

Legislative Analysis



TAX TRIBUNAL AMENDMENTS

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House Bill 5765 as introduced
Sponsor: Rep. Brandt Iden
Committee: Tax Policy
Updated on 10-14-16

Analysis available at
<http://www.legislature.mi.gov>

REVISED SUMMARY:

As noted on its website, the Tax Tribunal is an administrative court that hears tax appeals for all Michigan taxes. Most of the Tribunal's appeals involve property taxes; however, the Tribunal also hears other state tax issues. The Tribunal is divided into two divisions: the "Entire Tribunal" and the "Residential Property and Small Claims Division" (typically referred to simply as Small Claims). With the exception of principal residence and qualified agricultural exemption appeals, any case may be filed in the Entire Tribunal. Only certain cases—property disputes involving residential property, poverty, and disputes involving other classifications with amounts in contention under \$100,000—may be filed in the Small Claims Division.¹

Members of the Tax Tribunal are appointed by the governor with the advice and consent of the State Senate. The Tax Tribunal is housed in the Department of Licensing and Regulatory Affairs. It was transferred a LARA's predecessor (the Department of Commerce) from Treasury in an executive order in 1991. That same order allows the governor to name the chairperson of the Tribunal. House Bill 5765 amends the statute to reflect both of those changes made by that executive order.

The following appear to be the key changes House Bill 5765 would make to the Tax Tribunal Act.

Membership on the Tribunal

- Members could be appointed as full- or part-time members.
- The full- or part-time status of a member could not be diminished without the member's consent.
- In making an appointment, the governor would have to consider a list of qualified candidates solicited from at least one appropriate professional association located and primarily operating in the state.
- The bill specifies that the governor can remove a member, after notice and an opportunity to be heard, for failure to substantially perform duties, malfeasance, misfeasance, or nonfeasance in office, or other good cause.

¹ Based on the description on the Tribunal website at: <http://www.michigan.gov/taxtrib>

- Members must receive training on matters relevant to the work of the tribunal, including proper courtroom procedures and state and local tax issues.
- Each member must personally perform the duties of office including but not limited to the maintenance of his or her docket as assigned by the chairperson and in accordance with promulgated rules.

Temporary Members

- The governor could appoint, with the advice and consent of the State Senate, up to three temporary members if it appears that such services are advisable. Such a member would be appointed for no more than 12 months, on a full- or part-time basis, unless reappointed. The temporary members are in addition to the current seven regular members.

Limitations on Other Employment and Business Activities

- Generally speaking, a Tribunal member would be prohibited from engaging in any other gainful employment or business or professional activity for remuneration, or from holding any other office in or engaging in any other profitable undertaking with any governmental entity of the state, another state, or the United States. Additionally, a member could not act as an attorney, representative, or accountant for others in a matter involving any tax imposed or levied by the state or any of its subdivisions. However, a member could:
 - Own passive interests in business entities.
 - Earn income from incidental teaching or scholarly activities.
 - Receive compensation for extrajudicial activities described in Canon 4 of the Michigan Code of Judicial Conduct, if the receipt of that compensation does not create an appearance of impropriety, including, but not limited to, an appearance that the source of the compensation influenced the member in the performance of duties.
 - Act professionally on his or her own behalf; for example as an attorney or accountant.
 - Provide professional services to family members, such as legal, accounting and tax services, so long as there is no payment for the services.

Compensation for Members

- After September 30, 2016, full-time tribunal members would receive an annual salary not less than the maximum salary paid to an administrative law manager or equivalent civil service classification. Each part-time member would receive a proportionate annual pro rata salary.

- The bill would add to the definition of "actual and necessary expenses": fees incurred for the renewal of relevant and appropriate professional licenses and memberships in associations located in the state.

Disqualification from Proceedings

- On a motion of a party to a proceeding or a Tribunal member assigned to the proceeding or by order of the chairperson, a member of the Tribunal could be disqualified for any reason listed in Michigan Court Rules at 2.002(c)(1). A motion for disqualification would be reviewed and either approved or denied by the Tribunal member presiding over the proceeding. If the motion is denied, the moving party could appeal to the chairperson (unless the chairperson is presiding over the proceeding). An appeal would be randomly assigned to another member who is an attorney. Disqualification could be waived with the consent of all parties, in writing or placed on the record.
- The bill allows the Tribunal to operate regional offices, as determined by chairperson. [The statute says the principal office is to be in Lansing.]
- For proceedings before the Entire Tribunal filed after December 31, 2016, the chairperson will assign at least one member to the proceeding. The chairperson must assign two additional members so that a panel of three will hear and decide the proceeding in any of the following circumstances: (1) at the chair's discretion; (2) at the request of both parties if the request is made before a hearing; or (3) as otherwise provided in Tribunal rules. A three-member panel would consist of one member who qualifies as an attorney; one qualified on a basis that does not require being an attorney; and one member randomly chosen by lot.

Changes in Deadlines

- Currently the statute says that jurisdiction is invoked in certain matters by a party in interest by filing a written petition within *35 days* after the final decision, ruling, or determination. After September 30, 2016, the jurisdiction would be invoked by filing a petition within *90 days*. (This applies to matters other than those specified in Sec. 35a (6), which cites various commercial, industrial, and agricultural property.)
- Currently, an appeal of a contested tax bill must be made within *60 days* after mailing by the assessment district treasurer. After September 30, 2016, an appeal of a contested tax bill would have to be made within *90 days* after mailing by the assessment district treasurer.
- After December 31, 2016, a decision and opinion would be considered not timely if, absent good cause, it is issued more than 120 days after the date that the last brief was filed following the completion of the hearing or, if briefs were not filed following completion of the hearing, the date that the hearing was completed.

- A Tribunal member's repeated failure to issue timely decisions could be considered for purpose of a removal decision [under Sec. 21(6)].

Jurisdiction of Residential Property and Small Claims Division

- Currently, property other than residential property can go to the Small Claims Division if the amount of the taxable value or state equalized value is *not more than \$100,000*. Under the bill that figure would increase to *\$250,000* after December 31, 2016.
- Also, after December 31, 2016, the Small Claims Division would have jurisdiction over a proceeding involving the appeal of any non-property tax or special assessment over which the Tribunal has jurisdiction if the amount of the tax in dispute is *\$100,000 or less*, adjusted annually for inflation. Currently, that is true only for cases involving *\$20,000 or less*.

Appropriation to Tax Tribunal Fund

- The bill requires, beginning in FY 2017, that an amount sufficient to maintain the operation of the Tribunal consistent with the act would be deposited in the Michigan Tax Tribunal Fund, in addition to the fees that the Fund receives now.

Promulgation of Rules

- In addition to being able to promulgate rules for practice and procedure before the Tribunal and for mediation, the Tribunal could also promulgate rules regarding ethical standards governing the conduct of members; initial training requirements for newly appointed members; continuing training requirements; and guidelines and policies on docket maintenance, including those setting forth the method by which the chairperson assigns cases. Unless the policies and guidelines provide otherwise, the Tribunal would follow Michigan Court Rule 8.111.
- A Tribunal member must comply with these ethical standards, in addition to all other laws, rules, and standards applicable to conduct, professional or otherwise.

FISCAL IMPACT:

House Bill 5765 would have a significant and likely negative fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would create additional costs for the department by allowing the appointments of additional pro tempore members to the Tax Tribunal, and by increasing the compensation that tribunal members would receive. The bill allows the governor to appoint up to three additional pro tempore members to the tribunal, on either a full-time or part-time basis. LARA would be responsible for these members' proportionate pro rata salaries. The department estimates that these three additional tribunal members would cost the department \$305,400 if they were employed part-time, and \$610,800 if employed full-time.

The bill also increases the compensation that will be provided to tribunal members, which the department estimates will cost \$685,305 in the first year alone. The department estimates total increased costs associated with tribunal compensation to be between \$1 million and \$1.3 million. Additional costs that would be incurred by the department include: expenses associated with the maintenance and staffing of additional regional tribunal offices, expenses for tribunal member training, and increased administrative expenses that could arise from an increased volume of small claims cases (since the bill would change the jurisdiction for small claims cases from a \$100,000 limit to a \$250,000 limit). Precise estimates for the fiscal impacts of these expenses are currently unavailable.

The bill includes an opaque statement that an amount sufficient to maintain the operation of the tribunal shall be deposited into the Tax Tribunal Fund, upon appropriation, beginning in Fiscal Year 2017. The language of the bill does not include any mention of the source of this funding, and the appropriation does not necessarily have to be made, since current legislatures cannot bind future legislatures. It should also be noted that the Tax Tribunal Fund had a negative fund balance shortly before the close of Fiscal Year 2016. This is concerning, as it will be difficult for the department to bear the costs created by this bill without receiving additional funding for the Tax Tribunal, and the current language of the bill does not necessarily mean that such funding will be made available.

House Bill 5765 would not have significant fiscal impacts on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.