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Some Board Of Review Protests Still Required

Since 2007, owners of property classified as commercial and industrial real property have no longer had to protest their property tax assessments to the local Board of Review in order to appeal to the Tax Tribunal. However, it is important to remember that in certain situations a March 2010 board of review appeal is still required to preserve Tax Tribunal appeal rights for a 2010 tax year appeal. These situations include:

- 1) Valuation or exemption appeals for property classified as **residential, agricultural or developmental**.
- 2) **Personal property appeals** if the taxpayer failed to file a personal property statement before the first day the Board of Review meets.
- 3) **A challenge to a property's classification.**

Filing a letter or fax sometimes satisfies the protest requirement, but taxpayers should immediately check with the local assessor's office to **verify the procedural and timing requirements in a particular jurisdiction**.

Clearing the Air Regarding Classification Appeals

The Michigan Department of Treasury recently announced it had filed almost 10,000 property tax classifications for the 2009 tax year. In light of the MBT credit for industrial personal property tax paid and the reduced property tax rates for industrial and commercial property, Treasury's action likely will increase taxes for many taxpayers. The mass appeals announcement has caused a flurry of "advisories" and newsletters from various consultants and interested parties. It has come to our attention that some of these communications have significant inaccuracies.

To set the record straight, the Tax Tribunal is supposed to send each property owner the Petition that Treasury filed along with notice that the property owner has 28 days, from the date of service, to respond. While this will still require taxpayers to act quickly, and there may be cases where taxpayers do not receive notice, the system should provide much more notice than some have suggested. Additionally, the ramifications of these appeals need to be evaluated on a case-by-case basis. These appeals will significantly increase taxes for some, but not all, taxpayers. As a result, taxpayers should be on the lookout for such Tax Tribunal notices and they should carefully review their 2010 assessment notices to make sure each property classification is correct. If property is not correctly classified, then a timely appeal must be made to the March Board of Review.

Detroit



Lansing



Oakland County



Ann Arbor



Kalamazoo

Honigman has been at the forefront of the battle on classification issues and currently is handling the lead case which soon will be appealed to the Michigan Supreme Court. If you have concerns about the classification appeals and want to know how they could impact your taxes, please call one of our property tax professionals.

Tax Credit Claw-backs

Many of Michigan's more lucrative tax incentives such as MEGA employment credits and Industrial Facilities property tax abatements include agreements that provide for the recapture of the tax benefits in certain situations. The agreements vary but recapture or "claw-back" typically is triggered if the business relocates outside of Michigan, ceases operations or fails to meet certain employment or investment benchmarks.

The current economic climate and resulting plant closures and cutbacks have caused more than a few taxpayers to anxiously search for their tax credit agreements to check the claw-back provisions. Many current tax credit recipients have fallen short of investment or employment targets. In addition, the state and local governments have come under severe budget pressures and are searching for additional revenue. Some view tax credit recapture as an easy revenue source.

Obviously, the best time to prevent future tax claw-backs is while the agreement is being negotiated. However, there are planning opportunities available even after the agreement is signed but before claw-backs are triggered. In addition, certain defenses have been successful against claw-back claims. If you have questions or concerns about the status of your tax credit agreement, please call us.

Another Favorable Decision on the Uncapping of Taxable Value

The Court of Appeals in *Klooster v Charlevoix* recently held that a transfer of property from parents to their son, through the creation and termination of a joint tenancy, was exempt from uncapping, even though a direct transfer of property from parents to their children would have triggered an uncapping of taxable value. Under *Klooster* and the earlier Court of Appeals' decision in *Moshier v White Water Twp*, it may also be possible to transfer property to an unrelated third party buyer without uncapping. The manner in which a property transfer is structured is critical to the uncapping consequences. You are welcome to call us regarding any transfer/ uncapping issues you may have.