

# Tax Newsletter

April - June 1977



TAXATION SECTION

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Taxation Section  
State Bar of Michigan  
306 Townsend Street, Lansing, Mich. 48904

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## Notice to Local Bar Associations

This year's Central Region IRS - Bar Liaison Meeting will be held in Cincinnati, Ohio, on November 3-4, 1977, beginning with a social hour at 6:00 p.m. on Thursday, November 3, 1977. The State Bar and each local Bar Association is invited to send a representative to the meeting.

Stouffer's Cincinnati Towers, Fifth and Elm Streets, Cincinnati, Ohio (513-721-8600), is holding a block of rooms for November 3, 1977. Reservations may be made directly with the hotel.

In the past few years, Michigan has been poorly represented at these liaison meetings, and local Bar Associations are encouraged to send a representative. Please let Robert B. Pierce, Taxation Section Chairman, know if your association plans to send a representative.

MINUTES OF REGULAR MEETING OF COUNCIL OF  
TAXATION SECTION OF STATE BAR OF MICHIGAN

Pursuant to notice dated April 15, 1977, a meeting of the council was held at the University Club, 3435 Forest Road, Lansing, Michigan on April 28, 1977, beginning at 4:00 p.m.

Present: Robert B. Pierce  
John N. Seaman  
King S. Kearns  
John L. King  
John W. McNeil  
Lawrence J. Murphy  
John E. Riecker  
George L. Whitfield

Also in attendance pursuant to invitation of the Chairman were representatives of the Michigan Association of Certified Public Accountants: Leonard G. Velick and Charles Martin.

APPROVAL OF MINUTES. There being no corrections, the minutes of the meeting of January 27, 1977 were approved as circulated.

REQUEST FOR SECTION LIST. Mr. Velick reported that the MACPA had not granted the request for a member list, to First of Michigan Corporation. The council resolved not to make the section list available.

JOINT CONFERENCE. Mr. Velick mentioned the joint conference of CPA's and lawyers to be held at the Fairlane Club on Wednesday, June 8, 1977, which will be a workshop on the tax considerations of closely held businesses. The registration fee is \$45.

TAX COURT SESSION. Mr. King reported that

the tax court hearing will be on June 6th, and the lunch on June 7th.

STATE BAR 1977 ANNUAL MEETING. Mr. King announced that the program will cover tax consequences of divorce, deduction of attorney fees, and drafting problems under the Tax Reform Act of 1976.

EMPLOYEE BENEFIT COMMITTEE. Mr. Whitfield reported that the committee has held two meetings plus a meeting with IRS representatives, for discussion of procedures. The committee will attempt to furnish a series of short articles to be published in the State Bar Journal, and is discussing unauthorized practice problems.

SINGLE BUSINESS TAX COMMITTEE. Larry Murphy reported the recommendations of the task force and of the Governor.

PROCEDURES MANUAL. Mr. Murphy also discussed the proposed procedures manual, which has been held up because of changing procedures in the State Tax Tribunal. The question was mentioned; whether the committee should instead help the Tribunal with its manual. It was decided to take no action until the Tribunal situation becomes clearer.

MISCELLANEOUS. Mr. Martin reported the dispute in regard to disc benefits where there is unitary filing. Mr. Kearn reported that Indiana has voted itself out of the multi-state tax compact. The treasurer reported on the financial statement for October 1, 1976 to March 31, 1977.

TAX MANAGEMENT SERVICE. Jack Riecker suggested that specimen copies of the tax management service be available for exhibition at the annual meeting, and that an announcement be placed in the Bar Journal, that these volumes are available at

the State Law Library. It was resolved, that such an announcement be placed in the State Bar Journal.

PRESIDENT'S REPORT. Mr. Pierce reported that he had advised the State Bar office that the Council is generally unfavorable to practice by law students. He also announced that he will attend the liaison meeting with Internal revenue Service, Central Region on November 3 and 4 in Cincinnati, welcomes suggestions for discussion, and invites others to participate. Suggestions were requested for response to Mr. Frank's letter on the court rule covering announcements in the telephone yellow pages. An invitation has been received from MACPA to attend the May 10 luncheon for tax legislators and CPA tax committee members, which will be held on Tuesday, May 10 at the Lion's Den in Lansing at noon.

IRS DIRECTORY. The council discussed at length the possibility of preparing a new directory of IRS personnel. The President is gathering material for this purpose, and requests material from others.

The meeting was adjourned at 6:00 p.m.

Superior Court

AVIS RENT-A-CAR SYSTEM, INC v CITY OF ROMULUS

THE HERTZ CORPORATION v CITY OF ROMULUS

Docket Nos. 57857, 57937. Decided June 13, 1977.

Avis Rent-A-Car System, Inc., and The Hertz Corporation brought complaints against the City of Romulus, Wayne County, and Romulus Community Schools for recovery of taxes paid to defendants under protest. Avis and Hertz operate car rental concessions in buildings leased from the Wayne County Road Commission at Metropolitan Airport in Romulus. Plaintiffs claimed that the property was exempt from taxation by statute. The defendants asserted that the exemption did not apply because plaintiffs' operations are at an airport located in a county of more than 1,000,000 population. The Wayne Circuit Court, Richard M. Maher, J., in Avis, and George T. Martin, J., in Hertz, granted summary judgments for plaintiffs on the ground that the statute restricting the exemption in counties of more than 1,000,000 population is unconstitutional. The Court of Appeals, Bronson, P.J., and V.J. Brennan and D.E. Holbrook, Jr., JJ., affirmed (Docket Nos. 21134, 21714, 21715). Defendants appeal. Held:

1. A population qualification must have a reasonable relation to the subject matter of the legislation and must furnish some apparent reason for the legislation differing from that applicable to other municipalities having a substantial difference in population. A population classification can never be sustained where it is a manifest subterfuge.

2. The legislation which limits the application of the tax exemption granted to concessionaires at airports by requiring the concessionaire to meet

"basic tests" is applicable only to airports in counties with more than 1,000,000 population. A reasonable relationship between the population qualification and the limiting of a tax exemption has not been demonstrated in this case. The legislative conclusion must have been that these airports will attract concessions without the lure of a tax exemption. The attraction, however, is not a function of county population, but depends upon the volume of traffic flowing through the airport. The legislation withdraws the exemption not only from concessions at Metropolitan Airport but could apply also to Detroit City Airport and Grosse Ile Municipal Airport.

3. The provision of the statute which places restrictions on tax exemptions for operators of concessions at airports located in counties of more than 1,000,000 population violates the Constitution as a local act passed in a case where a general act could be applied.

4. The exemption for operators of concessions at airports granted by the remaining portion of the statute can operate effectively without the portion which is unconstitutional and is therefore severable and remains effective.

Affirmed

Justice Williams, dissenting, would hold that the statute is constitutional. The initial purpose of the legislation was to expand the tax base by making the users and lessees of public land taxable. The exemptions for concessionaires were to encourage the operation of concessions at public places where services might not be forthcoming without such a tax exemption. The statute was amended by narrowing those exemptions in certain cases where the airports are located in counties

of 1,000,000 or more population. The size of the county itself may not provide sufficient rationale for the subclassification, but the Legislature prescribed in addition three basic tests, the purpose of the first of which is to exclude from taxation concessionaires who have to be induced by exclusive contract to render service at the airport, while permitting taxation where the business is so attractive that more than one concessionaire seeks to and does render service. The Legislature has not created an unreasonable or irrational classification or tax policy because it based the classification on ability to pay, a normal tax classification.

1970 PA 174 held unconstitutional.

65 Mich App 119; 237 NW2d 209 (1975) affirmed.

KRATCHMAN v CITY OF DETROIT

Docket No. 59564, decided May 19, 1977.

George Kratchman, a taxpayer in the City of Detroit, brought an action seeking to enjoin the City of Detroit from issuing general obligation bonds for the Civic Center-Riverfront Stadium development. Plaintiff alleges that the notice of the proposed bonding published in the Detroit Free Press was inadequate in apprising the taxpayers of their rights and obligations under the law. The Wayne Circuit Court, Peter B. Spivak, J., granted summary judgment for plaintiff and issued an injunction. Defendant appeals prior to decision by the Court of Appeals. Held:

1. The defendant satisfied the statutory requirements with the published notice of intent to issue general public improvement bonds. The notice stated the maximum amount of the bond issue, the various purposes of the bond issue, its source of payment, and other information in relation to the nature of the issue, including the maximum interest rate and period of maturation.

2. The home rule cities act merely requires that the notice of intent to issue bonds state the "purpose thereof" rather than describe the proposed project with great specificity. The notice in the instant case stated that the purpose of the bonds was "Civic Center--Riverfront Stadium Development" which meets all the requirements of the statute.

3. The proposed public improvement bond had many purposes and the notice specified the improvements and the amount to be allocated for each one. Requiring further particularization in the case of this multi-purpose general public

improvement bond issue raises the danger that publication of a prospectus, rather than reasonable notice, would be required. Some flexibility must be left to the issuing authority as to the disposition of the bond proceeds.

4. The trial court erred in finding that notice required some indication of the total contemplated project cost. The total stadium project was not to be financed by a single bond issue. There is nothing in the record to indicate that the defendant would not have had the option of financing actual construction through other sources. It was sufficient for the defendant to state the maximum cost of the bond issue in question, rather than to make uncertain estimates of the ultimate cost of the project.

5. Holding that the notice of intent to issue bonds was misleading because it referred to a stadium rather than an arena was clearly erroneous. Facilities designed to house indoor sporting events are commonly referred to as stadiums. Furthermore, had the defendant referred to the development of a civic center arena there could well have been confusion with the civic center facility know as Cobo "Arena".

6. The home rule cities act requires that the legislative body of a city, rather than the Municipal Finance Commission, determine the contents of the notice of intent. Until the notice of intent is published and the referendum period has run, the commission cannot make the determination mandated by the Municipal Finance Act.

The judgment of the trial court is reversed and the cause remanded with direction to grant summary judgment for the defendant.

Justices Williams and Blair Moody, Jr., dissented on the ground that the notice did not inform the electors and all other interested persons of the "purpose" of the bond issue as required by the statute, and consequently was inadequate. Additional information which was given to the Common Council by the Mayor of Detroit shows that the "purpose" of the bond issue was to cover architectural and engineering fees likely, coupled with initial site preparation expenses relating to the construction of a new 20,000-seat arena or stadium near Cobo Hall at a cost originally estimated to be \$20,000,000. This additional information was also appropriate for the citizens of Detroit so they could adequately understand the "purpose" of the bond issuance, and would have been included in the notice without much increase in length. "Civic Center--Riverfront Stadium Development \$1,500,000" is at best ambiguous. A bond issue which finances only a part of a project must be placed in context with the whole project in order to understand the "purpose" of the issue.

Court of Appeals

XEROX CORPORATION,  
Plaintiff-Appellant,

-v-

No. 28124-30

CITY OF KALAMAZOO,  
Defendant-Appellee.

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APPEAL FROM: Michigan Tax Tribunal  
BEFORE: Danhof, C.J., and R.B. Burns and E. A.  
Quinnell, JJ.  
OPINION WRITTEN BY: Danhof, C.J.

FACTS: Plaintiff paid its taxes under protest, after appealing to the State Tax Commission challenging defendant's assessments, and then brought suit in circuit court to challenge the legality and constitutionality of the method of valuation employed by defendant. While the circuit court action was pending, the Michigan Tax Tribunal was established and the circuit court action was transferred to the Tax Tribunal, pursuant to statute. The Tax Tribunal ruled that it was without jurisdiction over plaintiff's claims because the State Tax Commission's decision was final and binding upon it. Plaintiff appeals from the Tax Tribunal's order of dismissal, which was dated December 1, 1975.

ISSUE: Yes. The State Tax Commission's decision was only conclusive as to the amount of the assessment; it could not be binding as to the validity of the methods employed in arriving at such assessments, since the legality and constitutionality of a tax was formerly determined by State Tax Commission and the circuit court in matters involving either the amount or the validity of a tax assessment, the Tax Tribunal had jurisdiction over plaintiff's claims, and erred in failing to recognize and exercise such jurisdiction.

Reversed and remanded for reinstatement of reinstatement of plaintiff's claims.

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