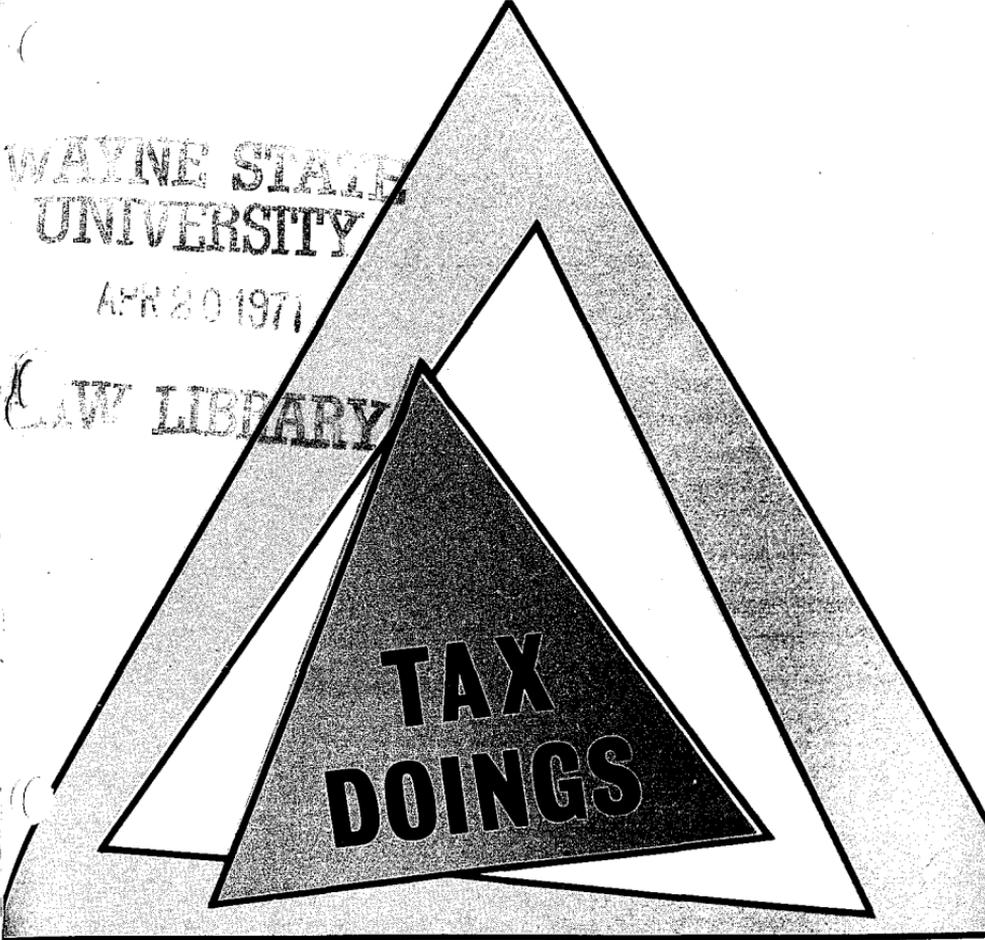


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**TAX  
DOINGS**

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**MARCH, 1971 ISSUE**

## TAX DOINGS

EDITOR ..... I. John Snider II

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**MINUTES OF MEETING  
BAR ASSOCIATION LIAISON GROUP  
AND  
CENTRAL REGION  
INTERNAL REVENUE SERVICE OFFICIALS  
HELD NOVEMBER 18, 1970  
AT CINCINNATI, OHIO**

The following is a continuation of the minutes of the Bar Liaison Group and the Central Region Internal Revenue Service Officials in Cincinnati, Ohio. A portion of the minutes were excerpted from the first issue of 1970 "Tax Doings" because of their length.

**III. PRIME ISSUE PROGRAM**

Eugene M. Corbin, Assistant Regional Counsel, Tax Court Litigation, discussed the present status of the prime case program of the Chief Counsel's Office. It was explained that the prime case program attempts to define the most important and active issues in the Chief Counsel's Office. Cases which have been so defined are then controlled by the national office through the prime case program in order to insure that the proper cases will be litigated in order to get a judicial determination in the prime issues. As far as the field is concerned, these prime issues are broken down into three categories. The first category is one where the field can take no action without authority from the national office and these are instances where normally the Commissioner's position is in the process of being determined. Category II cases are where the field can neither settle nor try the case without first advising the national office of the facts and being guided by its decision. Category III are prime issues in which the field has authority to settle the case but does not have authority to try the case without first advising the national office and being guided as to whether the case would be a proper test vehicle of the prime issue. Mr. Worthy, the Chief Counsel, has advised the field that when they have a prime issue that affects the handling of the case they are authorized to advise the petitioner that a prime issue is involved. As far as recent developments are concerned, the prime issue program is being narrowed and is pinpointing the issues more specifically. In September of 1970, a new prime issue list was promulgated in which 48 issues previously listed were deleted and 14 new issues were

added. Some of the issues on the list were more specifically defined and narrowed. At the present time, there are only 32 issues on the prime issue list. There are none in Category I, 6 in Category II and 26 in Category III.

#### **IV. TAX COURT PROCEDURES ON SMALL CASES**

Mr. Corbin also discussed "small case" procedures. The Internal Revenue Act of 1969 has provided for special handling of small cases which have been defined as being cases involving deficiencies and additions to the tax of less than \$1,000 for each of the years involved. It is understood that a special division has been set up within the Tax Court to handle these small cases and Judge Howard Dawson heads that division. Four commissioners have been appointed to hear small tax cases. Although the "small case" portion of the Internal Revenue Act is not effective until January 1, 1971, the Tax Court has been considering these matters and experimenting and hopes to get the small case procedure in full effect early in 1971. It is understood that they intend to set up Category I and Category II cities as places of trial for the small cases. Category I cities are a list of the cities which the Tax Court presently sits and, as in the past, small cases will be handled on regular calendars if the schedule permits. Category II cities will be additional cities which are only for sessions with small cases thereon. These cities are in addition to the regular trial locations. In Ohio, Toledo is the only Category II city listed; Evansville is the additional city in Indiana; Lexington is a Category II city in Kentucky; although not sure, it is thought that Grand Rapids is a Category II city in Michigan, and there are no Category II cities listed for West Virginia. It is contemplated that the Court will not be bound as to state lines regarding places of trial. For instance, calendaring small cases set in Evansville could include cases for the western part of Kentucky and the southeastern part of Illinois. Rules of procedure regarding the handling of small cases before the Tax Court have been promulgated and are published both in the CCH and Prentice-Hall tax services. In deciding to advise a client to go before the Tax Court, two things appear to be important. First, a small case decision has no precedent value in any court and by law no appeal procedures are available from a small case decision. Secondly, once the trial has started under the small case procedure, it cannot be removed from this procedure and if it is to be taken out of these procedures, a motion should be made prior to the commencement of the trial. In addition, written opinions are not required in these cases and in most instances it is not contemplated that briefs will be filed. Further, transcripts will not be produced except in unusual cases and upon specific request of the parties. There will be a court reporter who will transcribe the evidence at each of the sessions.

## VI. IRS LEVY AUTHORITY AND PRACTICE

A presentation on the use of the Notice of Levy was made by Messrs. W. C. Kellen, Executive Assistant to the Assistant Regional Commissioner (Collection), and J. Pitts Vick, Assistant Regional Counsel, General Litigation.

Internal Revenue Manual procedures provide that taxpayers shall be given a reasonable chance to settle their tax liabilities voluntarily before drastic enforcement actions are begun. Also, before seizure or levy, attempts are made to notify taxpayers of the contemplated action and give them a reasonable opportunity to pay. This notification prior to seizure or levy may be given in person, by telephone, or by correspondence.

Under actual operating procedures, depending upon the class of tax involved and the taxpayer's record of compliance with filing and payment requirements, three, and often four, written notices are sent to the delinquent taxpayer after assessment of the tax. The final notice to the taxpayer clearly indicates that enforced collection will follow if the liability is not satisfied within ten days. A period of *two to five months* from the date of the first notice may have elapsed before any such action is taken. During this period, the taxpayer has ample opportunity to make arrangements for payment, or if his financial circumstances are such that he cannot so do, he has ample opportunity to contact the IRS and tell them what his financial circumstances are. If he does neither, the Service may levy on property in the hands of a third party or may seize property in the possession of the taxpayer. This action usually consists of the service of a Notice of Levy on the taxpayer's employer to attach the wages of the taxpayer.

The chain of events leading up to the service of a Notice of Levy was presented from the point of view that the taxpayer had received all notices for payment and has neglected or chosen not to respond. If at any stage in this process a notice is returned as undeliverable mail, the delinquent account is issued to an appropriate person to attempt to locate and contact the taxpayer. Levy action is not attempted until it is ascertained that the taxpayer has received notice of the delinquent tax due and ultimately a *Final Notice Before Seizure* or personal final demand for payment.

Ordinarily, service of levy is made personally by a Revenue Officer on Form 668-A. This form shows name of taxpayer, kind of tax, period ended, and liability that has been assessed against him. In some instances, service is made by mail. This is done as a result of a written agreement with the employer on Form 4427.

Service by mail generally means substantial manpower savings to both the third party and the Government, and this manner of service does not deprive the taxpayer of his rights. (Copy of Notice of Levy,

Forms 668-A, 4427, and Notice 110, instructions, along with various notices mailed to delinquent taxpayers were distributed to participants.)

The IRS follows standard business practice in assuming that all first class mail that is not returned as undeliverable has been received by the addressee. It is recognized, however, that in a few isolated instances, mail may not be received by a taxpayer due to loss, theft, etc. In these instances, if a Notice of Levy is served, it can be released by the Service. Similarly, releases may also be granted in hardship cases, situations where the Notice of Levy, if effected, would result in the termination of the taxpayer's employment, upon full payment by the taxpayer, etc. Such releases are, of course, based on the circumstances of each individual case and on the judgment of the officer responsible for the case. They do demonstrate that the Service does not have an inflexible policy with respect to the exercise of this powerful enforcement collection tool.

## **VII. USE OF ENGINEER REVENUE AGENTS ON CERTAIN CASES AT TAXPAYER'S REQUEST**

Michael A. DeGuire, Assistant Regional Commissioner, Audit, stated that where a taxpayer feels services of an engineer agent are required, requests will be given careful consideration. However, it is not always possible to honor requests because of the limited number of engineer revenue agents in the region. There are presently *eighteen* such agents for the entire region, thus priority factual situations must be taken into consideration when making a decision on a request.

It is established procedure that adjustments stemming from engineer revenue agent's report must be orally explained to the taxpayer or his representative and set forth in the revenue agent's report.

Bar representatives indicated experiences where District Conferees declined to reverse or make any substantial changes to the engineer revenue agent's adjustments and expressed the belief that conferees are extremely reluctant to make any changes to these reports and, in effect, use them as a shield. In responding, Mr. DeGuire stated that conferees have authority to overrule the engineer revenue agent adjustment just as they do any other type adjustment. Mr. Keebler suggested to the representatives that if they feel an engineer report is being used improperly, such as a shield, they should take this up with the Chief of the Audit Division.

## **IX. FEDERAL ESTATE TAX RETURNS—FORM 706**

Some federal estate tax returns, Form 706, are being filed without all of the required supporting documentation. In these instances taxpayer contacts, which could have been avoided, are required to perfect the return, and delays occur in completing examinations.

Generally speaking, the copy of the decedent's will, and evidence to support credit for state taxes, are being filed with the return, but the following types of documentation are frequently missing:

Asset	Form 706 Schedule	Information Required
Real Estate	A	Description and identification of the realty. Also copies of appraisals and basis of valuation. Instructions on Page 6 of Form 706.
Inactive and/or Closely Held Corporation Stock, a Partnership Interest or a Proprietorship	B	Financial statements. Instructions on Page 8 of Form 706 and Sec. 20.2031-2(f) of the Regulations. Also, Instructions on Page 16 of Form 706.
Life Insurance Proceeds	D	Forms 712 for all policies and complete information, including copies of policies, for excluded proceeds. Instructions on Page 12 of Form 706.
Jointly Held Property Excluded in Whole or in Part	E	Complete details of the cotenant's acquisition of an interest. Instructions on Page 14 of Form 706.
Property Transferred Without Adequate Consideration	G	A copy of the death certificate and a statement made under the penalties of perjury setting forth all of the material facts pertaining to the transfer. Section 20.6018-4(g) of the Regulations. If transfer was by a written instrument, a copy thereof. Sec. 20.6018-4(f).
Power of Appointment	H	Copy of the instrument creating the power. Instructions on Page 20 of Form 706.

The cooperation of practitioners in filing as much of the required supporting documentation as possible with the federal estate tax return, Form 706, will be appreciated. If required documentation is not able to be filed with the return, making it available to IRS promptly after being requested will help to avoid delays in audits and be mutually beneficial in minimizing the time expended by the taxpayer, or his representative, and the revenue agent.

## NOTEWORTHY NEWS ITEMS

The Council of the Taxation Section would like to bring together comments and news notes of those who are Section members. Specifically, we are looking for the type of item that will not appear in your service, but which could prove helpful in all our practices. General or technical comments will be appreciated.

The following are items developed solely by your editor. Any comments you might have should be sent to me at P.O. Box 696, Muskegon, Michigan 49441.

A. It appears that there is some substance to the rumor that the Central Region will be merged with another Region—probably re-named—and probably will be located in Chicago.

B. A number of practitioners continue to report that they are not receiving copies of "Closing Letters" on Federal Estate Tax Returns which are filed. The same problem exists in the Pension and Profit-Sharing area when copies of the "Determination Letter" are not returned to Counsel. This condition exists where powers of attorney are attached on the original submission. It would appear that the power is being separated from the return or determination request and not rematched.

C. The Michigan Department of Revenue is apparently mailing bills for penalty and interest to Corporations, alleging that they failed to file a proper estimate. This problem apparently arises because the Department takes the position that any corporation anticipating annual tax in excess of \$250.00 must file an estimate (which is statutory) even though the subsequent section of the statute ties the estimate to the federal estimate which might not be required. This seems to be creating a real problem for smaller corporations.

D. The Bill establishing the "State Tax Tribunal" has been re-introduced in the State Senate. This bill, in substance, grew out of the study of the Section, the Department of Revenue and the University of Michigan Law School, of some years ago. The bill, while not in the form recommended by that group, would accomplish much of what that study recommended. The proposed bill was drafted by representatives of the Department of Revenue, the Legislative Service Bureau, the Governor's Legal Adviser and the Administrative Law Committee and Taxation-Section of the State Bar. Basically, it deserves the support, in this editor's opinion, of the members of the Bar.

E. The Department of Revenue has scheduled a public hearing for Thursday, April 29, 1971 to review proposed rules of practice and procedure for corporation and corporation franchise fee matters. The proposed rules follow. Any comments should be addressed to Mr. Clifford Domke, Chairman, Taxation Section, State Bar of Michigan,

1100 City Bank Bldg., Jackson, Michigan 49201, for presentation. You may also comment directly to Lloyd L. Anderson, Deputy State Treasurer, 1st Floor Treasury Bldg., Lansing, Michigan 48922. Comments must be in hand by April 29, 1971.

## **PROPOSED RULES OF PRACTICE AND PROCEDURE BEFORE THE CORPORATION DIVISION AND CORPORATION FRANCHISE FEE DIVISION, DEPARTMENT OF TREASURY**

### **R 450.51. Definitions.**

Rule 1. As used in these rules:

- (a) "Act" means the Fees, Taxes, and Charges Act, being Act No. 85 of the Public Acts of 1921, as amended, and the Michigan General Corporation Act, being Section 93 of Act No. 327 of the Public Acts of 1931, as amended.
- (b) "Division" means the Corporation Division or the Corporation Franchise Fee Division of the Michigan Department of Treasury.

### **R 450.52. Jurisdiction.**

Rule 2. Jurisdiction of the Division is limited to holding hearings in the following matters:

- (a) Determination of Franchise Fees. See Section 93 of the General Corporation Act.
  - 1. Initial organization and qualification fees. Also, see Section 3 of Act No. 85, PA 1921, as amended.
  - 2. Annual privilege fees. See Act No. 85, PA 1921, as amended.
- (b) Redetermination of Annual Privilege Fee. See Section 9 of the Fees, Taxes and Charges Act.
- (c) Claims for Refund. See Section 10 of the Fees, Taxes and Charges Act.
- (d) Declaratory Rulings. See Section 63, Michigan Administrative Procedures Act.

### **R 450.53. Practice and Procedure in General.**

Rule 3. The statutory references in Rule 2 prescribe Division procedure in the several matters in varying degrees of detail and to which reference shall be made. Additional practices and procedures are prescribed in these rules.

**R 450.54. Business Office and Hours.**

Rule 4. The business office of the Division is located in the Treasury Building, Lansing, Michigan 48922, and is open from 8:00 a.m. to 5:00 p.m. daily, except Saturday, Sunday, and legal holidays.

**R 450.55. Form and Style of Papers.**

Rule 5.(1) All papers filed with the Division shall be either printed or typewritten, and if typewritten, shall be on only one side of plain white paper. Paper shall be no more than 8½ inches wide and 13 inches long. Copies shall be legible but may be on any weight paper.

(2) A descriptive caption shall be placed on all papers filed. Where the written signature of a corporation is required it shall be signed in the name of the corporation by an officer active in the management of its corporate affairs whose name and title shall likewise be subscribed. The mailing address of any party filing papers under the provisions of these rules shall be typed or printed beneath the party's written signature.

(3) Except as otherwise provided in these rules, a signed original and one copy of papers shall be filed with the Division.

(4) Whenever any paper is filed in more than one proceeding (as a motion to consolidate proceedings or in proceedings already consolidated), one additional copy shall be filed for each additional proceeding.

**R 450.56. Filing and Copies.**

Rule 6.(1) Papers required by statute or rule to be filed by parties shall be deemed properly filed when the original and two (2) copies thereof are deposited with the Director of the Division at its business office.

**R 450.57. Time for Filing Papers.**

Rule 7.(1) Time for foreign corporation to make application to be heard on determination of qualification fees under Section 93 of the Act is limited to any time prior to determination of fees.

(2) Application setting forth a request for a determination of fees under Section 9 of the Act must be filed within twenty (20) days after receipt of Notice of Computation.

(3) Written claim for refund together with information and proof must be filed within three (3) years of the alleged overpayment.

**R 450.58. Representation.**

Rule 8. Practice before the Division shall be limited to duly elected officers of a corporation or licensed attorneys in good standing. The treasurer or other person delegated to hold the hearing may require adequate identification and authority.

**R 450.59. Informal Dispositions.**

Rule 9. The corporation may execute a sworn waiver of formal hearing which shall constitute a stipulation and agreement for an informal method of disposition pursuant to Section 78 of the Administrative Procedures Act (Act No. 306 of the Public Acts of 1969, as amended) and the proceedings thereafter will be informal without a record being made.

**R 450.60. Investigations.**

Rule 10. The Division may refer any pending matter to its representatives for further investigation. The representative shall submit a written report of findings and recommendations to the Division. The report shall be made available to authorized representatives of the corporation and payment of the established charge for such reproduction within twenty (20) days after such written request.

**R 450.61. Form of Petition for Determination or Redetermination and Claim of Appeal.**

Rule 11. An Application for Determination or Redetermination and Claim for Refund shall supply substantially the following information.

(Note: The following form of petition is suggested for redetermination under Section 9 of the Act. Appropriate changes should be made in the form for determinations or claim for refund.)

**STATE OF MICHIGAN  
CORPORATION FRANCHISE FEE DIVISION  
DEPARTMENT OF TREASURY**

Petitioner

Docket No. \_\_\_\_\_

**PETITION FOR REDETERMINATION**

**TO THE STATE TREASURER:**

Petitioner hereby requests a redetermination of the determination made by the Corporation Franchise Division of the Department of Treasury on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and petitions the State Treasurer for a recomputation of the amount of the annual privilege fee due from Petitioner upon the following grounds:

I. Petitioner is a \_\_\_\_\_ corporation with its principal office located at \_\_\_\_\_.



**R 450.61. (Cont'd) Form or Petition for Determination or Redetermination and Claim of Appeal.**

Rule 11.(2) A Claim for Refund under Section 10 of the Fees, Taxes and Charges Act is additional to and independent of that afforded by Section 10 of the same act which provides for a petition redetermination. Therefore, they must be set forth separately in the paper filed or in a separate petition.

**R 450.62. Docket Number.**

Rule 12. Upon receipt of the original Request for Determination, Redetermination or Claim for Refund, the Director of the Division will assign a docket number.

**R 450.63. Notice and Time for Hearing.**

Rule 13.(1) Upon filing of a paper for Determination, Redetermination or Claim for Refund, the Division shall notify the corporation of the right to an informal or formal hearing and provide the corporation with a form for a Waiver of Formal Hearing.

(2) The form for Waiver of Formal Hearing shall be executed and filed with the Division within fifteen (15) days from the date notice of a right to an informal or formal hearing is given. Otherwise, the Division shall within sixty (60) days fix a time for formal hearing unless for good cause shown the time is extended by order of the Division.

(3) At the time fixed for hearing the Division shall proceed with the disposition as a contested case. The Division may make informal disposition at the time set for hearing of any matter which is uncontested by virtue of Stipulation by the parties, Agreed Settlement, Consent Order, or Default.

(4) The Director of the Division shall mail a written notice of the time and place for hearing to all parties and to their attorneys at least ten (10) days prior to the date of hearing.

**R 450.64. Public Hearings.**

Rule 14.(1) All hearings before the Treasurer or other person delegated to conduct the hearing shall be public, except that the person conducting the hearing, for good cause shown, may exclude from the hearing all persons having no direct interest therein.

(2) At the hearing, parties shall have the right to be represented by counsel, to present and examine witnesses with the right of cross-examination by the adverse parties, and to produce and offer in evidence as Exhibits, books, records, documents and other papers. The person conducting the hearing may require the production of books, records and other documents, as well as the appearance and testimony of officers and employees of either party to ascertain facts and infor-

mation which he deems pertinent to the issues involved. Failure to comply with an order in this respect shall constitute grounds for the entry of such decision, determination or ruling by him as he deems to be appropriate under the circumstances.

**R 450.65. Failure to Appear.**

Rule 15. A continuance will not be granted by the Division due to the unexcused absence of a party or his attorney at the time and place of any scheduled hearing before the Division. The hearing shall proceed and the matter shall be regarded as submitted on the part of the absent party.

**R. 450.66. Evidence.**

Rule 16. The following rules of evidence shall govern in all contested cases before the Division.

(1) The rules of evidence applicable to proceedings in circuit courts in Michigan shall apply so far as practicable, but the person authorized to conduct the hearing may in his discretion admit and give probative effect to any evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Recognition will be given to the evidentiary rules of privilege. Incompetent, immaterial and unduly repetitious evidence may be excluded.

(2) Judicial notice will be taken without further identification of the contents of original records and documents in the possession of the Division when duly certified copies thereof are offered in evidence and made a part of the record. Other documentary evidence may be received at the discretion of the person authorized to hold the hearing in the form of copies or excerpts, or by incorporation by reference.

(3) Exhibits. All documents and papers offered in evidence by either party at the hearing shall be marked as exhibits. Exhibits offered by Petitioner shall be marked "Petitioner's Exhibit \_\_\_\_\_" and shall be consecutively numbered. Exhibits offered by any other party shall be marked "(type of party) Exhibit \_\_\_\_\_" and shall be consecutively numbered. Exhibits offered by the Division shall be marked "Division's Exhibit \_\_\_\_\_" and shall be consecutively numbered.

(4) The following do not constitute evidence:

- (a) Statements of counsel.
- (b) Unidentified and unauthorized documents and letters.
- (c) Affidavits which have not been submitted before the hearing to the opposite party and the Division and approved by the parties to be admitted as evidence at the hearing.
- (d) Briefs and arguments.

**R 450.67. Stipulation of Facts.**

Rule 17. The parties may at any time before final submission of the case agree as to any fact by stipulating in writing or on the record. Written Stipulations of Fact shall be marked as an exhibit and offered in evidence at the hearing but the contents or any part thereof shall be subject to objection under the rules of evidence at the time the offer is made.

**R 450.68. Amendments to Pleadings.**

Rule 18. Pleadings may be amended by motion at any time prior to ten (10) days before the day set for the initial hearing of the case. Copy of the amendment or amendments proposed to be filed shall be attached to the motion.

**R 450.69. Briefs.**

Rule 19. Briefs may be filed by the corporation or its attorneys prior to submission of the case. If filed thereafter, such briefs shall be filed within the time designated by the person authorized to conduct the hearing. Filing shall be made with the Director of the Division in accordance with the provisions of Rule 6.

**R 450.70. Transcript of Proceedings.**

Rule 20. No official reporter is provided by the Division. Parties desiring a transcript of the testimony and proceedings at any hearing before the Division may, at its own expense, make arrangements for the reporting and transcription thereof by a competent reporter; Provided, that the complete record so reported is transcribed and one (1) legible copy is furnished, without cost, to the Division and filed with the Director.

**R 450.71. Request for Declaratory Ruling.**

Rule 21.(1) On request of any interested party, the Division may issue a Declaratory Ruling as to the applicability of a statute, rule or order to a statement of actual facts.

(2) Submission of a request for Declaratory Ruling is made in the same manner as a Petition for Determination, Redetermination or Claim for Refund under these rules.

(3) The request for Declaratory Ruling shall be in the form suggested by Rule 11(1) hereof.

(4) Consideration of the Request for Declaratory Ruling shall be limited to its contents and attachments thereto.

(5) When a Request for Declaratory Ruling is granted or denied, the requesting party shall be notified within thirty (30) days of the grant or denial by certified mail.

### **R 450.72. Declaratory Ruling.**

Rule 22.(1) A Declaratory Ruling shall be based exclusively upon the consideration of actual facts stated in the request therefor and have controlling application only to those facts, unless the Division shall request a conference or hearing with the interested party.

(2) In the event that there is a conference or hearing in accordance with the immediately preceding paragraph, the Declaratory Ruling shall be based upon and have controlling effect to the actual facts stated in the Request for Declaratory Ruling and upon actual facts adduced at the conference or hearing.

(3) Notwithstanding any provision of Rule 21 and Rule 22, the Division may, at any time or stage, dismiss a Request for Declaratory Ruling whenever it shall appear to the Division that any statement of actual facts:

(a) Presents no reasonable uncertainty regarding the application of a statute, rule or order, or

(b) Lacks one or more facts necessary to make a Declaratory Ruling.

(4) The interested party shall be notified of a dismissal in the manner provided by Rule 21(5).

(5) When a Declaratory Ruling is issued, a copy thereof shall be transmitted to the interested party, one or more copies shall be retained by the Division and two (2) copies shall be transmitted to the office of the Attorney General.

### **R 450.73. Depositions.**

Rule 23. The testimony of any witness may be taken by deposition in accordance with Michigan General Court Rules of 1963, as amended, being Sections 302.1; 304; 305.1 and 306.1, which are incorporated herein by reference.

### **R 450.74. Rescission of Existing Rules.**

Rule 24. To the extent that the Rules of Practice and Procedure before the Corporation Tax Appeal Board created by authority of Act 153, PA 1954, are still in existence (R 450.1 through R 450.22, published as a supplement to the 1954 Michigan Administrative Code and found at page 733 of the 1957 Annual Supplement) the same are hereby rescinded by operation of law because the Supreme Court of Michigan declared the Corporation Tax Appeal Board to be improperly constituted. *Detroit Edison Co. v Department of Treasury* (1969), 382 Mich 497.