tribunal during our audit period consisted of the more complex Entire Tribunal cases. Entire Tribunal cases undergo a formal hearing process designed to resolve more complex appeals in which a formal record is prepared and attorneys typically represent the parties.

Dismissed, Settled, or Withdrawn Cases

Most tax disputes resolved by the Tribunal during our audit period did not require a hearing and an opinion and judgment. Of the 25,913 cases that the Tribunal completed during our audit period (17,392 small claims cases and 8,521 Entire Tribunal cases), 21,170 (82%) were dismissed, settled, or withdrawn prior to the Tribunal conducting a hearing and issuing an opinion and judgment. More significantly, during our three-year audit period, only 144 (2%) Entire Tribunal appeals actually required a hearing and an opinion and judgment in order to close the case.

* See glossary at end of report for definition.

During the most recent fiscal year of our audit period (fiscal year 2007-08), the Tribunal conducted a hearing and an opinion and judgment for only 21 Entire Tribunal cases.

Appeals Filed

During our audit period (fiscal years 2005-06 through 2007-08), appeals filed with the Tribunal totaled 8,898 for fiscal year 2005-06; 12,421 for fiscal year 2006-07; and 16,067 for fiscal year 2007-08 (see history of appeals filed, presented as supplemental information).

Audit Objective: To assess the efficiency and effectiveness of the Tribunal's processing of tax appeals.

Audit Conclusion: We concluded that the Tribunal was not efficient and effective in its processing of tax appeals. Our audit disclosed one material condition*. The Tribunal had not established a process to ensure that it resolved tax appeals in an efficient and timely manner (Finding 1).

Our audit also disclosed three reportable conditions* related to training for Tribunal members and hearing officers (Finding 2), use of hearing officers (Finding 3), and interagency agreement with the State Office of Administrative Hearings and Rules (SOAHR) (Finding 4).

FINDING

1. Resolution of Tax Appeals

The Tribunal had not established a process to ensure that it resolved tax appeals in an efficient and timely manner. As a result, the Tribunal's number of backlogged and pending appeals increased by 72%, from 14,824 in fiscal year 2005-06 to 25,451 in fiscal year 2007-08, which contributed to the significant delays in resolving taxpayers' appeals.

Section 205.751 of the *Michigan Compiled Laws* provides that a decision and opinion of the Tribunal shall be made within a reasonable period.

Although not binding on the Tribunal, by example, Michigan's trial courts are required by the State Court Administrative Office (SCAO) to develop and

* See glossary at end of report for definition.

implement caseflow management plans, including case processing goals, in accordance with Michigan Supreme Court Administrative Order No. 2003-7 and SCAO Model Local Administrative Order No. 22. The Orders establish the following standards for the timely resolution of cases that are heard in Michigan's trial courts:

Figure 1
SCAO Case Processing Goals for Michigan Trial Courts

Case Type	Percent Complete	Number of Months
General civil - District court	90%	within: 9 months
	98%	within: 12 months
	100%	within: 15 months
General civil - Circuit court	75%	within: 12 months
	95%	within: 18 months
	100%	within: 24 months
Appeals from administrative agencies	100%	within: 6 months
Summary civil (small claims)	100%	within: 4 months

Source: Michigan Supreme Court Administrative Order No. 2003-7.

Our review of the Tribunal's tax appeals process disclosed:

- a. The Tribunal had neither developed case processing goals nor established guidelines for the timely resolution of appeals.

Developing goals and establishing guidelines for the processing of cases would provide the Tribunal a basis on which to measure progress in the timely resolution of tax appeals.

On average, the Tribunal took 19 months to close a case completed during our audit period. The following table shows how long it took the Tribunal to close cases completed during our audit period and demonstrates the need for the

Tribunal to establish its own standards for case processing and the timely resolution of appeals:

Figure 2
Tribunal Cases Completed by Number of Months
For Fiscal Years 2005-06 Through 2007-08

Case Type	Cases Completed	Percent	Number of Months to Complete
Small claims	10,124	58%	12 months
	15,843	91%	24 months
	17,392	100%	116 months
Entire Tribunal	2,654	31%	12 months
	5,714	67%	24 months
	8,521	100%	142 months
Total	12,778	49%	12 months
	21,557	83%	24 months
	25,913	100%	142 months

- b. The Tribunal did not schedule cases for hearing in a timely manner.

Scheduling hearings in a timely manner helps to resolve cases in a timely manner. In addition, as observed by Tribunal members and staff, scheduling a case for hearing can be an incentive for parties to negotiate a settlement or other resolution prior to incurring the additional time and costs associated with litigation.

As of October 3, 2008, there were 7,428 appeals pending scheduling for a hearing. Of these cases, 4,469 (60%) were pending scheduling for more than six months, 683 (9%) were pending scheduling for more than one year, and 6 were pending scheduling for more than two years.

Although not binding on the Tribunal, SCAO Model Local Administrative Order No. 22 indicates that courts should adopt a scheduling policy whereby all

cases will be set in a manner that minimizes delay for the parties and ensures case progress so that pending cases are meeting established time guidelines.

- c. For cases in which a hearing was held, the Tribunal had not issued judgments and decisions within a timely period after holding the hearing.

After holding a hearing, judgments and decisions should be issued promptly while recollection remains high and the details of the case are most familiar in order to avoid inefficiencies in the completion of the case, such as having to reconstruct the case or review the file more intensely in order to refresh a memory regarding events in the case.

The Tribunal's records disclosed that, as of October 3, 2008, there were 188 appeals that had been heard by the Tribunal, which were awaiting only a judgment and decision. Of these appeals, 79 (42%) had been heard more than six months earlier; 39 (21%) had been heard more than one year earlier; 6 cases (3%) had been heard more than two years earlier; and 3 (2%) had been heard more than three years earlier.

- d. The Tribunal had not developed a plan to address its growing backlog of pending appeals.

The ongoing volume of cases being filed with the Tribunal each year, relative to the Tribunal's annual case output and corresponding backlog of pending appeals, necessitates that the Tribunal develop a plan to increase its annual output of cases through either improved efficiencies and/or additional resources.

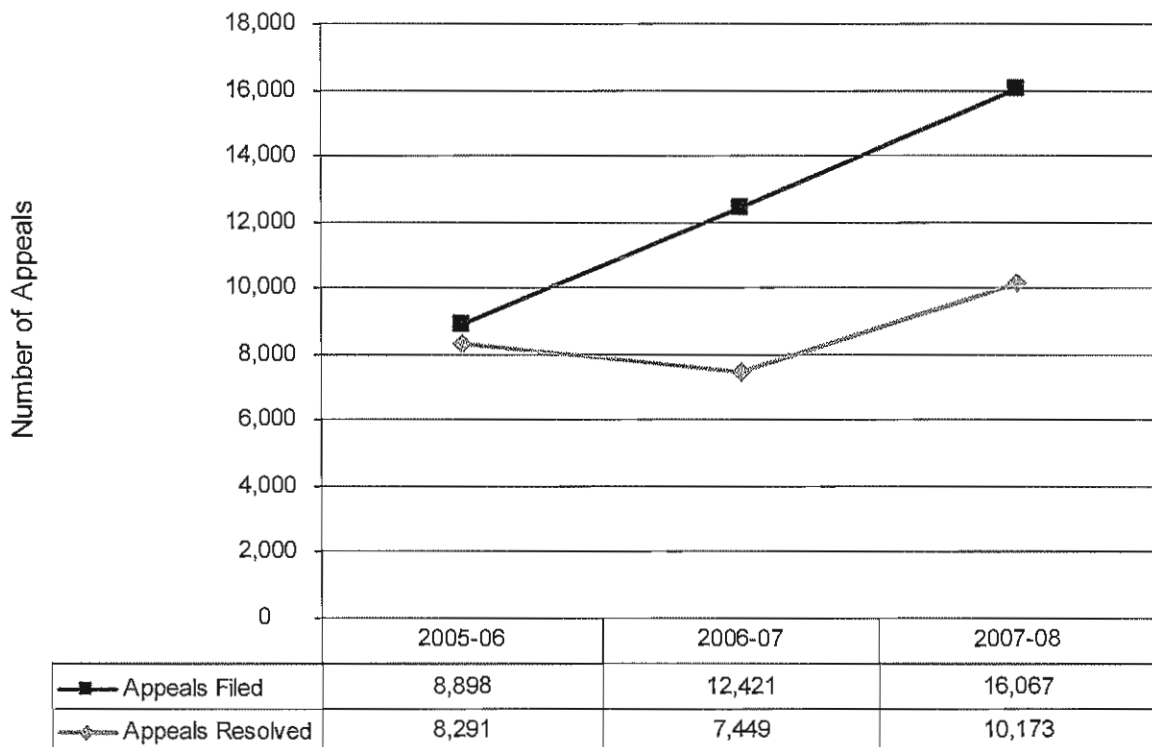
Our review of the Tribunal's volume of cases disclosed:

(1) Appeals Filed and Resolved

The number of cases that the Tribunal resolved annually during our audit period was not sufficient to keep pace with the number of appeals filed annually during the respective fiscal years (fiscal years 2005-06 through 2007-08).

As shown in Figure 3, the number of appeals filed at the Tribunal grew markedly during our audit period, while the resolution of those appeals lagged behind the volume of incoming cases:

Figure 3
 Appeals Filed and Resolved by Fiscal Year
 For Fiscal Years 2005-06 through 2007-08



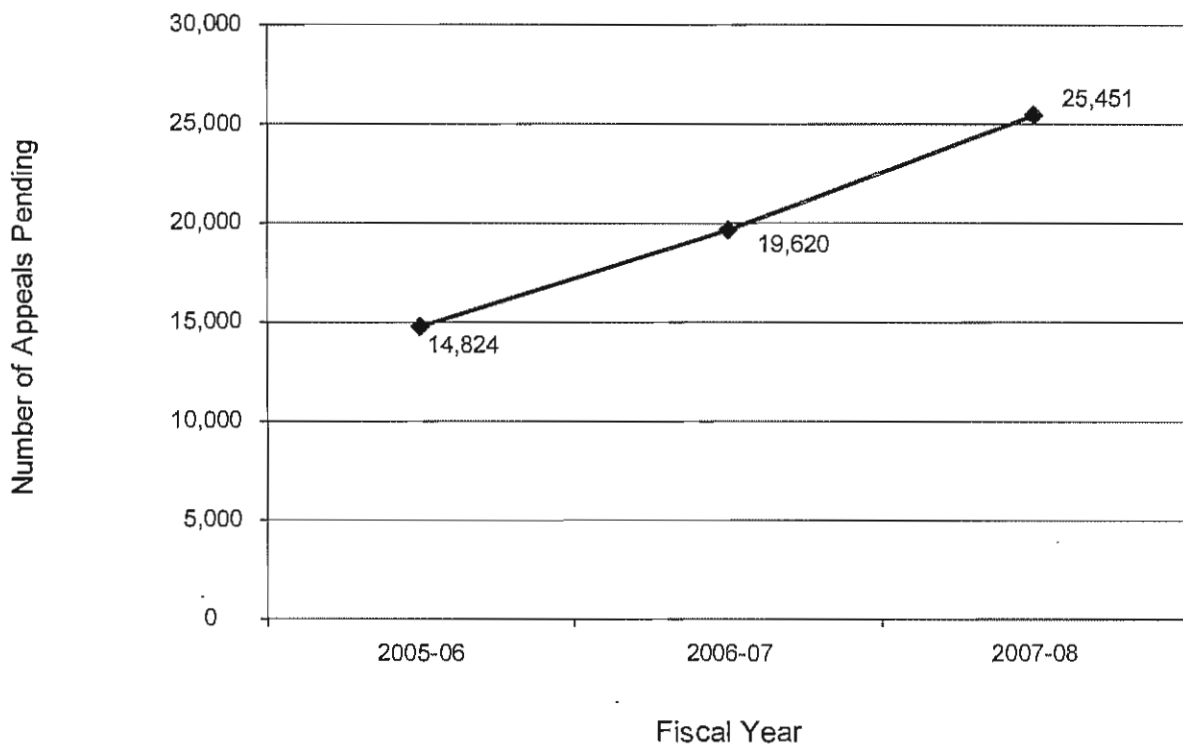
The Tribunal resolved 60% and 63% of its incoming cases filed in fiscal years 2006-07 and 2007-08, respectively. The Tribunal cannot address the increasing number of backlogged and pending appeals as long as it continues to take in substantially more cases each year than it is able to resolve.

(2) Backlogged and Pending Appeals

The Tribunal's number of backlogged and pending appeals continued to grow during our audit period, with the trend in volume of annual appeals filed relative to the number of appeals resolved being unmanageable.

As shown in Figure 3, the Tribunal resolved as many as 10,173 cases in one year during our audit period. However, as illustrated in Figure 4, the Tribunal's backlogged and pending appeals grew by 30% or more each year during our audit period and stood at 25,451 at the end of the audit period, which is nearly 2.5 times the highest annual case output generated by the Tribunal during our audit period:

Figure 4
Backlogged and Pending Appeals



While the Tribunal must dedicate resources to resolving prior year backlogged appeals, its efforts to resolve current year appeals on a timely basis are diminished.

Unless the Tribunal adopts a comprehensive and efficient process to address the current trend, the Tribunal's backlogged and pending appeals may more than double within the next five years to nearly 5 times the highest annual case output generated by the Tribunal during our audit period.

- e. The Tribunal had not established standards and procedures necessary to oversee the Tribunal members' work performance.

Establishing standards and procedures for the Tribunal members' work performance would assist the Tribunal to improve its efficiency in processing tax appeals by periodically evaluating the Tribunal members' work performance and productivity, identifying the training needs of members, and validating the reasonableness of established performance standards needed to facilitate improvement in the Tribunal's caseload production.

Our review disclosed:

- (1) The Tribunal had not established a standard protocol for the assignment of cases to the Tribunal members.

The Tax Tribunal Act sets forth the qualifications and experience necessary for appointment to the Michigan Tax Tribunal as an assessor, an appraiser, an attorney, a certified public accountant, or an at-large member. At completion of our fieldwork, the Tribunal consisted of 4 attorneys (2 attorney members and 2 at-large members), 1 assessor, and 1 certified public accountant.

As a multidisciplinary body, the Tribunal recognizes that all of its members may not necessarily be qualified to hear every type of case. However, the Tribunal had not established a standard protocol for the assignment of cases to Tribunal members of the various disciplines or among those members possessing similar credentials. To establish a fair and measurable method of case assignment for the Tribunal members, the Tribunal needs a method of case assignment that maximizes the productivity and performance of Tribunal members across various professional disciplines, while providing accountability through measurable results.

- (2) The Tribunal had not devised standards for the caseload production expected from Tribunal members.

The Tribunal assigned cases to Tribunal members without establishing tangible dates for when cases should be completed or specific amounts of time needed to complete the cases.

To effectively evaluate work performance and identify training needs, the Tribunal needs to adopt measurable expectations for the Tribunal members' productivity and caseload production.

- (3) The Tribunal had not established a process to efficiently evaluate the work performance and productivity of individual Tribunal members.

The efficient evaluation of Tribunal member work performance and productivity is needed to formulate work performance standards, as well as to enforce adopted performance standards and identify training needs.

RECOMMENDATION

We recommend that the Tribunal establish an efficient process for resolving tax appeals.

AGENCY PRELIMINARY RESPONSE

The Tribunal agrees. The Tribunal stated that it is exploring the feasibility of establishing meaningful case processing goals and guidelines for the timely resolution of appeals. However, the Tribunal indicated that without additional resources, it does not believe that establishing these goals and guidelines will achieve the desired result.

The Tribunal stated that its process is unlike that of a circuit court where there are no fixed deadlines and appeals may be filed year-round. In the Entire Tribunal Division, valuation appeals must be filed each year by May 31 and appeals must be filed in the Residential Property and Small Claims Division by July 31. The result, according to the Tribunal, is a massive ebb and flow of appeals for which resolution efficiency cannot be accurately gauged and managed merely by goals and guidelines; thus, additional resources are required.

The Tribunal also stated that during the audit period, it had changed its procedure for scheduling Entire Tribunal appeals to a procedure similar to that utilized by circuit courts. The Tribunal indicated that this new procedure did not work, and as

of May 2009, the Tribunal reverted back to its previous scheduling procedure. The Tribunal further stated that it will continue to monitor the current scheduling practices to ensure timeliness.

In addition, the Tribunal stated that it will develop goals for issuing decisions timely after a hearing is held and indicated that it had taken the following steps to increase the number of appeals resolved annually:

- (1) The Tribunal and SOAHR have reached an agreement wherein hearing referees are hired to hear small claims appeals. The Tribunal stated that this has significantly increased the number of resolved small claims appeals.
- (2) Two hearing officers are now hearing Entire Tribunal appeals. The Tribunal stated that this had helped to reduce the number of pending Entire Tribunal appeals.
- (3) The Tribunal stated that it has hired three limited-term employees solely for the purpose of docketing appeals and processing small claims opinions.

The Tribunal further stated that it agrees that criteria for evaluating the members must be established and that evaluations should occur on an ongoing basis. The Tribunal indicated that it would develop a standard protocol for the assignment of cases to Tribunal members. The Tribunal also indicated that it has established caseload production standards for small claims appeals and is working to establish standards for Entire Tribunal appeals. The Tribunal also stated that it agrees that more could be done to collect the data needed to evaluate the work performance of each Tribunal member but, in order for more to be done in this area, the Tribunal's docketing system would have to be replaced by a case management system.

FINDING

2. Training for Tribunal Members and Hearing Officers

The Tribunal needs to enhance training for new Tribunal members and establish a continuing education program for Tribunal members and hearing officers.

Training and continuing education in both the procedural and substantive aspects of the Tribunal's responsibilities would promote the consistent application of

complex tax law and assessment practices by Tribunal members and hearing officers alike, thus enhancing the Tribunal's efforts in the efficient performance of its duties.

The jurisdiction of the Tribunal is diverse and widespread. For example, Section 205.731 of the *Michigan Compiled Laws* provides that the Tribunal has exclusive and original jurisdiction over all assessment, valuation, rates, special assessments, allocation, and equalization, as well as refund, credits, or redetermination of taxes levied under the property tax laws of the State. Likewise, pursuant to Section 205.22 of the *Michigan Compiled Laws*, the Tribunal also shares concurrent jurisdiction over nonproperty tax appeals involving taxes levied by the Michigan Department of Treasury, including individual; business; sales, use and withholding; tobacco products; motor fuel; and oil and natural gas severance taxes.

In addition, the Tribunal's statutory design requiring that the Tribunal members be from a diverse background of professions and disciplines necessitates both introductory and ongoing training activity. For example, the majority of the Tribunal's cases involve property tax and typically involve the assessment and valuation of real and personal property. However, only 2 of the Tribunal's 7 members are required to have background in the valuation or assessment of property (the assessor and appraiser members). Similarly, the Tribunal hearings routinely require members to rule on legal matters, such as court procedure, evidence, and statutory construction. However, only 2 of the Tribunal's 7 members are required to be attorneys.

Our review disclosed:

- a. The Tribunal's training and continuing education did not provide Tribunal members sufficient familiarity with procedural, evidentiary, and substantive areas of the law in order to preside over hearings of various complexity and duration.
- b. The Tribunal's training and continuing education did not provide Tribunal members and hearing officers sufficient familiarity in taxation to hear cases involving the specialized area of taxation law, including a diverse assortment of taxes pursuant to the Revenue Act (Sections 205.1 - 205.3 of the *Michigan*

Compiled Laws) as well as the General Property Tax Act (Sections 211.1 - 211.157 of the *Michigan Compiled Laws*).

- c. The Tribunal's training and continuing education did not provide Tribunal members and hearing officers sufficient familiarity with appraisal and assessment practices related to the majority of the Tribunal cases involving the vast and sometimes complex area of property tax law. These cases often include matters involving the valuation, assessment, and appraisal of some of the most complex and unique industrial, commercial, residential, and agricultural properties in the State.

RECOMMENDATION

We recommend that the Tribunal enhance training for Tribunal members and establish a continuing education program for Tribunal members and hearing officers.

AGENCY PRELIMINARY RESPONSE

The Tribunal agrees and stated that it will seek additional training opportunities and develop continuing education programs as the budget permits.

FINDING

3. Use of Hearing Officers

The Tribunal had not fully analyzed the efficiency or administrative effectiveness of using hearing officers from SOAHR.

An analysis of using hearing officers from SOAHR compared with the Tribunal appointing hearing officers and contracting hearing referees directly would help ensure that taxpayer hearings and proposed decisions are prepared for Tribunal members in the most efficient and administratively effective manner.

Sections 205.726 and 205.761, respectively, of the *Michigan Compiled Laws* authorized the Tribunal to appoint hearing officers and to contract hearing referees to conduct hearings on the Tribunal's behalf. Based on the hearings, hearing officers and hearing referees submit proposed decisions, which are considered and decided ultimately by Tribunal members. However, effective March 27, 2005, Executive Reorganization Order No. 2005-1, codified at Section 445.2021 of the

Michigan Compiled Laws, transferred the Tribunal's authority to appoint hearing officers and contract hearing referees to SOAHR.

Subsequently, the Tribunal was required to use SOAHR employees exclusively to conduct all of its tax hearings, except those heard directly by Tribunal members. Department of Energy, Labor & Economic Growth's (DELEG's) appropriation included the costs of salaries, fringe benefits, overhead, and other direct expenditures incurred by SOAHR in conducting hearings on the Tribunal's behalf.

From fiscal year 2005-06 through fiscal year 2007-08, DELEG reported that SOAHR incurred costs of \$1.9 million to conduct 6,502 hearings on the Tribunal's behalf. SOAHR's annual costs incurred to conduct hearings on the Tribunal's behalf totaled \$557,438, \$670,196, and \$648,391, which translated to a per case cost of \$524, \$801, and \$472, for fiscal years 2005-06, 2006-07, and 2007-08, respectively. Prior to the implementation of Executive Reorganization Order No. 2005-1, the Tribunal contracted hearing referees at a per case cost of only \$70.

If the Tribunal had been able to use the \$1.9 million to directly contract for hearing referees, either of the following outcomes would have been possible:

- a. Based on a per case cost of \$70, the Tribunal could have contracted for hearing referees to hear a total of 26,800 cases instead of hearing only 6,502 cases. Such action would have reduced the Tribunal's backlog by an additional 20,298 cases during fiscal years 2005-06 through 2007-08.
- b. Based on a per case cost of \$70, the Tribunal could have contracted hearing referees to hear the equivalent number of cases assigned to SOAHR (6,502) for only \$455,140, thus saving \$1.4 million in hearings costs during fiscal years 2005-06 through 2007-08.

RECOMMENDATIONS

We recommend that the Tribunal fully analyze the efficiency and administrative effectiveness of using hearing officers from SOAHR.

If the Tribunal's analysis supports the efficiency and effectiveness of alternatives to the use of hearing officers from SOAHR, we also recommend that the Tribunal seek the means to achieve such alternatives.

AGENCY PRELIMINARY RESPONSE

The Tribunal agrees. The Tribunal stated that it completed an analysis of the efficiency and administrative effectiveness of using hearing officers from SOAHR and, after completing this analysis in February 2009, the Tribunal reached agreement with SOAHR consistent with Executive Reorganization Order No. 2005-1 wherein SOAHR agreed to contract with hearing referees to hear small claims appeals. The Tribunal also stated that, because hearing costs have been significantly reduced, the Tribunal has been able to increase the number of small claims appeals scheduled for hearing each month from approximately 200 to 1,000.

FINDING

4. Interagency Agreement With SOAHR

The Tribunal was not successful in its efforts to establish an interagency agreement with SOAHR. As a result, the timely and effective delivery of hearing services and the assignment of personnel were not fulfilled in accordance with the requirements of Executive Reorganization Order No. 2005-1.

SOAHR was established effective March 27, 2005 under Executive Reorganization Order No. 2005-1 to consolidate the State's administrative hearing functions, which included Tribunal hearing officers and hearing referees. Section II of Executive Reorganization Order No. 2005-1 provides:

To assure the timely and effective delivery of services related to administrative hearing functions . . . and the assignment of personnel to perform administrative hearing functions with expertise in the appropriate subject areas and the law, the SOAHR shall develop an interagency agreement relating to the provision of services with each principal department that includes a Department or Agency affected by the transfers under Section III.

Our review disclosed the following effects on the Tribunal's ability to effectively manage its cases because of the absence of an interagency agreement between the Tribunal and SOAHR:

- a. The Tribunal was limited in its ability to select which SOAHR employees were assigned to conduct the Tribunal hearings.

Executive Reorganization Order No. 2005-1 requires interagency agreements to ensure the assignment of personnel to perform administrative hearing functions who have expertise in the appropriate subject areas and the law.

SOAHR employs a panel of attorneys who are experts in State administrative law to hear cases on behalf of State agencies, including the Tribunal. However, the background, training, and experience of SOAHR's employees varied considerably and did not necessarily include tax law. The Tribunal hearings may involve complex matters of tax law that require a considerable level of expertise to perform properly and cost-effectively. Conversely, the Tribunal hearings may also involve relatively straightforward tax appeals in its Residential Property and Small Claims Division. While small claims cases may not require as high of a level of expertise in taxation, the corresponding costs of employees' salaries may be unnecessarily high, especially when SOAHR assigns and incurs costs for highly compensated legal experts from other fields of law unrelated to taxation.

The Tribunal's inability to impact who hears its cases may affect both the effectiveness of the hearings and proposed decisions rendered, as well as the administrative efficiencies to be gained from opting for lower cost contracted hearing referees when deemed practical, as described in Finding 3.

- b. The Tribunal was limited in its ability to impose standards for the preparation of proposed decisions submitted by SOAHR employees to the Tribunal members for consideration and decision because SOAHR employees reported to SOAHR management, not the Tribunal. The Tribunal's ability to enforce uniformity in the work product of SOAHR employees helps to limit the number of proposed decisions that the Tribunal must rehear or modify, which improves efficiencies in the processing of cases. The Tribunal informed us that a lack of uniformity in SOAHR's proposed decisions limited their usefulness and resulted in increased work modifying proposed decisions and rehearing cases.

RECOMMENDATION

We recommend that the Tribunal renew its efforts to establish an interagency agreement with SOAHR.

AGENCY PRELIMINARY RESPONSE

The Tribunal concurs and informed us that it is in the process of negotiating an interagency agreement with SOAHR.

NOTICE OF TAX DISPUTES THAT SIGNIFICANTLY AFFECTED SCHOOL AID FUND PAYMENTS AND STATE EDUCATION TAX REVENUES

COMMENT

Audit Objective: To assess the effectiveness of the Tribunal's efforts to ensure that State agencies were provided notice of tax disputes that significantly affected School Aid Fund payments and State education tax revenues.

Audit Conclusion: We concluded that the Tribunal's efforts to ensure that State agencies were provided notice of tax disputes that significantly affected School Aid Fund payments and State education tax revenues were moderately effective. Our audit disclosed one reportable condition related to notice of property tax appeals affecting the State (Finding 5).

FINDING

5. Notice of Property Tax Appeals Affecting the State

The Tribunal had not established administrative rules of practice and procedure that required petitioners to serve notice to an agency of the State regarding property tax appeals affecting School Aid Fund payments, State education tax revenues, and the State's property assessment process.

The State may have an interest in property tax appeals which affect the State's budget, including expenditures (School Aid Fund) and revenues (State education tax). The State may also have an interest in property tax appeals affecting the State's property assessment process supervised by the State Tax Commission. Without being served notice of such appeals, the State may be denied the

opportunity to contest such cases in order to defend the State's interests and to prepare for the outcome of a settlement or a Tribunal decision.

Section 205.732 of the *Michigan Compiled Laws* empowers the Tribunal to promulgate rules for practice and procedure before the Tribunal. *Michigan Administrative Code* R 205.1208 requires that tax appeals be served upon the local unit that assessed the amount being appealed. A copy of the tax appeal is also required to be delivered to the local school district, county equalization director, and county clerk, whose jurisdictions may be affected by the results of a tax appeal.

However, a copy of the tax appeal is not required to be delivered to a relevant agency of the State. State government is also impacted by the results of property tax appeals, including the following:

a. State Education Tax

Section 211.903 of the *Michigan Compiled Laws* provides for a 6-mill State education tax on property. This tax is based on the taxable value of assessed property and is deposited in the School Aid Fund for distribution to the State's schools. State revenues decline when property tax appeals result in reductions to the taxable value of property upon which the State education tax is based.

b. School Aid Fund

School Aid Fund payments are impacted when property tax appeals result in reductions to the taxable value of assessed property. Section 388.1620 of the *Michigan Compiled Laws* requires the State to fund the difference between a school district's foundation allowance and what is generated by the local school millage. When taxable value declines, the revenue generated by the local school millage also declines, which may increase the amount of school aid that the State must pay out of the School Aid Fund to meet the school district's foundation allowance.

c. State Tax Commission

Property assessments may be impacted by decisions rendered by the Tribunal in property tax appeals. The State's property assessment process is overseen by the State Tax Commission. Section 211.150 of the *Michigan Compiled Laws* provides that the State Tax Commission is responsible for supervision of local assessing officers and investigation of claims of improper property tax assessment. However, in property tax appeals, the Tribunal is responsible for making its own determination of a property's taxable value pursuant to Section 27a of the General Property Tax Act.

Property tax appeals may impact the State even more significantly in total dollars than the other parties who are required by the Tribunal's rules to be served notice. For example, as illustrated in the following chart, three recently resolved property tax appeals cost the State more in lost revenue and increased expenditures than any of the other principal governmental units or school districts affected:

Dow Chemical and Midland Cogeneration Venture Cases
Property Tax Appeals for Tax Years 1997 - 2007
Dollar Impact on Public Schools and County, City, and State Governments

Case Name	Midland Public Schools	Midland County	City of Midland	State of Michigan
Dow Chemical Tax Years 1997 - 2006	\$2,469,048	\$5,633,250	\$8,716,445	\$15,403,259
Midland Cogeneration Venture Tax Years 1997 - 2000	4,021,806	7,730,351	13,682,885	21,009,106
Midland Cogeneration Venture Tax Years 2001 - 2007	2,997,671	19,662,026	36,301,727	60,250,621
Total	\$9,488,525	\$33,025,627	\$58,701,057	\$96,662,985

And yet, the Tribunal had not established its administrative rules of practice and procedure to ensure that the entity most impacted by the property tax appeals (the State of Michigan) received notice of the appeals.

RECOMMENDATION

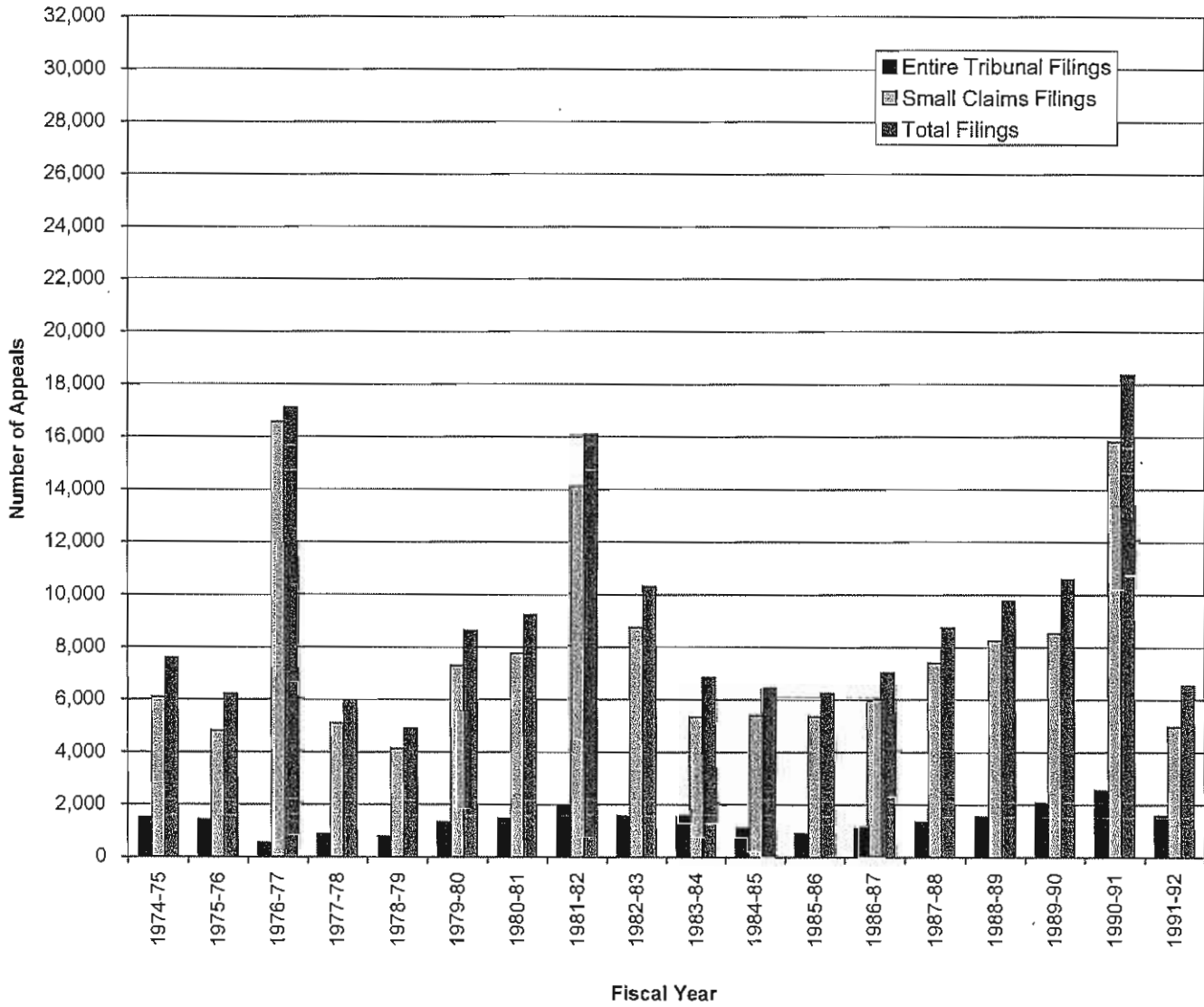
We recommend that the Tribunal establish administrative rules of practice and procedure that requires petitioners to serve notice to an agency of the State regarding property tax appeals affecting School Aid Fund payments, State education tax revenues, and the State's property assessment process.

AGENCY PRELIMINARY RESPONSE

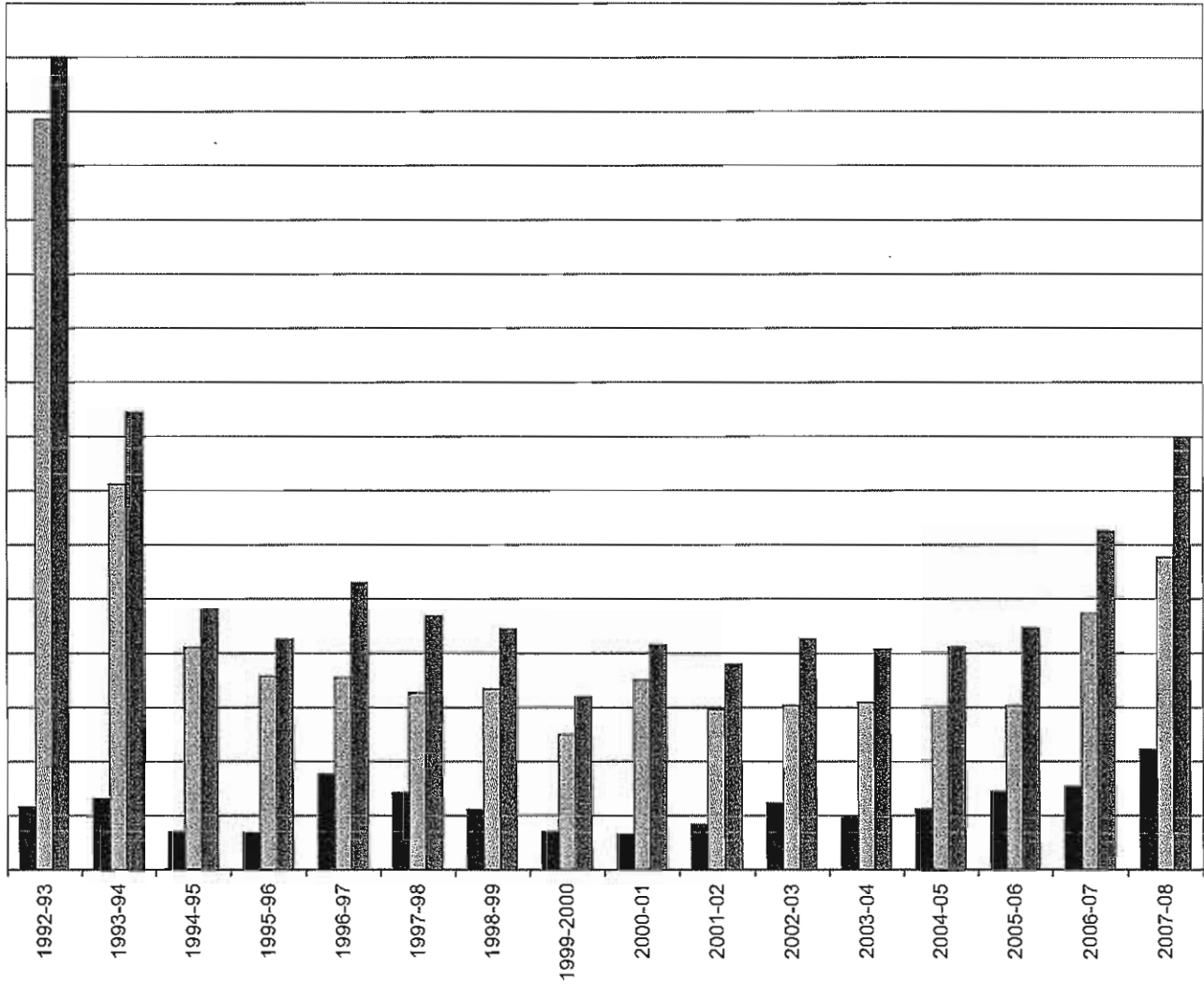
The Tribunal agrees. On October 17, 2009, the Tribunal's Rules (*Michigan Administrative Code R 205.1208*) were amended to add the State Treasurer as an official upon whom a petition must be served to commence a property tax appeal.

SUPPLEMENTAL INFORMATION

MICHIGAN TAX TRIBUNAL
History of Appeals Filed
Fiscal Years 1974-75 through 2007-08



Source: Michigan Tax Tribunal.

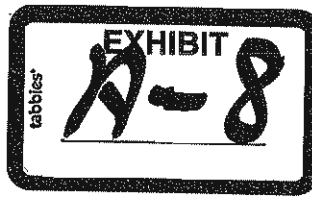


Glossary of Acronyms and Terms

DELEG	Department of Energy, Labor & Economic Growth.
effectiveness	Success in achieving mission and goals.
efficiency	Achieving the most outputs and outcomes practical with the minimum amount of resources.
Entire Tribunal	The Tribunal component that utilizes a formal hearing process designed to resolve more complex appeals, for which a formal record is prepared and attorneys typically represent the parties.
hearing officer	An employee appointed to hold hearings and propose decisions for consideration and decision by one or more Tribunal members.
hearing referee	A qualified person other than an employee who is contracted to hold hearings in the Tribunal's Residential Property and Small Claims Division and propose decisions for consideration and decision by one or more Tribunal members.
material condition	A reportable condition that could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
performance audit	An economy and efficiency audit or a program audit that is designed to provide an independent assessment of the performance of a governmental entity, program, activity, or function to improve program operations, to facilitate decision making by parties responsible for overseeing or initiating corrective action, and to improve public accountability.

reportable condition	A matter that, in the auditor's judgment, falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the objectives of the audit; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.
Residential Property and Small Claims Division	The Tribunal component that handles appeals limited to disputes involving residential property, disputes involving exemptions, tax disputes of less than \$20,000, or disputes of property value of less than \$100,000. These appeals involve an informal hearing process of typically 30 minutes or less for which no formal record is prepared and the parties usually represent themselves.
SCAO	State Court Administrative Office.
small claims appeals	Appeals that are heard in the Residential Property and Small Claims Division.
SOAHR	State Office of Administrative Hearings and Rules.
Tribunal member	An individual appointed by the Governor, with the advice and consent of the Senate, to hear and decide proceedings under the Tribunal's jurisdiction.





Businesses, homeowners appeal Michigan tax bills

Businesses, homeowners appeal Michigan tax bills as they seek relief in difficult economy

AP Associated Press

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On Saturday May 29, 2010, 5:12 pm EDT

DETROIT (AP) -- A record number of Michigan property owners are appealing their property tax assessments as small-claim homeowners and high-stakes businesses seek relief in a difficult economy.

The wave of appeals to the Michigan Tax Tribunal could decimate the budgets of local governments. The deadline for larger appeals above \$20,000 is Tuesday, the Detroit Free Press reported.

"Since Proposal A was adopted, this is the highest we've ever been," said Patti Halm, chairwoman of the Tax Tribunal. Proposal A, passed by voters in 1994, limited the annual increase of taxable values.

New case filings more than doubled between 2006 and 2009, and the current case load is 32,000 for claims of less than \$20,000 and 11,100 for larger cases. The appeals also could cut funding for schools, parks and libraries.

More than 11,000 commercial and industrial property owners are waiting to have their cases heard. Appeals can take several years to be heard, but property owners who succeed are entitled to refunds of any excess taxes paid, plus interest.

Some legislators want to speed the appeals process so property owners get swifter word on decisions.

"These waits are unacceptable," said state Rep. Kevin Daley, R-Attica, sponsor of a bill to require a hearing within one year of an appeal.

Others, however, say arbitrary deadlines could trample due process rights.

For many commercial and industrial property owners, appealing tax assessments is almost required to control costs, said David Nykanen, a Birmingham real estate lawyer who specializes in tax appeals.

"If your neighbor does it and gets a reduction, he now has a competitive advantage over you," Nykanen said. "My case load intake the past two years has been at record levels."

Information from: Detroit Free Press, <http://www.freep.com>

EXHIBIT B

State Bar of Michigan – Taxation Section

Outline of Section's 2010 Michigan Tax Tribunal Reform Proposed Legislation (With Revisions to Section's 2008 Proposal Highlighted)

205.721a Tribunal advisory committee; appointment, qualifications, and terms of members; quorum; compensation; staff and offices; powers and duties of committee.

Sec. 21a.

(1) The governor shall appoint a 7-member tribunal advisory committee. The committee shall consist of attorneys who have experience in the area of state and local taxation. The committee may also appoint qualified individuals to serve as special hearing referees from time to time on a contract or employment basis and each such individual shall be subject to periodic performance evaluation:

(2) Members of the committee shall be attorneys of the state bar of Michigan, of which 2 shall be members of the taxation section of the state bar of Michigan, 1 shall be a member of the real property law section of the state bar of Michigan, 1 shall be a member of the public corporation section of the state bar of Michigan, 1 shall be a member of the Michigan association of municipal attorneys, 1 shall be an employee of the Michigan department of treasury and 1 shall be a member of the Michigan association of certified public accountants.

(2A) The special hearing referees are not required to be attorneys but no person shall be appointed as a special hearing referee unless at the time of appointment the individual has substantial experience in the area of state and local taxation.

(2B) All proceedings for which the tribunal has exclusive and original jurisdiction provided by law shall be conducted by one or members of the committee, including any appeals from assessments, decisions or orders of the Treasury Department relating to any tax administered by the department, except the following property tax cases may be conducted by a special hearing referee assigned by the Chief Judge:

(a) Assessment Disputes - Valuation Cases: 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 this state involving real or personal property if the State Equalized Value is not more than \$100,000 [or other threshold amount] in disputed value;

(b) Assessment Disputes - Non-Valuation cases: Any proceeding involving issues other than dispute as to the State Equalized Value may be assigned by the Chief Judge based on the complexity of the issues involved and the ability of the special hearing

referee, including, but not limited to, experience making a record in a tribunal case suitable for judicial review.

(3) Members shall be appointed for terms of 4 years except that of the members first appointed, 3 shall be appointed for terms of 2 years, 2 shall be appointed for terms of 3 years, and 2 shall be appointed for terms of 4 years. A member shall not serve beyond the expiration of his or her term. The initial members shall be appointed not later than July 1, 2009.

(5) A quorum shall consist of 5 members. All business of the committee shall be conducted by not less than a quorum.

(4) Members of the tribunal advisory committee shall serve without compensation, but shall be reimbursed for all necessary expenses in connection with the discharge of their official duties as members of the committee.

(5) Staff and offices for the committee shall be provided by the department of labor and economic growth.

(6) The committee shall have the powers and perform the duties provided for under sections 21b and 21c, and 22.

205.721b Development of written examination; administration of written examination to applicants for position of tax tribunal member; interviews; appointment of qualified applicants; pamphlets.

Sec. 21b.

(1) The tribunal advisory committee, in consultation with the tax tribunal, shall develop a written examination for applicants with less than 5 years experience as an attorney in the field of state and local taxation. Such examination may be administered to applicants for the position of tax tribunal member in order to determine the applicant's ability and knowledge with regard to state and local taxation in the following areas:

- (a) Knowledge of the tax tribunal act.
- (b) Knowledge of the general property tax act, the revenue act and all tax acts administered under the revenue act.
- (c) Knowledge of the methods of assessment and valuation of real and personal property.
- (d) Skills with regard to fact finding.
- (e) The Michigan rules of evidence.
- (f) Skills with regard to the legal opinion writing.

(2) An applicant for the position of tax tribunal member, including those persons who were employed as tax tribunal members under this act on or before May 31, 2009, who successfully completes the examination provided for under subsection (1) or who has not less than 5 years experience as an attorney in the field of state and local taxation shall be

interviewed by the tribunal advisory committee for the position of tax tribunal member. To meet the requirement of 5 years' legal experience as an attorney in the field of state and local taxation, an applicant must document to the tribunal advisory committee a period of time totaling 5 years during which the applicant met 1 of the following criteria:

(a) A significant portion of the applicant's personal practice has been in active state and local tax practice.

(b) Service as a member of the tax tribunal.

(3) The tribunal advisory committee, after completing personal interviews of the eligible applicants, shall determine which of the applicants are considered qualified for the position of tax tribunal member. The personal interviews shall be used to determine the applicant's suitability for the position, especially with regard to his or her objectivity.

(4) The governor shall appoint only an applicant determined to be qualified by the tribunal advisory committee as a tax tribunal member for each available position pursuant to section 22.

(5) The department of labor and economic growth may develop pamphlets to assist those persons who desire to take the examination for tax tribunal member.

205.721c Evaluating performance of tax tribunal member and tax tribunal; frequency; criteria; report; response.

Sec. 21c.

(1) The tribunal advisory committee shall evaluate the performance of each tax tribunal member at least once every 2 years. The evaluation shall be based upon at least the following criteria:

(a) The rate of affirmance by the Court of Appeals of the tax tribunal member's opinions and orders.

(b) Productivity including reasonable time deadlines for disposing of cases.

(c) Manner in conducting hearings.

(d) Knowledge of rules of evidence as demonstrated by transcripts of the hearings conducted by the tax tribunal member.

(e) Knowledge of the law.

(f) Evidence of any demonstrable bias against particular taxpayers, treasury officials, representatives or attorneys.

(g) Written surveys or comments of all interested parties. Information obtained under this subdivision shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) The tribunal advisory committee in consultation with the tax tribunal shall evaluate the performance of the tribunal at least once every 2 years. The evaluation shall include an evaluation of the following criteria:

- (a) The management by the chief clerk and senior staff of the tax tribunal.
- (b) The productivity of tax tribunal staff.
- (c) The productivity and conduct of contract referees and administrative law judges.
- (d) The adequacy of technology, budget, salary of tribunal members and other resource needs.
- (e) The adequacy of the administrative rules or statutes.
- (f) Evidence of any demonstrable bias against particular taxpayers, treasury officials, representatives or attorneys.
- (g) Written surveys or comments of all interested parties. Information obtained under this subdivision shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) Upon completing an evaluation under this section, the tribunal advisory committee shall submit a written report including any supporting documentation to the governor regarding that evaluation which may include recommendations with regard to 1 or more of the following:

- (a) The promotion, suspension, removal or additional training or education of tribunal members, contract referees, administrative law judges and staff.
- (b) The recommendation of any budgetary, rule, statutory or other reform.

(4) The governor shall respond in writing to the committee regarding the action taken in response to the report of the committee.

205.722 Tax tribunal members; establishment; appointment, qualifications, and terms of members; designation of chairperson; vacancy; reappointment; removal; powers and duties of chairperson; duties of members; term of chairperson; compensation of members; employment of staff; tribunal as independent body; powers and duties of tribunal; rules; assignment and reassignment of member; office space.

Sec. 22.

(1) The tribunal is established as an autonomous entity in the department of labor and economic growth. The tribunal shall consist of 9 members appointed by the governor with the advice and consent of the senate. The governor shall designate 1 of the appointees as the member that will be chairperson. A person shall not be appointed to the tribunal who has not been recommended by the tribunal advisory committee. All members of the tribunal shall be members of the state bar of Michigan.

(2) The members of the tribunal shall be appointed for terms of 4 years. A vacancy caused by the expiration of a term shall be filled in the same manner as the original appointment. A member shall not serve beyond the expiration of his or her term unless the tribunal advisory committee fails to submit a recommendation to the governor before the expiration of the term. A member may be reappointed. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the balance of the unexpired term. A member of the tribunal may be removed by the governor for good cause which shall be explained in writing to the tribunal member. Good cause for removal shall include, but not be limited to, lack of productivity or other neglect of duties.

(3) The governor may designate a member of the tribunal as the chairperson upon a vacancy occurring in that position. The chairperson of the tribunal shall have general supervisory control of and be in charge of the employees of the tribunal and the assignment and scheduling of the work of the tribunal. Whenever the tribunal trial docket becomes congested or a tribunal member is absent, disqualified or for any other reason unable to perform his or her duties as tribunal member, the chairperson may select temporary members to serve for not more than 6 months in any 2-year period from a list maintained by the tribunal advisory committee. The list shall be composed of persons determined qualified by the tribunal advisory committee who are former or retired tax tribunal members, or former or retired tax tribunal administrative law judges. A temporary member selected by the chairperson shall have the same powers and duties as an appointed member under this act. The chairperson may also establish productivity standards that are to be adhered to by employees of the tribunal, the tribunal, and individual members. Each member of the tribunal shall devote full time during business hours to the duties of his or her office and shall not engage in gainful employment or business, nor hold another office or position of profit in government. Notwithstanding, a tribunal member may own passive interest in business entities and earn income from teaching or scholarly activities to the extent those activities do not detract from the dignity of the office and are approved by the tribunal advisory committee. Each member of the tribunal shall personally perform the duties of the office in a manner, at locations and during the hours generally worked by officers and employees of the department of labor and economic growth.

(4) The chairperson of the tribunal shall serve as chairperson at the pleasure of the governor.

(5) Each member of the tribunal shall receive an annual salary and shall be entitled to necessary traveling and other expenses incurred in the performance of official duties subject to the standardized regulations of the state.

(6) The tribunal may employ the staff it considers necessary to be able to perform its duties under this act which may include legal assistants for the purpose of legal research and otherwise assisting the tribunal and individual members of the tribunal, and hearing referees to conduct hearings in the small claims division.

(7) The tribunal is an independent body with the powers and duties as provided for under this act. The tribunal may promulgate rules on administrative hearing procedures for purposes under this act.

(8) The chairperson of the tribunal may assign and reassign tax tribunal members to hear cases at locations in this state.

(9) A tribunal member ~~or special hearing referee~~ may disqualify himself or herself on his or her own motion in any matter, and may be disqualified for any of the causes specified in chapter two of the Michigan court rules of 1985.

(10) If a tribunal members ~~or special hearing referee~~ violates the Code of Judicial Conduct or similar code applicable to administrative law judges or fails to render a decision within the prescribed time period, either party may, after consultation with the tribunal advisory committee, petition the circuit court for Ingham County for superintending control.

(11) The department of labor and economic growth shall provide suitable office space for the tribunal, tribunal members and the employees of the tribunal.

EXHIBIT C

State Bar of Michigan – Taxation Section

Section’s 2010 Tax Tribunal Reform Proposal - Eliminating “Pay to Play” Provision (With Proposed Deletion Highlighted)

205.22 Appeal; procedure; assessment, decision, or order as final and not reviewable.

Sec. 22.

(1) A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision, or order. The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal. However, an action shall be commenced in the court of claims within 6 months after payment of the tax or an adverse determination of the taxpayer's claim for refund, whichever is later, if the payment of the tax or adverse determination of the claim for refund occurred under the former single business tax act, 1975 PA 228, and before May 1, 1986.

(2) An appeal under this section shall be perfected as provided under the tax tribunal act, 1973 PA 186, MCL 205.701 to 205.779, and rules promulgated under that act for the tax tribunal, or chapter 64 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6401 to 600.6475, and rules adopted under that chapter for the court of claims. ~~In an appeal to the court of claims, the appellant shall first pay the tax, including any applicable penalties and interest, under protest and claim a refund as part of the appeal.~~

(3) A taxpayer or the department may take an appeal by right from a decision of the tax tribunal or the court of claims to the court of appeals. The appeal shall be taken on the record made before the tax tribunal or the court of claims. The taxpayer or department may take further appeal to the supreme court in accordance with the court rules provided for appeals to the supreme court.

(4) The assessment, decision, or order of the department, if not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.

(5) An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this section.