

February 1, 2007

Board of Review Requirements for Personal Property Owners

Beginning in 2007, commercial and industrial real property owners no longer need to protest their property tax assessment to the local Board of Review in order to appeal to the Michigan Tax Tribunal. **Personal** property assessments may also be appealed directly to the Tax Tribunal, but only if a personal property statement was filed with the assessor before the first day of the Board of Review. Starting dates for Boards of Review vary by locality, but they usually start in the first or second week in March.

It is still advisable to file your personal property tax statements by the February 20 statutory deadline. This will not only ensure that you can appeal directly to the Tax Tribunal if need be, but timely filing will also (a) allow you to claim a 15% SBT credit for industrial personal property taxes paid and (b) preserve your right to correct mistakes due to incorrect reporting that may be discovered after the usual Tax Tribunal deadlines. Remember if you have filed after the commencement of the Board of Review or not filed at all, and wish to appeal, you must comply with the local requirements for appearing at the Board of Review including, in some cases, first appearing at an assessors review.

Some organizations that have traditionally been exempt from property taxation and have not filed personal property statements will receive an assessment notice for personal property tax. Under the new law, if this happens, the organization, before the Board of Review begins, may choose to file a very cursory return to preserve the ability to appeal the assessment directly to the Tax Tribunal.

Facilities for Elderly and Disabled Expanded Exemption

In January, Governor Granholm signed legislation (the "Act") amending MCL 211.7o. MCL 211.7o(1) ("Preexisting Law") exempts from tax property owned and occupied by a nonprofit charitable institution while occupied by it solely for the purposes for which it was incorporated. The Act confers exemption on certain existing facilities for the elderly and disabled that have historically been treated as exempt, even if exemption had been inappropriately granted or the use of the property has changed to a nonexempt use. The Act, while very beneficial to the owners of such facilities, raises a number of questions.

Although the Act leaves several issues to interpretation, the Act does provide an automatic safe harbor exemption for covered facilities without the need to substantiate they are operated in a qualifying charitable manner. Some of the facilities the Act covers would not qualify for exemption under Preexisting Law.

The Act exempts from tax real and personal property owned and occupied by a nonprofit corporation that meets various specific conditions. The Act also provides that property not meeting the specified requirements may still qualify for the Preexisting Law charitable institution exemption.

Because the status of property for a tax year is determined as of December 31 of the preceding year, the Act will likely not apply until the 2008 tax year.

Buying and Selling Tax Credits

Several state incentive programs offer Single Business Tax credits that may be applied against the tax or carried forward over a limited period of time. Certain credit holders, however, due to their limited tax liability, either can't fully use the credits or would have to carry them forward for several years, diminishing their value to such credit holders. For these taxpayers, it is important to know that there is an active market for credits and holders may benefit from selling them to other taxpayers who can sooner put them to use.

The credits can also be used to cure cash flow difficulties. Real estate developers, for example, may sell the rights to future credits as a way of generating the necessary up-front capital for a project. Also, some programs permit the taxpayer to either sell or assign credits. There can be income tax advantages to assigning the credits opposed to selling them and, therefore, careful planning is necessary before a project is started.

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