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A VACANCY LOSS MAY ENTITLE YOU TO PROPERTY TAX RELIEF

For decades Michigan property taxes were required to be imposed on a tax base (generally referred to as state equalized value) equal to 50% of true cash (market) value (“TCV”). In short, Michigan law required uniformity in establishing the tax base (state equalized value) and treated all taxpayers the same. All that changed on March 15, 1994 when Michigan voters approved a Constitutional Amendment commonly known as “Proposal A.”

Property taxes are no longer required to be uniformly based on 50% of TCV. Instead, Michigan property taxes are based on “taxable value.” The term “taxable value” is a misnomer because it is not a value. Nor does it have any consistent relationship to TCV. Instead, taxable value is simply a dollar amount on which Michigan property taxes are based. By law, the relationship between this tax base called “taxable value” and TCV can be far different, even for identical properties. In short, there is no legal requirement of uniformity or equal treatment of all property taxpayers.

The application of the formula to calculate “taxable value” has created numerous opportunities for taxpayer challenges beyond the historical challenge that state equalized value exceeds 50% of TCV. **This HONIGMAN Tax Appeals Alert discusses one such tax saving opportunity - the identification of a “loss” in calculating the permitted change in “taxable value” from one year to the next.**

Prior to the passage of Proposal A, the General Property Tax Act (the “Act”) defined “additions”

and “losses” as changes in value due to physical changes to real property, such as a change to building size. After passage of Proposal A, the Michigan legislature amended the Act and expanded the definition of “losses” to provide for a reduction in taxable value attributable to a decrease in a property’s occupancy rate. **This “loss” or reduction in taxable value exists even if the taxable value is significantly less than 50% of TCV, i.e., the relationship of taxable value to TCV is irrelevant to qualification for this “loss.”**

In 2002, HONIGMAN won a landmark case in the Michigan Supreme Court which struck down as unconstitutional the amendment as it related to “additions” attributable to increased occupancy rates (*see WPW Acquisition Co v City of Troy*, 466 Mich 117 (2002)). The “losses” definition as it relates to decreases in occupancy rates was not at issue in that case. Therefore, under the Act, taxable value must still be adjusted downward to provide for a “loss” attributable to a decrease in a property’s occupancy rate. HONIGMAN is currently defending a challenge to the constitutionality of this “loss” provision. **Unless and until this “loss” provision is overturned, the potential property tax savings available due to a decrease in occupancy remains viable and should not be overlooked.**

HONIGMAN is the Michigan member firm of the American Property Tax Counsel, The National Affiliation of Property Tax Attorneys. For more information about this organization, visit www.apcnet.com.

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