

Protecting Business Information Privacy at the Michigan Tax Tribunal

MMA Testimony on HB 5697: House Committee on Local Government and Municipal Finance

I am Mike Johnston, MMA Executive Vice President of Government Affairs and Workforce Development, and I am joined by Dan Stanley, a partner at Honigman and an active participant in the MMA Tax Policy Committee.

Madam Chair, thank you for the opportunity to testify today in support of your bill HB 5697.

We are here to help solve a problem for both businesses and the Michigan Tax Tribunal regarding the Tribunal's ability to protect private business information. For many years, the Tribunal routinely stipulated the protection of private business information. However, in the last year or so, the Tribunal has issued two administrative "Notices" implementing new procedures that make it virtually impossible to protect private business information. These notices say the Tribunal had "misapplied" a 2003 court decision and must now implement new procedures accounting for the interplay between the Tax Tribunal Act, the Open Meetings Act and the Freedom of Information Act. However, the new standards have slowed the Tribunal's docket and thus far, taxpayers subject to the new policies have not been able to protect their confidential business information that must be submitted to the Tribunal during an appeal.

I note that taxpayers with older appeals who previously obtained protective orders in the past continue to benefit from those orders. For example, taxpayers who filed their appeals this year cannot obtain the same protection.

Currently, when a business's information becomes part of a Tribunal proceeding, that information usually winds up on the Tribunal's web site for the entire world to see. This places taxpayers in an untenable conundrum between seeking fair tax treatment and allowing competitors to know confidential business information. Taxpayers should not be forced to choose between maintaining the confidentiality of their private business information and appealing tax valuations.

HB 5697 attempts to resolve the situation for both the Tribunal and taxpayers by streamlining the system and providing certainty for both taxpayers and the Tribunal that private business information can remain confidential. This means providing clear authority to the Tribunal to protect private information that has been kept out of the public domain. The proposed amendment is consistent with United States Supreme Court precedent, which has recognized that taxpayers can have intellectual property rights in their confidential information. Moreover, the proposed amendment also will put taxpayers in a Tribunal tax case, in a similar position to

taxpayers who pursue tax or valuation appeals in other forums, such as the Michigan Court of Claims and the Michigan Circuit Court.

While the administrative notices attempt to solve the issues for taxpayers, we ultimately believe the statute must be amended to provide clear authority to the Tribunal to protect private business information. And this bill, and particularly the substitute, provides that authority.

We have had several conversations with our friends at the Tribunal. This is certainly a complicated legal issue, but the principle is simple. We seek a path forward for both the Tribunal and taxpayers that reduces the backlogs which the legal uncertainty has created at the Tribunal and eliminates the untenable conundrum for businesses to choose between appealing their taxes and revealing their private business information. We are confident that this bill and this substitute provide that pathway.

Madam Chair, we are happy to respond to any questions.