



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4433 (Substitute H-1 as passed by the House)
House Bill 4434 (Substitute H-1 as passed by the House)
House Bill 4435 (as passed by the House)
House Bill 4436 (as passed by the House)
House Bill 4437 (as passed by the House)

Sponsor: Representative Steve Bieda (H.B. 4433)
Representative Coleman Young (H.B. 4434)
Representative Fulton Sheen (H.B. 4435)
Representative Tim Melton (H.B. 4436)
Representative Brian Calley (H.B. 4437)

House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 2-14-08

CONTENT

The bills would amend the Tax Tribunal Act to do the following:

- **Provide for the mediation of disputes before the Tax Tribunal.**
- **Authorize the Tax Tribunal to promulgate rules for mediation and for the certification of mediators to facilitate claims in the Court of Claims and in the Tribunal.**
- **Create the "Michigan Tax Tribunal Fund", to be used solely for the operation of the Tribunal, and require fees to be deposited in the Fund, rather than the General Fund.**
- **Give the residential property and small claims division jurisdiction over disputes involving up to \$20,000, rather than \$6,000, and allow the division to hear disputes before the entire Tribunal by its leave and with the parties' consent.**
- **Revise provisions concerning the Tribunal's review of a proposed order of the residential property and small claims division.**
- **Allow hearings of the division to be held via teleconferencing by leave of the Tribunal and with the parties' consent.**
- **Repeal a requirement that the residential property and small claims**

division hold a hearing after 6 p.m. upon request.

- **Delete a provision under which more than three members of the Tribunal may not be of the same professional discipline.**

The bills are described below.

House Bill 4433 (H-1)

Powers of the Tax Tribunal

Under the Act, the Tax Tribunal has exclusive and original jurisdiction over both of the following:

- A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.
- A proceeding for refund or redetermination of a tax under the property tax laws.

Under the bill, the Tribunal also would have jurisdiction over mediation of a proceeding before the Tribunal described in either of the above provisions and the certification of a mediator in such a tax dispute. The Tribunal

also would have jurisdiction over any other proceeding provided by law.

Currently, the Tribunal's powers include all of the following:

- Affirming, reversing, modifying, or remanding a final decision, finding, ruling, determination, or order of an agency.
- Ordering the payment or refund of taxes in a matter over which it may acquire jurisdiction.
- Granting other relief or issuing writs, orders, or directives that it deems necessary or appropriate in the process of disposing of a matter over which it may acquire jurisdiction.
- Promulgating rules for the implementation of the Act, including rules for practice and procedure before the Tribunal.

The bill would extend the Tribunal's powers to:

- Promulgating rules for mediation as provided in the bill.
- Mediating a proceeding before the Tribunal.
- Certifying mediators to facilitate claims in the Court of Claims and in the Tribunal.

Mediation

The Tribunal would have to mediate a proceeding in which it had exclusive and original jurisdiction if all of the following conditions were satisfied:

- The parties had filed with the Tribunal a stipulation that they agreed to participate in mediation.
- The parties agreed to a mediator.
- The Tribunal issued an order designating the proceeding for mediation.

The Tribunal would have to appoint the mediator agreed to by the parties. A mediator would have no authoritative decision-making power to resolve a dispute in mediation and would have to report the results of the mediation to the Tribunal. If an agreement were reached in a proceeding before the Tribunal, the Tribunal would have to accept the agreement if it met the Tribunal's requirements.

Statements made during a mediation conference, including statements made in written submissions, could not be used and would not be admissible in any other proceedings, including trial. Any statements, written submissions or materials, or communications between the parties or counsel of the parties and the mediator relating to the mediation would be confidential and could not be disclosed without the written consent of all parties and would not be subject to the disclosure requirements of the Freedom of Information Act except for the following:

- The report of the mediator, in a form prescribed by the Tribunal.
- Information reasonably required by Tribunal personnel to administer and evaluate the mediation program.
- Information necessary for the Tribunal to resolve disputes regarding the mediator's fee.
- Consent judgments

A mediation conference would not be a meeting of a public body for the purposes of the Open Meetings Act.

The Tribunal could charge a fee for mediation.

Certification

Under the bill, a person could apply to the Tribunal to be certified as a mediator. The application would have to be in a form prescribed by the Tribunal. Certification would be for a period of one year. A Tribunal member or hearing officer could not be certified as a mediator.

The Tribunal would have to promulgate rules establishing requirements for an applicant to be certified as a mediator. Whether an applicant met the established requirements to be certified would be solely determined by the Tribunal. The requirements for certification would have to include five years of State and local tax experience that occurred immediately preceding submission of the application. If an applicant satisfied the requirements established by the Tribunal, the Tribunal would have to certify that applicant as a mediator. The Tribunal could charge each certified mediator an annual certification fee, as determined by the Tribunal.

The Tribunal would be required to maintain a list of certified mediators available to conduct a mediation. The list would have to be published and indicate all of the following:

- The hourly rate charged by the mediator for his or her mediation services.
- The type of tax the mediator was certified to mediate.
- A summary of the mediator's experience and training.
- The forum in which the mediator was certified to practice.

A mediator would have to disclose to all parties any conflict of interest that would exist, before agreeing to mediate a dispute.

House Bill 4434 (H-1)

Tribunal Hearing Officers & Referees

Under the Tax Tribunal Act, the Tribunal may appoint one or more hearing officers to hold hearings. Hearings, except as otherwise provided in Chapter 6 of the Act, must be conducted pursuant to Chapter 4 of the Administrative Procedures Act and the Open Meetings Act. In matters other than before the small claims division under Chapter 6, a proposed decision of a hearing officer must be considered and decided by one or more members of the Tribunal. The bill would delete reference to matters other than before the small claims division, and would require a proposed decision of a hearing officer or referee to be considered and decided by one or more Tribunal members.

(Chapter 6 of the Tax Tribunal Act establishes the residential property and small claims division of the Tribunal. Chapter 4 of the Administrative Procedures Act describes procedures to be used in contested cases.)

Under the bill, in matters before the residential property and small claims division, a proposed decision of a hearing officer or referee also would have to be considered and decided by one or more members of the Tribunal.

Fees

Currently, the Tribunal by rule must prescribe filing fees and other fees to be

paid in connection with a proceeding. The bill would delete a requirement that the fees charged be sufficient to cover costs of the Tribunal except the costs of publishing its decisions, the salaries of the Tribunal members, their chief clerk, and the costs of homestead appeal in the small claims division.

Under the Act, the residential property division of the Tribunal may not charge fees or costs on appeals of homestead property. The bill provides, instead, that the residential property and small claims division could not charge fees or costs on appeals of principal residence property as defined in rules promulgated by the Tribunal.

Michigan Tax Tribunal Fund

The bill would create the Michigan Tax Tribunal Fund in the Department of Labor and Economic Growth as a separate interest-bearing fund. All fees collected pursuant to the Act would have to be deposited in the Fund. The State Treasurer would have to direct the investment of the Fund. Money in the Fund would remain in it at the close of the fiscal year and would not revert to the General Fund. Money in the Fund would have to be used solely for the operation of the Tribunal.

The bill would delete the current requirement that fees be collected by the clerk and paid directly into the General Fund.

House Bill 4435

The members of the Tribunal must be citizens of the United States and residents of this State. The Tribunal is made up as follows:

- At least two members must be attorneys meeting certain requirements for prior experience.
- At least one member must be a certified assessor holding the highest level of certification granted by the State Assessors Board.
- At least one member must be a professional real estate appraiser meeting certain requirements for certification and experience.
- At least one member must be a certified public accountant with five years of experiences in State or local tax matters.

The bill would delete a requirement that not more than three members may be members of the same professional discipline.

House Bill 4436

Under the Act, the residential property and small claims division has jurisdiction over a proceeding, otherwise cognizable by the Tribunal, in which residential property is exclusively involved. Property other than residential property may be included in a proceeding before the division if the amount of that property's taxable value or State equalized valuation in dispute is not more than \$100,000. The division also has jurisdiction over a proceeding involving an appeal of any other tax over which the Tribunal has jurisdiction if the amount of the tax in dispute is \$6,000 or less.

Under the bill, the limit on the amount of the tax in dispute would be increased to \$20,000 or less. Also, notwithstanding the jurisdictional limit of the residential property and small claims division, by leave of the Tribunal and with the consent of the parties, a proceeding before the entire Tribunal could be heard in the residential property and small claims division.

Under the Act, "residential property" means a homestead or other residential or agricultural real property including fewer than four rental units. Under the bill, "residential property" instead would mean any of the following:

- Real property exempt under Section 7cc of the General Property Tax Act.
- Real property classified as residential real property under Section 34c of the General Property Tax Act.
- Real property with fewer than four rental units.
- Real property classified as agricultural real property under Section 34c of the General Property Tax Act.

(Section 7cc grants a homestead exemption from tax levied by a local school district for school operating purposes. Under Section 34c, "agricultural real property" includes parcels used partially or wholly for agricultural operations, with or without buildings. "Residential real property" includes the following:

- Platted or unplatted parcels, with or without buildings, and condominium apartments located within or outside a village or city, which are used for, or probably will be used for, residential purposes.
- Parcels that are used for, or probably will be used for, recreational purposes, such as lake lots and hunting lands, located in an area used predominantly for recreational purposes.
- For taxes levied after December 31, 2002, a home, cottage, or cabin on leased land, and a mobile home that would be assessable as real property except that the land on which it is located is not assessable because the land is exempt.)

Rehearing

Under the Tax Tribunal Act, a person or legal entity entitled to proceed under the Tribunal's exclusive and original jurisdiction, and whose proceeding meets the jurisdictional requirements for the residential property and small claims division, may elect to proceed before either the division or the Tribunal. Within 20 days after a hearing referee issues an order, by leave of the Tribunal and for good cause, a party may request a rehearing by a Tribunal member. A rehearing is not limited to the evidence presented before the hearing referee.

Under the bill, within 20 days after a hearing officer or referee issued a proposed order, a party could file exceptions to the proposed order. The Tribunal would have to review the exceptions to determine if the proposed order would be adopted as a final order. Upon a showing of good cause or at the Tribunal's discretion, the Tribunal could modify the proposed order and issue a final order or hold a rehearing by a Tribunal member.

Teleconferencing

Currently, the residential property and small claims division must meet in the county in which the property in question is located or in a county contiguous to that county. A petitioner-appellant may not be required to travel more than 100 miles from the location of the property in question to the hearing site, except that a rehearing by a Tribunal

member may be at a site determined by the Tribunal.

Under the bill, by leave of the Tribunal and with the mutual consent of all parties, a residential property and small claims division proceeding could take place at a location mutually agreed upon by all parties or could take place by the use of amplified telephonic or video conferencing equipment.

House Bill 4437

Section 66 of the Act requires a Tax Tribunal hearing in the residential property and small claims division to be held after 6 p.m. if the petitioner requests an evening hearing in his or her initial petition. The bill would repeal the section.

MCL 205.703 et al. (H.B. 4433)
205.726 et al. (H.B. 4434)
205.722 (H.B. 4435)
205.762 (H.B. 4436)
205.766 (H.B. 4437)

Legislative Analyst: Craig Laurie

FISCAL IMPACT

The bills would decrease the operating costs of, and provide an additional source of revenue for, the Tax Tribunal within the Department of Labor and Economic Growth. The proposed options for mediation and greater use of the small claims division would tend to decrease the operating costs of the Tax Tribunal by offering alternative methods to resolve a dispute. The potential savings from the bills would depend on the number of cases using the proposed alternatives.

To implement a mediation program, the Tax Tribunal would be required to certify mediators and publish and maintain a listing of mediators. The Tax Tribunal also would be required to promulgate rules establishing certification criteria for mediators. The Tax Tribunal would be permitted to charge a fee for mediation. The revenue from this fee would be available to offset the additional costs of the regulation.

The bills would create the Michigan Tax Tribunal Fund to receive all of the Tax Tribunal's filing fees and other fees. The proposed Fund would be used for the operations of the Tax Tribunal. Any balance

in the Fund at the end of the fiscal year would carry forward into the next fiscal year. Currently, the Tax Tribunal has the authority to establish the level of fees to cover certain costs and this revenue partially funds Tax Tribunal operations. In FY 2007-08, the Tax Tribunal has a budget of \$2,006,900. Of that amount, \$1,487,000 or 74% is provided from Tax Tribunal fees, \$220,500 is from corporation fees, and \$299,400 from securities fees.

Fiscal Analyst: Elizabeth Pratt
Maria Tyszkiewicz

S0708\s4433sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.