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HONIGMAN OBTAINS FAVORABLE MICHIGAN SUPREME COURT DECISIONS FOR TAXPAYERS IN TWO RECENT CASES

Honigman Miller Schwartz and Cohn LLP recently obtained favorable Michigan Supreme Court decisions for taxpayers in two cases, which are summarized below.

MICHIGAN SUPREME COURT DEFINES “MUTUAL MISTAKE OF FACT” IN FORD MOTOR COMPANY PROPERTY TAX REFUND CASES

On June 28, 2006, the Michigan Supreme Court overruled the Tax Tribunal and Court of Appeals in a group of cases involving Ford Motor Company and held that excessive assessments and payments stemming from erroneously prepared personal property statements constitute a mutual mistake of fact made by the assessing officer and the taxpayer and are correctable within the extended 3-year refund limitations period of section 53a of the Property Tax Act, MCL 211.53a. In reversing prior decisions, the high court expanded the definition of a mutual mistake and broadened the types of situations in which a taxpayer can claim a refund for overpayment. Relying upon prior cases defining the term for contract law purposes, the Supreme Court held that “mutual mistake of fact” in section 53a means “an erroneous belief, which is shared and relied upon by both parties, about a material fact that affects the substance of the transaction.” The Supreme Court held that this definition is satisfied because, when a taxpayer prepares and an assessing officer relies on an incorrect personal property statement, both parties share a mistaken belief material to the very nature of the transaction – that the property reported on the personal property statement exists and is taxable.

If a taxpayer is assessed and pays property taxes in excess of the correct and lawful amount owing because of a mutual mistake of fact made by the assessing officer and the taxpayer, section 53a

permits the taxpayer to sue for a refund of the excessive amount **within 3 years of the date of payment**. Section 53a is an exception to the rule that a challenge of an unlawfully excessive assessment must generally be instituted by the taxpayer within a very short time after the assessment is made. However, the Tax Tribunal (often with the Court of Appeals affirmance) had interpreted “mutual mistake of fact” very narrowly, rendering section 53a relief rarely available.

Whether section 53a applies in the personal property context has been a particularly nagging problem. Under Michigan’s system for assessing personal property, taxpayers are required to prepare and file a personal property statement by February 20 of each year in each taxing jurisdiction where they own personal property on the preceding December 31 tax day. It is not uncommon for taxpayers, particularly large taxpayers with numerous items of personal property in numerous taxing jurisdictions, to mistakenly overstate the amount of their personal property. This results in excessive assessments by assessing officers who generally rely on taxpayers’ personal property statements without conducting an independent audit.

While it addressed applicability of section 53a only in the context of personal property misreporting, the Supreme Court’s broad definition of “mutual mistake of fact” is likely to result in expanded applicability of section 53a in other contexts as well. In any case where a factual error results in an inadvertent over assessment and payment of

property tax, the 3 year refund suit limitations period of section 53a is now potentially available.

In this case, the Honigman team, led by attorney Jeffrey A. Hyman, included John D. Pirich and Michael B. Shapiro.

MICHIGAN SUPREME COURT THWARTS NARROWING OF CHARITABLE INSTITUTION EXEMPTION

On May 4, 2006, Honigman Miller Schwartz and Cohn LLP obtained a favorable Michigan Supreme Court decision in Wexford Medical Group v. City of Cadillac, where the Court held Wexford exempt from property taxation as a “charitable institution.” The Court’s significant decision ends a string of Tribunal and Court of Appeals decisions that had denied the charitable institution and public health exemptions to non-profit health care providers, including Wexford, the largest primary care clinic in Cadillac, Michigan.

In the Tax Tribunal and the appellate courts, Wexford based its charitable institution exemption claim upon facts such as the following: (1) Wexford served the public on a first-come, first-serve basis, in a designated health professional shortage area, with charity care policies that insured treatment for everyone; and (2) Wexford’s policies resulted in financial losses of almost \$2 million that Wexford’s charitable parents shouldered. Both the Tax Tribunal and the Court of Appeals rejected Wexford’s claims under *ProMed Healthcare v. City of Kalamazoo*, 249 Mich. App. 490, 644 N.W.2d 47 (2002), holding that a fatal flaw in Wexford’s claim was that in its first two years it provided free medical care to 13 patients at a cost of about \$2,400, even though it had up to 44,000 patient visits per year and a \$10 million annual budget.

Overruling the decisions below, the Michigan Supreme Court held that viewing its activities as a whole, Wexford was a charitable institution. In particular, the Court found that Wexford had attributes of a charitable institution in that it: (1) is a non-profit institution; (2) is organized chiefly, if not solely, for charity; (3) “serves any person who

needs the particular type of charity being offered” (i.e., it does not offer its charity on a discriminatory basis by choosing whom, among the group it purports to serve, deserves the services); (4) “relieves people’s bodies from disease, suffering, or constraint...(and) otherwise lessens the burdens of government”; and (5) does not charge for its services “more than what is needed for its successful maintenance....”

Honigman’s team consisted of lead attorney Stewart L. Mandell and John D. Pirich.

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.aptcnet.com.

For additional information, please contact Michael B. Shapiro at 313.465.7622 or MShapiro@honigman.com.

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