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**SBM** | TAXATION SECTION  
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The MICHIGAN TAX LAWYER is a publication of the Taxation Section of the State Bar of Michigan that is designed to be a practical and useful resource for the tax practitioner. THE MICHIGAN TAX LAWYER is published three times each year —September/October (Fall), January/February (Winter), and May/June (Summer). Features include the Section's Committee Reports, news of Section events, feature articles, and Student Tax Notes.

Input from members of the Taxation Section is most welcome. Our publication is aimed toward involving you in Section activities and assisting you in your practice. The Taxation Section web address is [www.michigantax.org](http://www.michigantax.org). If you have suggestions or an article you wish to have considered for publication for 2016, please contact Katherine Kaile Wilbur, Varnum LLP, 333 Bridge Street NW, Grand Rapids, Michigan 49504, [kkwilbur@varnumlaw.com](mailto:kkwilbur@varnumlaw.com); or (616) 336-6494

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## LETTER FROM THE CHAIR

August 1, 2016

Dear Taxation Section Members:

It is hard to believe that the 2015-2016 term is soon coming to an end. It has been an honor to serve as the Chair for the Taxation Section. I have forged many great friendships and learned a lot from other tax practitioners—none of which would have been possible without being involved in the Section. For those of you who are not actively involved with our Section or Committees, I highly recommend that you to get involved in order to get the most out of your membership. Below is an update on some of our most recent events as well as upcoming events.

The 29<sup>th</sup> Annual Tax Conference was held on May 19, 2016 at the Inn at St. John's located in Plymouth. The keynote was delivered by former United States Senator Carl Levin. The Conference was well attended and featured local and national speakers addressing a wide range of federal, state and local tax law developments. A special thank you to Tammie Tischler, the Committee Chairs and ICLE for their hard work in making the event a success. Thank you to all of you that attended the event. We welcome any comments you may have on how we can improve your experience next year.

A Tax Court Luncheon was held on June 8, 2016 at the 24 Grille restaurant located at the Westin Book Cadillac Hotel in Detroit. The Honorable Judge David Gustafson from the United Tax Court was our featured speaker. Judge Gustafson provided the attendees with insight as to the development of a tax opinion through the US Tax Court system.

The Annual Meeting will be held at 5 pm on October 6, 2016 at Tre Monti Ristorante located in Troy. The Annual Meeting will be followed by our Annual Dinner. The Annual Dinner is a great opportunity for you to meet other Tax Section members. If you are interested in attending, please contact me at [mantovski@bodmanlaw.com](mailto:mantovski@bodmanlaw.com). I look forward to seeing you there!

Sincerely,

Michael M. Antovski  
Chair of the Tax Section

## SECTION COMMITTEE REPORTS

### EMPLOYEE BENEFITS COMMITTEE

Committee Members are invited to attend a “Washington Update” breakfast meeting hosted by the ASPPA Benefits Council (“ABC”) of Detroit on August 25, 2016 at Andiamo in Bloomfield Township. Craig Hoffman (American Retirement Association) will present on a variety of current legislative and regulatory developments affecting the benefits industry.

The Taxation Section will soon be undertaking an initiative to update the way it communicates with its membership through SBMConnect. Please be sure to sign up for SBMConnect and be on the lookout for further information about how to ensure that you continue to receive communications from the Committee.

Thank you to Committee Members who have volunteered to write articles for the Fall 2016 Volume of *Michigan Tax Lawyer*. The response was overwhelming and we should have several great employee benefits articles forthcoming in this publication.

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### ESTATES AND TRUST COMMITTEE

On Thursday, August 11, 2016, the Estates and Trusts Committee will be hosting a “lunch and learn” with Robin D. Ferriby (Vice President, Philanthropic Services) of the Community Foundation for Southeast Michigan at Clark Hill PLC Birmingham, Michigan office. Robin will discuss the advisor’s role in charitable planning and tax planning, as well as any new legislation that we (as planners and tax professionals) should be aware of. Robin will also take time to introduce the Community Foundation, its initiatives and the way it benefits Southeast Michigan. Additionally, the Estates and Trusts Committee is currently planning an event for Fall 2016, with speaker Gerard P. Charette of Miller Canfield,

LLP. Mr. Charette’s presentation will address the integration of the Canadian and US tax systems with respect to gifts and death from the perspective of a US resident or citizen holding Canadian real estate and personal property.

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### FEDERAL INCOME TAX COMMITTEE

The Federal Income Tax Committee welcomed several new members since its last report. The Committee attempted video-conferencing in order to attempt to improve the participation of members on the west side of the state.

On June 22, 2016, Carolee Smith from CMS Energy presented, “Top State and Local Tax Traps to Watch for when Acquiring a New Business.” The presentation addressed tax structuring, tax due diligence and documentation matters.

On April 12, 2016, Andrew MacLeod from Dickinson Wright presented, “New Streamlined Partnership Audit Rules.” The presentation addressed how the new rules operate, key elections, and potential issues to consider in operating agreements.

Networking functions were held after both presentations.

The Committee has events scheduled on September 8, 2016, and November 30, 2016. Speakers will be determined soon for these events.

The Committee is also looking for volunteers to speak at future events and write articles.

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**PRACTICE AND PROCEDURE COMMITTEE**

The Practice and Procedure Committee and State and Local Tax Committee held an event in February focusing on SB 537, a bill to reform/improve the Michigan Tax Tribunal to address ongoing budgetary issues, to better attract and retain highly qualified members, to address concerns with the assignment process and a host of other issues of concern to stakeholders. Greg Nowak and Jason Pucas attended on behalf of the Detroit Chamber of Commerce and addressed the group. Judge Marmon attended the session on behalf of the Tribunal. Glenn White attended on Treasury's behalf.

The Ad Hoc Tax Litigation Reform Committee, consisting of Carolee Smith, Paul McCord, Jackie Cook, Andrea Crumback and Jack Panitch finished work on a new Policy Statement to enhance the Section's existing statement on tax litigation reform. The new policy statement is intended to place the Tax Section in a better position to support reform consistent with a set of principles.

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**STATE AND LOCAL TAXATION COMMITTEE REPORT**

The State and Local Tax Committee and the Practice and Procedure Committee held an event in February focusing on SB 537, a bill to reform/improve the Michigan Tax Tribunal to address ongoing budgetary issues, to better attract and retain highly qualified members, to address concerns with the assignment process and a host of other issues of concern to stakeholders.

The State and Local Tax Committee's annual mixer is scheduled for Wednesday September 14 from 5-7:30 at Dykema in Lansing. The mixer will be an enjoyable evening where government representatives, private practice attorneys, and in-house attorneys equally interested in State and local tax issues can meet and interact.

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# FOREIGN LIFE INSURANCE CONTRACTS UNDER THE INTERNAL REVENUE CODE: TAX PLANNING CONSIDERATIONS FOR FOREIGN NATIONALS

By Erin Haney

While many foreign nationals residing in the United States have traveled here to pursue employment or business opportunities, one important aspect of tax planning for these individuals is considering the taxability of income he or she may receive from non-U.S. sources during the time of his or her United States residency.

Although not a United States citizen or legal permanent resident, a foreign national may be considered a “resident alien” under the Internal Revenue Code if he or she passes the “substantial presence” test.<sup>1</sup> As a resident alien, a foreign national will generally be required to pay taxes on income derived from inside and outside of the United States just as a United States citizen would.<sup>2</sup> According to the International Insurance Institute, world life insurance premiums in 2014 totaled over \$2.5 trillion (USD), with the largest amounts spent in the United States, Europe, Southeast Asia, and Canada.<sup>3</sup> As this statistic demonstrates, life insurance contracts are a common pre-existing source of potentially taxable income to a foreign national. This article is intended to provide a brief overview of the Internal Revenue Code’s treatment of foreign life insurance contracts.

In the United States, most life insurance is designed to meet the IRS’s definition of a “life insurance contract.” Under the Internal Revenue Code, such contracts are generally not taxed on increases in cash surrender value.<sup>4</sup> Foreign life insurance, however, may not be designed to meet the IRS’s definition. As a result, the taxability of the insurance proceeds under United States law depends on the terms of the contract.

The Internal Revenue Code provides that a life insurance contract created under foreign laws may qualify as life insurance for United States income tax purposes.<sup>5</sup> However, pursuant to the Deficit Reduction Act of 1984, the Code imposes two alternative tests in an effort to prevent purported “life insurance” contracts from essentially serving as tax-free investments. These tests compare the present value of future benefits to the premiums charged and disqualify plans that allow for large accumulations of cash value beyond what is necessary to fund those future benefits.<sup>6</sup> The two alternative tests under which a contract may qualify as a life insurance contract are:

- a cash value accumulation test (“CVAT”) *or*
- a combined guideline premium requirement (“GPT”)/cash value corridor test (“CVCT”)<sup>7</sup>

## CASH VALUE ACCUMULATION TEST (“CVAT”)

A contract satisfies the cash value accumulation test if, by its terms, the cash surrender value at any time doesn’t exceed the net single premium needed at that time to fund the contract’s future benefits.<sup>8</sup> The net single premium is essentially the present value of the future benefit provided for under the contract, based on risk and an annual effective interest rate of at least 4%.<sup>9</sup> In other words, a contract will pass the CVAT if the present value of the future benefit provided by the contract is never greater than the cash surrender value of the contract at the same point in time.

## GUIDELINE PREMIUM REQUIREMENT (“GPT”)/CASH VALUE CORRIDOR TEST (“CVCT”)

A contract will satisfy the guideline premium requirement test if the sum of the premiums paid at any time does not exceed the current “guideline premium limitation” at that time. The “guideline premium limitation” is the greater of the “guideline single premium” or the sum of “guideline level premiums” to date.<sup>10</sup> The “guideline single premium” is the premium that is required to fund future benefits under the contract at the time that the contract is issued (assuming an annual effective interest rate of at least 6%), while the “guideline level premium” is the level annual amount that is payable over a period not ending before the insured reaches age 95 (assuming an annual effective interest rate of at least 4%).<sup>11</sup>

## CASH VALUE CORRIDOR TEST

The cash value corridor test is satisfied if the death benefit under the contract at any time is not less than a specified applicable percentage of the cash surrender value. For individuals age 40 and under, the applicable percentage is 250%; throughout the rest of a person’s lifespan, it decreases in increments until 100% at age 95.<sup>12</sup> A table of these percentages is available in the statute at IRC § 7702(d)(2).

### BASES FOR PREMIUM CALCULATION

For purposes of both the CVAT and the GPT/CVCT, the “future benefits” of a contract include both death benefits payable to the insured’s beneficiary and endowment benefits that are payable to the insured at the end of the policy.<sup>13,14</sup>

In addition, both the CVAT and GPT determinations are based on: (1) reasonable mortality charges meeting the requirements of the regulations and not exceeding the prevailing commissioner’s standard tables, (2) any other reasonable charges reasonably expected to be actually paid, and (3) interest at the minimum annual effective rate specified, unless a greater rate is guaranteed on issuance of the contract.<sup>15</sup>

When calculating the net single premium, guideline single premium, and guideline level premium, it is important to distinguish between mortality charges and other charges. According to Revenue Ruling 2005-6, mortality charges are not required to be “reasonably expected to be actually paid.” Mortality charges, which are actuarial computations reflecting mortality risk, need only comply with the regulations and the commissioner’s standard tables issued by the National Association of Insurance Commissioners. In contrast, however, benefits included as “other reasonable charges” are subject to the “expense charge rule.” That is, they must be “reasonably expected to be actually paid.”<sup>16</sup> This issue becomes relevant when a contract includes charges for “qualified additional benefits” (QABs). QABs are defined by the IRC to include guaranteed insurability, accidental death or disability benefits, family term coverage, disability waiver benefit, or other benefits prescribed in the regulations.<sup>17</sup> Although QABs themselves are not considered “future benefits,” the charges for them are treated as future benefits. Therefore, charges for QABs fall under the expense charge rule applicable to “other reasonable charges” and must be expected to be paid if they are to be included in the permitted cash value of the contract or the allowable premiums.<sup>18</sup>

### NON-QUALIFYING CONTRACTS

If a United States resident owns a contract that is a life insurance contract under foreign law but doesn’t qualify for federal income tax purposes because it fails one or both of the tests described above, he or she must include the income earned on the contract in gross income. The amount is treated as ordinary income and is received or accrued in the year in which the contract fails to qualify.<sup>19</sup> The taxable amount with respect to the increase in value of the policy will be the excess of:

- the sum of the increase in the net surrender value for the taxable year and the cost of life insurance protection provided for the year, over
- premiums paid during the tax year.<sup>20</sup>

In addition, distributions will be taxable to the extent of the excess of the distribution over basis in the policy. Basis in the policy is generally equal to the sum of after-tax premiums paid plus income that was already reported, less any dividends or withdrawals taken.

If the policy does qualify as life insurance, there will be no taxation of inside build up in the value of the cash value policy. However, in the event that a contract qualifies as a life insurance contract at one time and later fails to qualify, income for all of the prior years will become taxable in the year that the contract no longer qualifies as a “life insurance contract.”<sup>21</sup>

For tax advisers and their U.S. resident clients, income derived from United States activities is often at the forefront of tax considerations. As demonstrated above, however, it is important that a person who expects to qualify as a “resident alien” be mindful of the potential tax implications of their existing financial arrangements.

### ABOUT THE AUTHOR

*Erin is a member of Varnum LLP’s Tax Team, and is based in their Grand Rapids, Michigan office. A former Senior Auditor for the Michigan Department of Treasury, she has completed use tax, Single Business Tax, and Michigan Business Tax audits for large and mid-size companies. She is experienced in reviewing financial records and applicable laws, compiling detailed schedules and working with taxpayers and tax preparers. A Certified Public Accountant, Erin was a tax consultant for a major accounting firm prior to pursuing a career in law, preparing tax returns for corporations, partnerships, individuals and tax-exempt organizations. During law school she served as a research assistant, reviewing major portions of the Guidebook to Michigan Taxes. She received numerous scholarships, awards, and certificates of merit as both an undergraduate and law school student.*

### ENDNOTES

- 1 I.R.C. § 7701(b)(3) (West, Westlaw through P.L. 114-165, approved 06-03-2016); An individual will be treated as a United States resident if he meets the substantial presence test. Under the substantial presence test, an individual will be treated as a resident if he is present in the United States on at least 31 consecutive days of the current year, and at least 183 days weighted on the aggregate throughout the current and two preceding years. See *id.* § 7701(b)(1)(A)(ii), (3)(A).
- 2 Treas. Reg. § 1.1-1(b) (as amended in 2008).

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| <p>3 Insurance Information Institute Factbook 2016, <a href="http://www.iii.org">http://www.iii.org</a> (last visited June 20, 2016).</p> <p>4 I.R.C. § 72(e)(5)(c).</p> <p>5 I.R.C. § 7702(a).</p> <p>6 Pehrson, Bieluch, Christie, and Dexter, 546 T.M., Annuities, Life Insurance, and Long-Term Care Insurance Products A-22 (BNA 2014).</p> <p>7 I.R.C. § 7702(a).</p> <p>8 I.R.C. § 7702(b)(1).</p> <p>9 NET SINGLE PREMIUM, Black's Law Dictionary (10th ed. 2014).</p> <p>10 I.R.C. § 7702(c)(1), (2).</p> <p>11 I.R.C. § 7702(c)(3), (4).</p> | <p>12 I.R.C. § 7702(d)(2).</p> <p>13 I.R.C. § 7702(f)(4).</p> <p>14 LIFE INSURANCE, Black's Law Dictionary (10th ed. 2014).</p> <p>15 I.R.C. § 7702(c)(3)(B).</p> <p>16 Rev. Rul. 2005-6, 2005-1 C.B. 471.</p> <p>17 I.R.C. § 7702(f)(5).</p> <p>18 Pehrson, Bieluch, Christie, and Dexter, 546 T.M., Annuities, Life Insurance, and Long-Term Care Insurance Products A-25 (BNA 2014).</p> <p>19 I.R.C. § 7702(g)(1)(C).</p> <p>20 I.R.C. § 7702(g)(1)(B).</p> <p>21 I.R.C. § 7702(g)(1)(C).</p> |
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# ESSENTIAL SERVICE ASSESSMENT

*By David A. Buick, ESA Administrator*

The Essential Service Assessment (ESA) is a state-specific tax on eligible personal property owned by, leased to, or in the possession of an eligible claimant who has claimed the eligible manufacturing personal property (EMPP) tax exemption. Certain EMPP subject to extended PA 198 (IFT) or PA 328 (New Personal Property) exemptions are also subject to the ESA.

The Michigan Department of Treasury has built a system to support the processing of ESA. The new system which went “live” on April 4, 2016, will enable a taxpayer to manage an online account using Michigan Treasury Online (MTO). Through this system, a taxpayer will be able to certify their ESA statement and pay their ESA tax. Because the information needed to validate taxpayers will come from their filed affidavit, registered MTO users will not be able to add the ESA tax to their MTO account until late April. Additionally, the Department is working with software vendors in developing e-file software for taxpayers choosing to file their ESA statements electronically.

Taxpayers were required to complete the ESA Affidavit and Statement (Form 5278) and file with the local unit assessor by February 22, 2016 (extended from the statutory deadline of February 20<sup>th</sup> due to the 20<sup>th</sup> falling on a Saturday). After a taxpayer has properly claimed the exemption by timely filing Form 5278, an electronic ESA statement will be created by the Department from the information filed with the local unit on Form 5278. Beginning May 1<sup>st</sup> each year, the taxpayer’s electronic statement will be accessible by the taxpayer through MTO. Taxpayers will have the ability to review and edit their statements through the MTO portal. Taxpayers

have until August 15<sup>th</sup> to certify and file their ESA statement through MTO or with approved e-file software and make their payment without penalty. A taxpayer will need to be registered in MTO in order to access their statement and the Department’s electronic payment portal. Taxpayers are required to electronically pay their ESA tax, either through EFT debit or credit.

By statute, amended returns can be accepted until September 15<sup>th</sup>. The last day for a taxpayer to certify, file and pay their ESA with penalty is October 15<sup>th</sup>. If the certified ESA statement and full payment are not received by the Department on October 15<sup>th</sup>, the Department is required to recommend to the State Tax Commission that the exemption be rescinded for those parcels and the parcels be returned to the ad valorem property tax roll.

As of this writing, amendments to the General Property Tax Act (PA 206 of 1893, as amended), State Essential Services Assessment Act (PA 92 of 2014, as amended), and Alternative State Essential Services Assessment Act (PA 93 of 2014, as amended) have passed the Michigan House and are currently being considered in the Michigan Senate that would extend the window for claiming the exemption until May 31<sup>st</sup> for 2016 only. These amendments also enhance and streamline the appeal process, clarify language and terms, and further define acquisition costs for Construction in Progress beginning in the 2017 tax year.

Additional information and a sign-up for listserv updates regarding ESA can be found at [www.Michigan.gov/esa](http://www.Michigan.gov/esa) or email your questions to [ESAQuestions@michigan.gov](mailto:ESAQuestions@michigan.gov).

# STREAMLINED PARTNERSHIP AUDIT LEGISLATION — “ENACTED AND PROPOSED LEGISLATION AFFECTING THE TAX TRIBUNAL AND COURT OF CLAIMS”

By Andrew M. Harris

In Michigan, there are two (2) primary statewide forums for taxpayers to contest state taxes, the Michigan Tax Tribunal (“Tribunal”) and the Michigan Court of Claims (“COC”). On June 16, 2015, Governor Rick Snyder signed into law Public Act 79, which implemented significant changes to the Tribunal and COC.<sup>1</sup> Additionally, pending in the Michigan State Senate Finance Committee, is Senate Bill 537, which contains several proposed changes to the Tribunal.<sup>2</sup> To best understand the effects of Public Act 79 and the potential impact of Senate Bill 537, it is worthwhile to understand the structure and function of both the Tribunal and COC.

## MICHIGAN TAX TRIBUNAL

In 1969, members of the State Bar, the Michigan Department of Treasury, the Michigan State Tax Commission and the Michigan Attorney General’s Office created a Report which recommended, *inter alia*, a specialized tribunal with jurisdiction over tax disputes.<sup>3</sup> As a result of this Report, the Michigan Legislature passed the Tax Tribunal Act in 1974 (“Act”).<sup>4</sup> The Tribunal serves as a quasi-judicial administrative entity subject to the provisions of the Act and nineteen (19) pages of Administrative Rules which functions as an administrative tax court with exclusive jurisdiction over property tax matters and concurrent jurisdiction (shared with the COC) over non-property tax matters such as individual income taxes, sales taxes, use taxes, withholding taxes, corporate office tax liability, etc.<sup>5</sup>

The Tribunal contains two (2) divisions, the “Entire Tribunal” and the “Small Claims Division.”<sup>6</sup> Any state tax case may be filed with the Entire Tribunal except for matters involving principal residence appeals and qualified agricultural appeals. The Entire Tribunal, which conducts hearings in Lansing<sup>7</sup>, consists of seven (7) members appointed by the Governor, with the advice and consent of the Senate for four (4) year terms.<sup>8</sup> The statutory criteria to serve on the Entire Tribunal ensures that members have extensive knowledge and expertise in state and local tax matters. For example, the Entire Tribunal must include: (a) at least two (2) attorneys with five (5) or more years of experience (completed immediately before their appointment) in tax matters or the discharge of a judicial or quasi-judicial office; (b) a certified assessor; (c) a real estate appraiser; and (d) at least one (1)

accountant with five (5) years’ experience in state or local tax matters.<sup>9</sup>

The Small Claims Division retains jurisdiction over residential properties, principal residence exemption disputes, agricultural property and any other property (including commercial property) which involves a valuation dispute \$100,000 or less.<sup>10</sup> Proceedings before the Small Claims Division, which conducts cases on an expedited basis as compared to the Entire Tribunal, include an appointed Hearing Officer, whose proposed decision will be subject to review by at least one (1) member of the Tribunal.<sup>11</sup>

## MICHIGAN COURT OF CLAIMS

The COC has the power and jurisdiction to hear and determine all claims and demands against the State of Michigan and any of its departments, commissions, boards and agencies.<sup>12</sup> Consistent with this definition, the COC retains jurisdiction over non-property tax related matters.<sup>13</sup> As a result of legislation enacted in 2013, the COC is no longer housed within the Ingham County Circuit Court (30<sup>th</sup> Circuit) but the Court of Appeals.<sup>14</sup> The COC includes four (4) elected Court of Appeals Judges who serve in at least two (2) districts created by the Michigan Supreme Court for two (2) year terms expiring on May 1<sup>st</sup> of every odd year.<sup>15</sup> The COC must hold at least four (4) sessions a year and can meet within any one (1) of the aforementioned Court of Appeals districts.<sup>16</sup> Proceedings before the COC, unlike the Tribunal, are subject to Michigan’s Revised Judicature Act and mirror those in place before Michigan’s Circuit Court.<sup>17</sup>

## PUBLIC ACT 79

Until March 31, 2016, MCL 205.22 required taxpayers seeking relief in the COC to “first pay the [contested] tax, including any applicable penalties and interest...”<sup>18</sup> In taxpayer parlance, this prerequisite referred to the “pay to play” obligation. As a result of Public Act 79, oftentimes referred to as Senate Bill 100, the “pay to play” requirement is no longer in effect.<sup>19</sup> In other words, a taxpayer need not have to pay the contested portion of the tax before having its claim decided by one of the four (4) COC Judges (the uncontested portion, if applicable, must still be paid) before. A taxpayer

does, however, retain the option to pay the contested portion before filing in the COC, a measure which may be prudent for taxpayers contesting large sums to avoid the accrual of significant penalties and interest. Public Act 79 also extended the time period a taxpayer may appeal a non-property tax decision to the Tribunal from thirty-five (35) days to sixty (60) days, which is still thirty (30) days fewer than the ninety (90) day time period a taxpayer has to file with the COC.<sup>20</sup>

Given Public Act 79's nascence, its effect on tax litigation in Michigan cannot yet be determined.<sup>21</sup> In the future, however, the COC may see an influx of cases because parties may prefer to litigate before elected Judges with the protections allotted by the Michigan Court Rules ("MCR").<sup>22</sup> These characteristics of the COC stand in stark contrast to the Tribunal, which includes non-attorneys and rules separate from the MCRs.<sup>23</sup> Due to the anticipated increase in cases before the COC (as well as the decrease in filing before the Tribunal), Public Act 79 contains an additional \$200,000 appropriation to the COC for fiscal year 2015-2016.<sup>24</sup>

### SENATE BILL 537

On October 1, 2015, State Senators Rick Johnson (R) and Darwin Booher (R) introduced Senate Bill 537 to the Senate Finance Committee ("SB 537"). SB 537 contains significant proposed changes to the Tribunal and is therefore referred to as "reform legislation" within Michigan's tax and legislative communities. Some of the material aspects of SB 537 include the following:<sup>25</sup>

- The Governor would have to consider a "list of qualified candidates solicited from at least 1 appropriate professional association located and primarily operated..." in Michigan before making an appointment to the Tribunal.<sup>26</sup> The Governor would also have increased powers to (a) designate a member of the Tribunal as a Chairperson (who has the authority to assign cases and other Tribunal work) and (b) remove a Tribunal member for misconduct or any other "good cause."
- Tribunal members would have to receive training on "proper courtroom procedures and state and local tax issues."
- The Bill would also change the composition of the Tribunal to include five (5) attorneys (three more than the current composition) with at least five (5) years' experience in federal and state/local tax matters immediately before appointment, one (1) certified assessor holding the highest level certification with five (5) years' experience with a tax assessing unit and one (1) CPA with at least five (5) years' experience in state or local matters. Additionally, the Tribunal Members would be unable to engage in any other gainful employment or business subject to certain exceptions (including, passive business

interests, scholarly work, and acting for oneself).<sup>27</sup>

- The Tribunal's principal office shall remain in Lansing, but the Tribunal would be allowed to "operate such regional offices across" Michigan "as the Chairperson considers necessary."<sup>28</sup>
- SB 537 also allows the Tribunal to promulgate rules regarding practice and procedure before the Tribunal regarding mediation, ethical standards for Tribunal Members, and training for existing and newly appointed Members.
- Each proceeding before the Tribunal would require at least two (2) Members, one of which must be an attorney. Additionally, the attorney must issue an "Initial Decision" which is then reviewed by the non-attorney member who may concur or dissent. In the event of a dissent, the Chairperson must assign a third tribunal member to the proceeding who "shall decide the outcome of the proceeding" with the option (but not requirement) of issuing a written opinion.<sup>29</sup> These proceedings must be conducted in public in compliance with Michigan's Open Meetings Act.<sup>30</sup>
- The time period to file non-property tax cases with the Tribunal would be extended from sixty (60) days to ninety (90) days.<sup>31</sup>
- Instead of Decisions and Opinions issued within a "reasonable time", they must be issued three (3) months after the last brief filed following completion of the hearing or three (3) months after the hearing, whichever is later. This deadline is subject to a one (1) month extension provided by the Chairperson.
- SB 537 raises the jurisdictional threshold for non-residential properties in the Small Claims Division from a \$100,000 valuation dispute to \$250,000.

As reflected in the summary above, SB 537's primary intentions are to enact more sophisticated and efficient procedures for the Tribunal through heightened oversight by the Governor's office, stricter training and qualifications, expedited rulings, and expanded jurisdiction of the Small Claims Division. Given its significant changes to the governance and function of the Tribunal, it will be interesting for tax practitioners in Michigan to monitor whether SB 537 gains any traction in the Legislature, where the bill currently remains before the Senate Finance Committee.

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*Andrew M. Harris graduated from the University of Michigan in 2000 with a B.A. in Kinesiology and received both his JD (2003) and LL.M in Taxation (2010) from Wayne State University. Mr. Harris is a partner at the Kitch Drutchas Wagner*

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**ENDNOTES**

- 1 2015 PA 79.
- 2 SB 537.
- 3 See <http://www.michigan.gov/taxtrib/0,1607,7-187-38249-139737--00,html>.
- 4 MCL 205.701, et seq.
- 5 MCL 205.731.
- 6 MCL 205.761.
- 7 MCL 205.725.
- 8 MCL 205.721.
- 9 MCL 207.722. Additionally, all Members who are not attorneys, certified assessors, professional real estate appraisers, or certified public accountants, must have at least five (5) years of experience in state or local tax matters.
- 10 Michigan Administrative Code, R 408.41863; MCL 205.762.
- 11 MCL 205.761.
- 12 MCL 600.6419.
- 13 *Id.*
- 14 MCL 600.6404(1).
- 15 *Id.* These Judges are the Hon Michael J. Talbot (Chief Judge), Hon. Cythia D. Stephens, Hon. John. Mark T. Boonstra and Hon. Stephen L. Borrelo. These four (4) Districts include Detroit (District 1), Troy (District II), Grand Rapids (District 3) and Lansing (District IV).

- 16 MCL 600.6407.
- 17 MCL 600.6422.
- 18 The no longer applicable version of MCL 205.22(2).
- 19 MCL 205.22(2).
- 20 MCL 205.22(1)
- 21 On March 11, 2015, the Taxation Section of the State Bar of Michigan affirmed its support of Public Act 79's removal of the "pay to play" requirement but advocated that the time period to file matters with the Tribunal should be increased to ninety (90) days (instead of 60) to comport with the time period applicable to appeals before the COC.
- 22 MCL 600.6422.
- 23 MCL 205.721.
- 24 MCL 205.22(6).
- 25 For a full text of SB 537, please see [http://www.legislature.mi.gov/\(S\(od0dko1w0k0lje0zs5kwmnjo\)\)/mileg.aspx?page=getObject&objectName.=2015-SB-0537](http://www.legislature.mi.gov/(S(od0dko1w0k0lje0zs5kwmnjo))/mileg.aspx?page=getObject&objectName.=2015-SB-0537).
- 26 SB 537.
- 27 *Id.*
- 28 *Id.*
- 29 *Id.*
- 30 MCL 15.261, et seq.
- 31 SB 537; MCL 205.735a(6).

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