

## Did You Receive a City Assessment? Michigan Cities' Appeals Process

by Lynn A. Gandhi



Lynn A. Gandhi

Lynn A. Gandhi is a partner with Honigman Miller Schwartz and Cohn LLP, Detroit.

In this edition of *Smitten With the Mitten*, Gandhi discusses the appeals process for city income tax assessments in Michigan. Gandhi writes that although Detroit has added preliminary steps in its income tax appeals process not found in the state statute, it is unlikely that a challenge to those steps would be successful.

Although the economic climate is improving in Michigan, local jurisdictions are still struggling to achieve prerecession revenue levels due to the lag in the recovery of real estate values, the reduction in state revenue sharing, and the backlog of necessary infrastructure improvements. To alleviate the revenue squeeze, there has been a renewed focus on improving city tax collections in the state, including city income tax.

In Michigan the City Income Tax Act gives municipalities the power to assess income taxes.<sup>1</sup> The act was passed in 1964 when the state did not impose a state income tax but instead imposed a business activities tax.<sup>2</sup> The act provided for the adoption of a uniform ordinance under which Michigan cities can levy and collect income taxes. A city is only permitted to impose an excise tax levied on or measured by income by adopting the Uniform City Income Tax Ordinance. Detroit and 21 other Michigan cities have adopted the act.<sup>3</sup> In Detroit a flat rate income tax is levied on both corporations and individuals. For corporations the

tax is levied “on the taxable net profits of a corporation doing business in the city.”<sup>4</sup> This article reviews the appeals process for city income tax assessments.

### Appealing Assessments Under the Michigan act

The act contains multiple levels of appellate review for taxpayers who have disputes relating to the imposition of city income tax. Under the act, cities that establish an income tax must also establish an income tax board of review.<sup>5</sup> The board of review is the first level of appellate review of city income tax decisions. The board must be composed of three city residents who are not city officials or employees.<sup>6</sup> A taxpayer may file a written notice of appeal with the board of review within 30 days of city actions. The city actions that can trigger board review are final assessments, denials in whole or in part of a claim for refund, as well as decisions, orders, or special rulings by the city’s tax administrator or the Michigan Department of Treasury. There is no statutory authority permitting an extension of the appeal deadline. Once a notice of appeal is filed with the board of review, the board must grant the taxpayer a hearing after which the board must affirm, reverse, or modify the taxing decision at issue.<sup>7</sup>

If a taxpayer is dissatisfied with the board’s decision, it may pursue a second level of appellate review at the Michigan Tax Tribunal.<sup>8</sup> An appeal to the tribunal must be filed within 35 days of the board’s decision.<sup>9</sup> If a taxpayer is dissatisfied with the tribunal’s decision, it may seek a third level of appellate review at the Michigan Court of Appeals. Review at the appeals court is governed by the Michigan Court Rules and based on the record created at the tribunal.<sup>10</sup>

<sup>1</sup>MCL 141.501 et seq. An income tax may be levied on residents, nonresidents who work in the city, and on all business activity.

<sup>2</sup>Public Act 284 of 1964 was effective June 12, 1964. The business activities tax was imposed under Public Act 150 of 1953, became effective January 1, 1953, and remained in place until the enactment of the Michigan Income Tax Act in 1967.

<sup>3</sup>Albion, Battle Creek, Big Rapids, Detroit, Flint, Grand Rapids, Grayling, Hamtramck, Highland Park, Hudson, Ionia, Jackson, Lansing, Lapeer, Muskegon, Muskegon Heights, Pontiac, Port Huron, Portland, Saginaw, Springfield, and Walker.

<sup>4</sup>MCL 141.632; Detroit City Code section 18-10-9(b)(7).

<sup>5</sup>MCL 141.691.

<sup>6</sup>There is no requirement that board members have any specific knowledge or experience in tax law. That the board is composed of seemingly random city residents is in and of itself troubling.

<sup>7</sup>MCL 141.692.

<sup>8</sup>MCL 141.693.

<sup>9</sup>An appeal to the tribunal is governed by the tribunal rules, not the Michigan Court Rules.

<sup>10</sup>MCL 141.694.

## Appealing Assessments Under the City of Detroit Ordinance

Detroit has adopted a city ordinance that mirrors the act. The City of Detroit Income Tax Ordinance tracks nearly word for word the language of the act, particularly regarding the income tax assessment appeals process.<sup>11</sup> The Detroit ordinance calls for an appeal to the board of review, then to the Michigan Tax Tribunal, and finally to the Michigan Court of Appeals. On its face, the Detroit ordinance appears to be in complete harmony with the act.

Despite this apparent harmony, Detroit's procedures for appealing income tax assessments differ from state law. While the Detroit ordinance mirrors the appellate procedures found in the act, in practice the city requires additional steps to appeal income tax assessments that are not found in the state statute.

The Income Tax Division of Detroit's Finance Department requires several additional threshold steps to appeal an assessment that are not found in either the city ordinance or the act, but appear to be required before a taxpayer is permitted to appeal to the city's board of review. These steps include (1) contacting the auditor who performed the audit to seek an explanation for his disposition; (2) appealing the auditor's disposition to the audit supervisor; (3) appealing the auditor supervisor's disposition to the income tax manager who will conduct an "informal hearing and review of the case"; and (4) appealing the income tax manager's disposition to the city's finance director.<sup>12</sup>

The city's process as outlined above considers a taxpayer to have received a "final assessment of the administrator" when it has received the finance director's decision. Because only a final assessment by the administrator triggers the right to appeal to the board of review, this language can be interpreted to mean that Detroit only permits an appeal to the board of review after the taxpayer has gone through the numerous preliminary steps.<sup>13</sup> However, none of those threshold steps are required by either the Detroit ordinance or the act. However, the act authorizes the administrator to make rules and regulations relating to the enforcement of the income tax ordinance, and Detroit's threshold steps may simply be an exercise of that authority.<sup>14</sup>

<sup>11</sup> See Detroit Income Tax Ordinance sections 18-10-18 to 18-10-23. As of June 8, 2015, the city's website indicates that the current members of the Detroit Board of Review are Paul Huxley, Robert Watt, and G. Eric Winston. However, no information is available regarding the board's meeting schedule. Even city finance officials have indicated a general unawareness of the board's official meetings, as well as its current composition.

<sup>12</sup> See City of Detroit, Income Tax Board of Review Appeals, Income Tax Appeal Process, available at <http://bit.ly/1da3sCN>.

<sup>13</sup> Detroit ordinance, section 18-10-21.

<sup>14</sup> MCL 141.671.

## Further Considerations

The Michigan Constitution provides that all local government ordinances are "subject to the constitution and law."<sup>15</sup> Michigan courts have made it clear that no municipality may enact ordinances that conflict with state law.<sup>16</sup> Following this reasoning, the city "is precluded from enacting an ordinance if . . . [the] ordinance is in direct conflict with the state statutory scheme."<sup>17</sup> Moreover, a municipal ordinance is preempted if the state statutory scheme occupies the regulatory field "even if there is no direct conflict."<sup>18</sup> Under these principles of conflict and field preemption, one could question whether Detroit can maintain an income tax appeals process that conflicts with the state statute or that differs from the statute if the statute occupies the regulatory field.<sup>19</sup>

**One could question whether Detroit can maintain an income tax appeals process that conflicts with the state statute or that differs from the statute if the statute occupies the regulatory field.**

It appears that a challenge to the Detroit process would be unlikely to prevail. First, the state law mechanism governing appeals and Detroit's extra steps are not mutually exclusive. That is, a taxpayer can follow both the Detroit process and the statutory rules without frustrating either scheme. Second, Detroit's additional steps are all threshold steps that occur before there is a "final assessment of the administrator" to trigger board review. Because the act's assessment appeals mechanism is silent on local procedures before a city administrator's final assessment, the inclusion of additional steps does not appear to directly contradict the act.

A more important question may be whether the act occupies the regulatory field and thereby preempts Detroit's preliminary steps. One could argue that the act is complete in its creation of an assessment appeals mechanism and that there is no room for additional municipal regulation. This argument is strengthened by the seemingly excessive number of steps that Detroit requires before arriving at a final assessment that can be appealed to the board of review.<sup>20</sup> On

<sup>15</sup> Const. 1963, Art. VII, section 22.

<sup>16</sup> See *Ter Beek v. City of Wyoming*, 195 Mich. 1, 19 (2014).

<sup>17</sup> *Ter Beek*, 195 Mich. at 19.

<sup>18</sup> *Id.*

<sup>19</sup> Detroit is a home rule city under Michigan law, which means that it is permitted to exercise all powers both specifically granted and not expressly denied. However, the Michigan Supreme Court has held that the principles of conflict and field preemption apply to home rule cities. See *American Federation of State, County and Municipal Employees v. City of Detroit*, 468 Mich. 388, 410 (2003).

<sup>20</sup> That the board of review is composed of three members who must be residents of the city and who may not be officers or employees

(Footnote continued on next page.)

the other hand, the act expressly authorizes the administrator to adopt rules for the enforcement of the act.<sup>21</sup> This delegation of authority expressly reserves a place for some local regulation in the field.

### Conclusion

Regardless of the city, local tax collections and enforcement are certain to get additional scrutiny as Michigan cities increase their efforts to achieve fiscal health. It follows that an increase in city appeals will also occur. Taxpayers are cautioned to watch their mail so that they can review and respond to notices promptly. This will ensure that appeal rights are not lost due to the failure to comply with procedural deadlines. ☆

*It takes a lot of hard work  
to become an expert.  
Fortunately, it's much  
easier to remain one.*

To update their expertise each day, tax professionals simply look to *Worldwide Tax Daily*. It's the only daily service for timely international tax news and developments from more than 180 countries – with news stories and analyses by more than 200 correspondents and practitioners.

To learn more, please visit us at  
**taxanalysts.com.**

**worldwide tax daily**<sup>®</sup>  
**taxanalysts**<sup>®</sup>

of the city suggests that part of the purpose of the board is to take assessment appeals decision out of the hands of city officials at a fairly early stage in the process.

<sup>21</sup>MCL 141.671.