

# New Procedures for Property Tax Appeals Effective in 2007

by Jason C. Long

**D**uring 2006, the Michigan Legislature amended the Tax Tribunal Act to alter the procedures in property tax appeals. Beginning in January 2007, taxpayers are no longer required to protest the assessments for certain classes of property to the local board of review before appealing the assessments to the Michigan Tax Tribunal. Other classes of property, however, remain subject to this requirement. Further, the deadlines for filing appeals to the Tax Tribunal have changed for all properties, with the deadline advancing for certain classes of property and being delayed for other classes. Understanding these and other recent amendments to the Tax Tribunal Act will be essential for attorneys representing clients with property tax issues.

## *The Board of Review Requirement*

In the past, a taxpayer was required to protest the assessment for virtually any type of property to the local board of review before the taxpayer could appeal the assessment to the Tax Tribunal.<sup>1</sup> The Tax Tribunal would have no jurisdiction to consider a property's assessment if the property's owner or another party in interest did not first protest the assessment to the local board of review.<sup>2</sup>

Under the amendments to the Tax Tribunal Act, however, taxpayers or other parties in interest may appeal the assessments for several classes of property directly to the Tax Tribunal without first protesting to the board of review. In 2006 PA 174, the Legislature provided that a challenge to the amount of a property's assessment or a claim for an exemption for property classified as commercial real property, industrial real property or developmental real property need not be protested to the board of review in order to be appealed to the Tax Tribunal.<sup>3</sup> Likewise, property classified as commercial personal property, industrial personal property or utility personal property may be appealed directly to the Tax Tribunal so long as the taxpayer files its personal property statement with the local assessor before the board of review begins to meet.<sup>4</sup> On the other hand, the Legislature preserved the requirement that assessments must be protested to the board of review for all other classes of property.<sup>5</sup> This

includes property classified as residential real property, developmental real property and several other property classifications.<sup>6</sup>

Importantly, the classifications of property, such as "commercial real property," refer to the classifications established for assessment purposes under the General Property Tax Act.<sup>7</sup> A property's classification will be identified on its notice of assessment. Attorneys assisting clients with property tax issues should consult the notice

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of assessment to determine a property's assessment classification and must not rely on other matters, like a property's zoning, to determine this classification. While a property's zoning classification may often be similar to its assessment classification, there is no necessary relationship between the two. For example, many apartment complexes have residential zoning classifications, but the General Property Tax Act requires that they be classified as commercial real property for tax purposes.<sup>8</sup> Thus, examining the notice of assessment is essential to determining whether the property's assessment must be protested to the board of review.

In any event, the opportunity to bypass the board of review can simplify the appeal process and offer savings for taxpayers. But just because a protest to the board of review is not required for a given property does not mean that such a protest would not be worthwhile. Though boards of review sometimes lack the expertise to address complex properties, meeting with the local assessor and appearing before the board of review can nevertheless result in relief for a taxpayer, or can at least set a cooperative tone for working toward a resolution of the taxpayer's issues. Taking these steps can be helpful for the attorney and the client, even if the Tax Tribunal Act no longer requires them.

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### Deadlines for Filing Tax Tribunal Appeals

This relatively streamlined procedure of bypassing the board of review comes with a shortened time period for taxpayers to file appeals to the Tax Tribunal. Previously, when the Tax Tribunal Act required that all assessments must be protested to the board of review, it also required that all appeals must be filed by June 30 of the tax year being appealed.<sup>9</sup> Under the amendments effective for the 2007 tax year, however, appeals for properties classified as commercial real property, industrial real property or developmental real property, as well as appeals for property classified as commercial personal property, industrial personal property or utility personal property, must be filed by May 31 of the tax year under appeal.<sup>10</sup> Thus, for those properties that need not have their assessments protested to the board of review, the Legislature advanced the deadline for filing appeals with the Tax Tribunal.

In contrast, the Legislature actually extended the deadline for filing appeals to the Tax Tribunal for those properties that remain subject to the board-of-review requirement. The Tax Tribunal Act now provides that the assessments for property classified as agricultural real property, residential real property, timber-cutover real property or agricultural personal property may be appealed to the Tax Tribunal by the owner or a party in interest filing the appeal by July 31 of the tax year in dispute.<sup>11</sup>

Beginning with the 2007 tax year, these new deadlines also apply to motions to amend an appeal to include a subsequent tax year. For example, if a property classified as commercial real property is appealed to the Tax Tribunal in 2007, the appeal petition must be filed by May 31, 2007, and if the appeal remains pending in 2008, a motion to amend for that year must be filed by May 31, 2008.<sup>12</sup> Notably, no motion to amend is necessary if an appeal alleges only that a property is tax exempt, or when the Tribunal's residential and small claims division possesses jurisdiction over the appeal.<sup>13</sup> But for appeals filed with the Tribunal before January 1, 2007, motions to amend a petition to include a subsequent year remain subject to the June 30 deadline.<sup>14</sup>

### Filing the Appeal to the Tax Tribunal

Finally, the amendments to the Tax Tribunal Act altered the procedures for taxpayers to file their appeal petitions with the Tax Tribunal. For appeals filed before January 1, 2007, an appeal petition was only timely if it was delivered to the Tax Tribunal or postmarked by the correct category of United States mail by June 30 of the tax year involved.<sup>15</sup> The courts had strictly enforced the requirement that an appeal petition was only timely if it was timely postmarked by the correct mail category. In decisions like *Electronic Data Systems Corp. v. Flint Township*,<sup>16</sup> the courts held that appeal petitions submitted to overnight delivery services by June 30 were not timely filed under the Tax Tribunal Act, regardless of the merits of such services compared to the United States mail.<sup>17</sup>

(continued on page 26)

That is the real focus of the report if it is used in case evaluation, not the fact the experts are hired guns.

11. Never mention to the panel, unless all counsel agree to do so, the status of settlement discussions preceding the case evaluation. The panel is not interested in those discussions since they failed and different figures are now of more importance. Also, by unilaterally disclosing such discussions, you may be accused of a violation of MRE 408.
12. Keep the presentation simple. Be succinct. Be imaginative. Be original in your presentation. Show the panel why the outcome of the evaluation is crucial in having the parties and their counsel engage in serious settlement discussions after the award is rendered.

There has been supposition that case evaluation is no longer significant due to the mediation rules. Well, so long as case evaluation is still part of the pre-trial procedure and the court rules, it is still important to be used as a settlement device. The goal is to reduce client expense and delay in resolution of disputes.

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The amendments to the Tax Tribunal Act slightly ease these requirements. Beginning in January 2007, an appeal will be timely if the petition is (a) actually delivered to the Tax Tribunal by the applicable deadline; (b) postmarked by the deadline; or (c) given to a designated delivery service for delivery on or before the deadline, and the petition is actually delivered or the taxpayer can establish that the petition was given to the service for timely delivery.<sup>18</sup> The Tribunal is required to issue a notice by December 31 of each year identifying at least one delivery service as a "designated delivery service."<sup>19</sup> But the taxpayer must still submit the appeal petition to the service "for delivery on or before the expiration" of the filing deadline.<sup>20</sup> Thus, the amendments ease the filing requirements only by eliminating the distinctions among the various types of United States mail service, and by providing a remedy when an appeal petition is submitted to a delivery service to be delivered to the Tribunal before the deadline expires but the service fails to actually deliver the petition on time.

### Conclusion

In sum, the 2006 amendments to the Tax Tribunal Act alter the procedures that apply in property tax appeals, rendering appeals less onerous in some respects while also imposing new requirements. Attorneys representing clients with property tax issues must take note of the new procedures to ensure that the clients receive every advantage that the new procedures offer.

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### Footnotes

- 1 See MCL 205.735(2). Only certain claims relating to exemptions for agricultural properties were exempted from this requirement. *See id.*
- 2 See *WA Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 338; 686 NW2d (2004).
- 3 See MCL 205.735a(4)(a).
- 4 See MCL 205.735a(4)(b). Personal property statements are governed by MCL 211.19.
- 5 See MCL 205.735a(3).
- 6 *See id.*
- 7 See MCL 211.34c.
- 8 See MCL 211.34c(2)(b)(iii).
- 9 See MCL 211.735(3).
- 10 See MCL 211.735a(6).
- 11 See MCL 211.735a(6).
- 12 See MCL 211.737(4).
- 13 See MCL 211.737(5).
- 14 See MCL 211.737(4).
- 15 See MCL 211.735. The Tax Tribunal Act required that residential appeals had to be postmarked by first-class mail by June 30, while all other appeals had to be postmarked by certified mail by that date. *See id.*
- 16 253 Mich App 538; 656 NW2d 215 (2002).
- 17 *See id.* at 542-45.
- 18 See MCL 211.735a(7).
- 19 See MCL 211.735a(11). The Tax Tribunal Act also sets forth requirements that a delivery service must meet to qualify as a "designated delivery service." Under the requirements, delivery services such as Federal Express, United Parcel Service, and DHL would all likely qualify, though the Tribunal needs only to select one such service under the Act. *See id.*
- 20 MCL 211.735a(7)(c).