

An electronic newsletter for real estate professionals



From the Desk of

The Real e-ditor
Steven D. Sallen

Robert's Hamburger-Moment

My son, Robert, turned 20 this year. Back in the day friends referred to him as Mini-Me. Frankly, I see the family resemblance more today than I did when he was little. He's anything but mini now; built like the proverbial brick house. This summer Robert finally has his first real job. Oh, sure, he's had jobs before. He's been a camp counselor; a lifeguard; baby sitter; private swim lessons. Paychecks were enough to fill his tanks (car and stomach). This summer a client was kind enough to set him up with a factory job. He works in a refrigerated work space (38°!), mixing salsa, blending hummus, lifting and toting, and generally doing what needs to be done. He wears long underwear to work, when it's 90° outside. A real dose of the real-world; the best education a young man can get!

After working hard, *really hard*, for the first two weeks, he looked forward to getting his first paycheck. He opened his first paycheck envelope. Two weeks' wages at \$12/hour. He had done the math. So, what the heck? That's when he had what I call a Hamburger-Moment; remember, the old lady in the Wendy's commercial years ago. *Hey! Where's the beef?* An examination of his pay stub revealed some involuntary *d-e-d-u-c-t-i-o-n-s* that he had not anticipated. Social security? What's that? Medicare? Never heard of it. Federal income tax. Ouch! State income tax too? Yup, my kid isn't even out of college, and he's become a fiscal conservative after, literally, thirty seconds reading his first pay stub!

So given the continuing dysfunction in Washington, Robert's Hamburger-Moment got me thinking. According to Answers.com, the last time our country ran a "true surplus" was 1969! For more than a generation, our federal government has routinely robbed from *Peter* to pay *Paul*. My guess is, you feel more like *Peter* than *Paul*! As I write this, the finger pointing, table pounding and chest thumping in Washington are epic. The supposed debt-default deadline is just days away. Cable news networks are in their glory with wall to wall coverage of the melee. Now, the focus is squarely on the **\$14.66 trillion** federal debt ceiling, as though it just popped up overnight, like a big mushroom on a newly mown front lawn. Of course, this mushroom is (a) poisonous, and (b) taller than the darn house! And, oh yes, its been growing there for 40 years. I hope that our president and elected representatives in Washington take a Hamburger-Moment during the debate to actually open their own paycheck envelopes, and read their paystubs. If that doesn't influence their decision-making to FIX THIS MESS!, then maybe we should all send them our paystubs, and demand that they read them! Perhaps a couple hundred million paystubs arriving in the mail will get their attention.

Steve Sallen

REPEAL OF THE MICHIGAN BUSINESS TAX

BY: WILLIAM E. SIGLER

Governor Snyder proposed eliminating the Michigan Business Tax ("MBT") and replacing it with a six percent (6%) corporate income tax. He also proposed significant changes to the individual income tax. These proposals have passed the Michigan House and Senate and were signed into law on May 25, 2011. The MBT will expire and the new Corporate Income Tax will take effect on January 1, 2012. The following are some of the highlights of the new law:

A. Corporate Income Tax ("CIT")

- 6% of the CIT tax base after allocation or apportionment.
- Honors existing commitments for tax credits made to businesses through signed agreements under the old tax structure.
- Businesses subject to the CIT are limited to C corporations and limited liability companies that have chosen to be taxed as C corporations for federal tax purposes. Unlike the MBT, partnerships (including limited liability companies taxed as partnerships), S corporations, trusts, and individuals are not subject to the CIT.
- Nexus standards from the MBT are retained. That is, an out-of-state taxpayer will be subject to the CIT if that taxpayer has a physical presence in Michigan or actively solicits sales in this state and has Michigan sales of \$350,000 or more, subject to federal restrictions.
- The CIT tax base is federal taxable income subject to certain adjustments before allocation or apportionment.
- The CIT tax base is apportioned by a sales factor, which is Michigan sales over sales everywhere. The sale of tangible personal property is sourced by destination. Receipts from services are sourced where the benefits are received.
- The Small Business Alternative Credit is retained from the MBT. All other credits are eliminated for CIT purposes.
- Taxpayers with a CIT liability of

\$100 or less need not file a CIT return or pay the tax.

- A unitary business group is required to file a combined return.

B. Individual Income Tax

- Rate fixed at 4.35% through January 1, 2013, at which time it is lowered to 4.25%.
- Public and private pensions, senior dividends and interest, and political contributions are no longer subtracted from AGI. Thus, these items will now be taxable, except as noted below.
- The standard personal exemption allowance is fixed at the 2011 level of \$3,700 through 2012. The exemption is phased out at a certain level of income. All special exemptions are repealed except for the exemption for disabled persons. Special provisions for military personnel and veterans are retained.
- Under current law, the Homestead Property Tax Credit equals some percentage of the property taxes that exceed 3.5% of household income. The applicable percentage varies, with most taxpayers receiving 60%, while seniors and disabled individuals receive 100%. The bill would eliminate the difference in rates between seniors and most taxpayers. The phase-out range for the Homestead Property Tax Credit is lowered to \$41,000 to \$50,000 from the current range of \$73,650 to \$82,650. The Homestead Property Tax Credit would not be available if the taxable value of the homestead exceeds \$135,000 (for a new home, this equates to a purchase price of \$270,000).
- The Michigan earned income tax credit would be reduced to 6% of the Federal earned income tax credit after December 31, 2011. Currently, it is 20%.
- Many other credits are repealed going forward, including:
 - Historic preservation credit
 - City income tax credit
 - Credit for gifts to public art, radio, colleges, universities, archives, museums, and libraries
 - Community foundations, food banks and homeless shelters credit
 - College tuition and fees credit
 - Automobile donation credit
 - Family/Individual development accounts credit



PROPERTY TAX APPEALS: DEMISTIFYING THE PROCESS

BY: RICHARD J. MADDIN



Real property assessments, taxes and how it all happens in Michigan remains a mystery to too many people. This article has been prepared to help demystify the process and, hopefully, help the reader become proactive in reducing property taxes and increasing the resultant economic bottom line.

Under the Michigan Constitution, the government has the right to assess real estate and the assessed value is based upon 50% of true cash value. The assessment process occurs annually.

The State Tax Commission regulates the assessment process and establishes guidelines. These guidelines are to be followed by the local assessors who are responsible for determining assessed value.

Local assessors are not required to appraise property and do not conduct an appraisal on individual properties to determine assessed value. The process, in general, is done in bulk based upon guidelines established by the State Tax Commission.

Local assessors create and maintain records for each property assessed. The information maintained by the assessor is open to public viewing. Those records can be inaccurate, including errors in the description, and features of the subject property, square footage and other factors that have a bearing on value.

December 31 of the year preceding the assessment is Tax Day; *i.e.*, the day that the true cash value of the property is to be determined for purposes of the following year's assessment.

In most cases, a property's taxable value, the number used to calculate the tax bill, is based on the lesser of (a) the assessed value, or (b) the prior year's taxable value, increased by the rate of inflation or 5%, whichever is lower. However, if there is an uncapping event, and the assessed value is greater in the current year than the prior year, there is no limit on the increase

to taxable value. The subject of uncapping is beyond the scope of this article, but generally speaking, the most basic uncapping events are a transfer of title and new construction (distinguished from maintenance and repair).

The actual tax that is to be paid for a particular property depends upon the millage rate of the community in which the property is located. The millage rate changes from year to year and can be found by making contact with the local community in which the property is located. Millages are typically for schools, including community colleges, county taxes, municipal taxes and retirement of debt for infrastructure such as storm and sanitary sewer, etc.

Notices of Assessment are released by the assessor toward the end of February each year. There is a Board of Review, but that process is not required for commercial, industrial and multi-family residential properties as a precondition for taxpayers to prosecute an appeal.

Tax appeals must be filed by May 31 of the year of taxation; *i.e.*, that is the date by which an appeal must be filed with the Michigan Tax Tribunal.

Your tax appeal team should consist of an experienced attorney or other qualified tax professional and a qualified appraiser who has prepared an appraisal report for the property. The expertise and work product of the appraiser is the essence of what will be needed to satisfy the taxpayer's burden of proving what the true cash value of the property was as of Tax Day, to-wit, December 31 of the prior year.

There are various rules and procedures required by the Michigan Tax Tribunal that need to be followed to properly prosecute an appeal. We will not attempt to address those here.

Historically, only a small percentage of assessed properties were appealed. In recent years, the number of appeals have increased exponentially to the point where the backlog of cases can mean three-plus years before an appeal will be scheduled for formal hearing. There are strategies that should be considered once an assessment has been appealed, involv-

ing subsequent assessments that occur while the appeal is pending. In general, if property values continue to drop and the taxable value is greater than 50% of true cash value, an appeal should be filed in subsequent year(s) in order to challenge these subsequent assessments while the appeal remains pending.

Most appeals can be resolved through settlement. This requires the community to be generally inclined to negotiate and for the assessor to be open to a dialog with the appraiser. This can occur at any time. For those communities disinclined to settle tax appeals, the settlement process, nevertheless, is pursued once the file has matured to the point where notice of sched-

“In recent years, the number of appeals have increased exponentially to the point where the backlog of cases can mean three-plus years before an appeal will be scheduled for formal hearing.”

uling of the formal hearing is issued by the Michigan Tax Tribunal. In most instances, the taxing community has not yet retained an appraiser and will have to decide whether or not to hire an appraiser. Most communities do not have an appraiser on staff. This juncture produces a fruitful environment for meaningful settlement negotiations before the community will have to decide whether to hire an appraiser to substantiate the assessment and defend the action. If the appeal has reached this point, and cannot be resolved through settlement, then the case needs to be prepared for formal Tribunal hearing.

While an appeal is pending, subsequent tax bills issued by the communities are issued based upon the taxable value as set forth in the Notice of Assessment under appeal. If there is a settlement, then the various taxing authorities issue refunds based upon the agreed upon assessment value.

This article is intended to eliminate some of the mystery that surrounds the tax appeal process. There are numerous opportunities available to get the proper assessment before the Notice of Assessment is issued, as well as afterward. These opportunities should be explored on an individual basis. Feel free to talk to your Maddin Hauser attorney to address individual questions and help you explore your options.



MICHIGAN SUPREME COURT SUBJECTS STC PROPERTY RECLASSIFICATIONS TO JUDICIAL REVIEW

BY: KASTURI BAGCHI

In a consolidated opinion filed on May 23, 2011, the Michigan Supreme Court unanimously concluded that property classifications determined by the Michigan State Tax Commission (STC) pursuant to MCL 211.34c “constitute final decisions that are quasi-judicial and affect private rights”; therefore, the Michigan constitution guarantees taxpayers judicial review of such property classifications. Accordingly, the Court invalidated the last sentence of MCL 211.34c (6) which provides:



“An appeal may not be taken from the decision of the State Tax Commission regarding classification complaint petitions and the State Tax Commission’s determination is final and binding for the year of the petition.”

In *Iron Mountain*, plaintiff taxpayers owned machinery and equipment that is subject to personal property taxes. The local assessors had classified such personal property as commercial property for the tax year 2008. Pursuant to MCL 211.34c(3)(c), the plaintiffs timely petitioned the applicable boards of

review to reclassify the personal property to industrial personal property, in order to preserve certain tax exemptions and credits.¹ In each case, the boards of review rejected plaintiffs’ request and plaintiffs then petitioned the STC to reclassify the personal property. The STC also denied plaintiffs’ petitions.

The plaintiffs then filed for relief in various circuit courts and were awarded judgments in their favor. Relying on MCL 211.34c(6), the STC argued before the Court of Appeals that circuit courts lack subject matter jurisdiction over reclassification of properties. The Court of Appeals agreed, reversed each circuit court judgment and directed entry of orders in favor of the STC and assessors. The Michigan Supreme Court, however, found that without access to circuit courts, a taxpayer had no other forum to appeal an STC reclassification decision which affected private rights. As such MCL 211.34c(6) is unconstitutional and the judgment of the Court of Appeals was reversed so that plaintiff taxpayers can seek relief in circuit courts from STC decisions.

The Michigan Supreme Court’s decision in *Iron Mountain* compels a certain amount of transparency in the decision making process of the STC, now that it is subject to judicial review. This closer scrutiny is sure to impact the strategy of the STC in their campaign to preserve the State’s treasury by preventing owners of personal property classified as industrial from continuing to claim certain tax benefits. At press time, no bulletin has been posted on the STC website to reveal their

approach in light of the *Iron Mountain* decision. It is unlikely that the STC will retreat completely given the directive set forth in a Memorandum dated December 7, 2010 from the Executive Director of the State Tax Commission to “prepare orders to change the classification for properties believed to be inappropriately classified for the 2009 and 2010.”

Endnote:

¹ For a discussion of tax advantages, see *Reclassification of Property by the State Tax Commission Threatens Loss of Tax Incentives*, by Kasturi Bagchi and Michael K. Hauser, *Real e-State*, July 2010, Volume 7, Issue 3, available at www.maddinhauser.com.



STEVEN D. SALLEN

GUEST SPEAKER AND
PANELIST AT
ICSC MICHIGAN
IDEA EXCHANGE

JULY 21, 2011



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On Thursday, July 21, 2011, Steve Sallen participated in a panel discussion at the ICSC Idea Exchange in Novi, MI. The topic was “My Loan Went to the Special Servicer, Now What?”

Mr. Sallen’s remarks focused on the potential exposure to personal liabilities under the so-called *Non-Recourse Carve Out Guarantees* routinely executed in connection with securitized loans.

The panel discussion was spirited and included some lively debate from the floor. For more information on this topic, feel free to contact Mr. Sallen directly at (248) 827-1861 or sds@maddinhauser.com.



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