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BOMA White Paper for Tax Tribunal

Who we are:

Founded in 1908, Building Owners & Managers (BOMA) of Metropolitan Detroit is a professional trade association whose nearly 400 members either own or manage commercial real estate, or provide goods and services to the industry. As part of BOMA International, which serves 16,500+ commercial real estate professionals and represents over 9 billion square feet of commercial properties and facilities in North America and abroad, BOMA of Metro Detroit provides commercial real estate professionals with the opportunity to work together for professional growth, advocacy rights, corporate profit, and the benefit of the nine Southeastern Michigan communities it serves. BOMA Michigan members represent organizations managing more than 250 million square feet of office and industrial space, with employees and tenants totaling more than 1.25 million people in Michigan.

Members of BOMA include the largest names in Michigan commercial development including Schostak Brothers & Company; REDICO; Grubb & Ellis Management Services, Inc.; and the Farbman Group.

Tax Tribunal Issues

BOMA understands there are important issues facing the Tribunal; however, we believe there are several potential solutions, both immediate and systemic, which would help our industry and the taxpayers in the State of Michigan.

It is important to understand BOMA has a vested interest in the efficiency and expediency of the Michigan Tax Tribunal. The most important cases to BOMA members are those filed before the entire Tribunal and involve a tremendous amount of revenue to both taxpayers and governmental units. Against the backdrop of the nation's highest unemployment rate, plummeting home values and stagnant per-capita income growth, a 5+ year wait for a decision in the Tax Tribunal has hamstrung many property owners from re-investment in jobs and development by tying up millions of dollars in disputed property taxes "with cases pending" or "under review".

Immediate Issues:

1. There are presently at least 80 or more property tax appeal cases in the tribunal that have been languishing for as long as 5 years that have just been taken out of abeyance.
2. There is still a vacancy for Judgeships on the Tribunal.
3. There is no effective system for encouraging case management by the Tribunal. This stands in stark contrast to Michigan Courts. Michigan Judges, who are under the control of the Supreme Court Administrators Office, are required to provide monthly status reports regarding their cases. The Tribunal has no comparable requirement.

BOMA would like you to consider the following recommendations for immediate relief.

- A. Provide formula based interim relief for those cases not heard within a *reasonable* time frame.

B. Consider short term contract staff to alleviate the backlog until qualified candidates are seated. This will seemingly remain within budgetary restraints and focus on short term relief.

C. Appoint or hire a person to act as the oversight for the Tax Tribunal with authority to make changes in processing, rules and to oversee productivity standards for a minimum of two years.

D. Appoint an oversight administrator to evaluate performance and champion the appropriate staffing levels, qualifications and compensation.

Systemic Issues

1. The cases filed in the Tax Tribunal often present complex legal issues and involve rulings on evidentiary and statutory issues. Unfortunately, the multi-disciplinary make-up of the Tribunal and lack of legal background has proven to be an impediment to dealing with these challenges. Effective adjudication of the issues requires knowledge of the rules of evidence and familiarity with the use of precedent. Non-attorneys usually lack this training. That is why an increasing number of state tax bodies are made up exclusively of attorneys who are trained to make these kinds of rulings. It is simply asking a tremendous amount of non-attorneys to make these types of decisions and rulings. This burden has translated into delay and backlog in addition to other problems.
2. BOMA believes the Tribunal has suffered from the Governor's Executive Order 2005-1, which transferred the Small Claims hearing function of the Tribunal to the State Office of Administrative Hearing and Rules. Except where the small claims cases are heard by Tribunal Members, this transfer has resulted in a rejection of one of the primary purposes for creating the Tax Tribunal, namely, the use of tax experts for hearing tax claims. But Administrative Law Judges of SOAHR are now hearing many Tribunal cases. These judges may take away a prisoner's "good time" or determine unemployment eligibility in the morning and then determine the value of real or personal property and other complex tax issues in the afternoon. This is no recipe for the development of tax expertise. This transfer has also resulted in Tribunal members being forced to hear a tremendous amount of small claims cases and review exceptions to the ALJ's proposed opinions with a resulting decrease in the number of entire tribunal matters they can hear and decide. A review of the number of 2006-2007 fiscal year filings in the small claims division shows a total of 6,037 with 4,621 total dispositions. In no period in the last four years has the number of cases disposed of equaled or exceeded the number of new cases filed.
3. Prior to the issuance of the Governor's Executive Order, the Tribunal contracted with individuals to act as hearing referees. The referees were persons experienced in the area of tax who performed their functions at less than \$90 per case with no benefit or support cost to the State. The referee did not get paid until his/her Opinion had been received by the Tribunal. This was a built-in incentive for the referees to get their Opinions completed within an expeditious time frame. The amount that SOAHR currently charges is substantially greater and provides fewer completed cases that are poorer in quality than those provided by the Referee system.

4. The Tribunal is also grossly under-funded. MCL 205.749 requires that the “fees charged shall be sufficient to cover costs of the tribunal except costs of publishing its decisions, the salaries of tribunal members, their chief clerk and the costs of homestead appeal in the small claims division.” (There have been no fee increases since 1981.) BOMA is not aware of any other judicial or quasi-judicial body that is required to sustain itself solely on fees. If fees were at a level that truly defrayed the costs incurred by the Tribunal, they would be so high as to effectively deny access to a majority of taxpayers. General fund/general purpose appropriations are needed to assure access. An increase in general fund/general purpose funding is necessary for the Tribunal to adequately serve the taxpayers of Michigan.
5. The Tribunal is understaffed even if the existing vacancy is filled. Filling the vacancy alone will not remedy the present situation at the Tribunal but could make a significant impact on the adjudication of backlogged cases.

BOMA would like you to consider the following as more systemic fixes for the above issues.

- A. Require that Tribunal members be attorneys and increase the number of Tribunal members to 9, thus creating a makeup similar to the Public Service and Civil Service Commissions.
- B. Establish disposition standards similar to the ABA.
- C. Develop quarterly reporting requirements similar to State Court Administrators Office. These standards would apply to all Members and would include number of opinions written, cases heard, and the permissible time period for conclusion of a case and its final disposition.
- D. By legislation or administrative rule, remove the Tax Tribunal small claims function from SOAHR’s and return to the procedure utilized prior to the Executive Order of contract referees.
- E. Increase fees and or general fund/general purpose appropriations to adequately staff and fund the Tribunal.

We encourage you to visit www.bomadet.org for more information on BOMA, its members or issue positions or contact:

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