



**Testimony of the Michigan Chamber of Commerce
Before the Senate Finance Committee
Wednesday, September 17, 2014
Presented by
Tricia Kinley, Senior Director of Tax & Regulatory Reform
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Thank you for the opportunity to provide comments regarding SBs 1038, 1039, 1040. I'm Tricia Kinley, with the Michigan Chamber of Commerce and I have Mark Hilpert with the Honigman law firm, with me today to help answer technical questions. Not only is Mark a certified Public Accountant and Certified Michigan Property Tax Assessor...but he served over eight years as Chairman of Michigan's State Tax Commission, three years as a Michigan Tax Tribunal Judge. We appreciate Sen. Caswell's desire to improve the property tax system and access to courts for taxpayers.

From our perspective, while we may not agree with every aspect of this package at this point, there are some very taxpayer-friendly provisions and we appreciate the sponsor's expressed open-mindedness for feedback. Specifically I will start with **Senate Bill 1040** which amends Michigan's Revenue Act to eliminate the pre-payment requirement for taxpayers choosing to appeal their taxes straight to the Court of Claims. This is a critically important bill, and a long overdue reform in our tax system.

As it stands today, taxpayers who want to appeal their assessment have one of two choices: pay only the uncontested portion of their assessment and go to the Michigan Tax Tribunal, or pay the full freight assessment (which for some taxpayers can be 10s of millions of dollars) in order to enter the Court of Claims. This "pay-to-play" approach not only raises serious due process concerns, but it simply sets up a system that is "exclusive" to those who can afford it. It is simply unfair if we want to be a state with equal access to justice for all. Therefore, we wholeheartedly support the substance of this bill. We do, however, oppose the addition of a tie-bar at the end. We don't think it's necessary, and are concerned that this worthy bill could be held up, if the other bills are not widely embraced or fall short of passage. We encourage you to remove the tie-bars from SB 1040.

Last, we do recognize that there might be some start-up logistics for the court to tackle if this change occurred. Therefore we think it would be very reasonable (if this bill can get passed in short order) to either not give the bill Immediate Effect, or add an effective date of something like July 1, 2015. Nonetheless -- I reiterate that we strongly support SB 1040!

Senate Bill 1038 GPTA – the Michigan Chamber is generally supportive of this legislation. There are certainly some reforms that would benefit taxpayers. From our perspective it is always good to give taxpayers a little more time/flexibility to appeal so all of the changes related to extra time are welcome by our organization! However, if this bill were to move forward we would certainly be seeking further amendments and clarification on some points. We will touch on those briefly.

We recognize the bill sponsor's desire, in general, to bring consistency within the property tax system. However, we do have concerns and would like to seek a better understanding of the rationale behind adding an extra year to the appeal period. Just because the new ppt reform opens the appealable years to the current, and immediately preceding 3 years (as opposed to most of current law which is current plus 2), we are not yet convinced this is necessary for everything else. Obviously, this could cut both ways; good and bad for taxpayers. But generally speaking: our members want to err on the side of predictability and finality. Just like we have discussed on audit bills in this committee before, our members generally DON'T want assessments (and the uncertainty that goes with them) open for longer than they currently are.

We do have a number of comments regarding the classification provisions included in the bill. For the sake of time, I will only touch on them briefly, but we have detailed suggestions in this written testimony and they would certainly be things we would like to see changed.

1. In section 34(d)(i), p 53, line 6, there has been some controversy about whether an industrial building which has processing activity constitutes a manufacturer. To simplify and clarify the law, we suggest that the "and" at the end of line 6 be changed to an "or". That way when buildings are used for processing, even if they are not manufacturers, the property will qualify as industrial, as it should.
2. Page 56 should be changed so that no board of review protest is required for a classification appeal but instead the initial appeal should be filed with the State Tax Commission, if not the Tax Tribunal itself. Local boards of review do not have expertise with respect to property classification. Just as SB 1039 eliminates board of review protests for determinations of exemption for a personal residence or qualified agricultural property, so too the board of review protest should be eliminated for classification appeals. Indeed, with the system currently proposed, taxpayers often might have to file a classification appeal at the board of review, the Tax Commission and the Tax Tribunal. That is very inefficient. In 2006, the Legislature wisely eliminated board of review protests for cases involving the valuation of industrial and commercial properties and the Legislature should now do the same for classification protests. Page 58 of SB 1038 and

SB 1039 (which amends the Tax Tribunal Act) also should be amended to be consistent with this change.

3. On page 63, proposed Section 53E, has ambiguities that could be addressed by the following changes: i) Change the last sentence of subsection 1, lines 15-17 to the following: A CORRECTION UNDER THIS SUBSECTION MAY BE REQUESTED OF THE STATE TAX COMMISSION BY AN ASSESSOR OR BY A PERSON OR ENTITY WHO IS A PARTY IN INTEREST WITH RESPECT TO PROPERTY. THE STATE TAX COMMISSION HAS AUTHORITY TO CORRECT A QUALIFIED ERROR FOR THE CURRENT YEAR IN WHICH A REQUEST IS MADE AND ALSO FOR UP TO THREE YEARS PRIOR TO THE YEAR IN WHICH THE CORRECTION REQUEST IS MADE TO THE STATE TAX COMMISSION; and ii) With these changes, proposed subsection 2 can be deleted. These changes make the bill's intent clearer and also by allowing a party in interest to request the correction, a lessee or other party who actually bears the economic burden of the taxes can pursue relief.
4. As a result of the change just mentioned, the Act should be amended to provide that a "party in interest" includes and is not limited to either one who has an ownership interest in the property involved in the matter or a party who may bear the cost that ultimately will result if the relief requested is denied.
5. On page 64, line 20, we suggest that the word "REAL" be deleted so that a qualified error includes an error regarding the taxable status of both real and personal property. Especially in recent years we have seen some very unexpected and disappointing statutory constructions and this would avoid any argument that this type of correction could not be made.
6. Where applicable, SB 1039, which amends the Tax Tribunal Act, should be modified to reflect the above changes so the two bills are consistent.

Finally, with respect to **Senate Bill 1039**, which would amend the Michigan Tax Tribunal Act, we believe there are some good points in this bill, including raising the small claims filing threshold and a number of the jurisdictional changes. However, we have a number of concerns with this bill and as a result we are opposed to it in its current form. Of course, if our concerns, which we discuss below, can be addressed – we'd certainly be open to supporting this bill down the road.

The first two major concerns that strike us are actually intertwined. We assume the suggestion for moving to an "all attorney" Tribunal is innocently put forward as a way to elevate the perceived expertise and general proceedings. This is a laudable goal, but one we feel can potentially be accomplished in another way – which I will elaborate on in a minute.

However first, as you can imagine- we have heard from member CPAs, but also attorneys, non-attorney corporate tax executives, that limiting this forum to only attorneys is the wrong direction to take the Tribunal, and that this forum benefits from having the diversity of experience that comes from attorneys, CPAs and Assessors!

The second part of this suggested change is to allow the MTT to use contract Assessors. We adamantly oppose this as well. In a Tribunal property tax case, typically there is an assessor and a taxpayer disagreeing about a matter. There is no way that the Tribunal should be hiring and involving another assessor. This would be even worse than where the government hires a third party to conduct an audit and our member's experience with outside 3rd party auditors (sometimes referred to as bounty hunters when they are paid on an incentive basis) has – to date – been very sour.

Last, we can't help but point out the irony in a proposal which calls for eliminating the Assessor position as Tribunal Member, but then suggests that such expertise is probably needed.

As an alternative – for years our members have suggested that quite better compensation should be addressed. We are not necessarily suggesting that money = performance or expertise. However, our members have said that when open slots are to be filled, great candidates who are otherwise very qualified, often simply can't, or are unwilling, to take the positions due to the compensation.

Next, we do have some concerns with granting full discretion to the Tribunal about whether they issue a requested subpoena or not. While nobody likes systems that are abused (where endless subpoenas are used to delay or obfuscate), we also have concerns with simply giving the MTT the ability to deny them – which seems like an awful lot of power given to a quasi-judicial body. Instead, we would strongly suggest removing ambiguity about when they should be issued or revoked by referencing some standards for what is reasonable or not. While this may seem overly cautious, we think it is better to err on the side of being more robust, not less; quite frankly our members have had a number of surprising and disappointing experiences lately during Tribunal proceedings and we think it is important to think through the ramifications of these proposed changes.

We do agree with a number of the jurisdictional changes, however a couple technical issues that we see:

- 1) Section 35a(3) should be changed so that no board of review protest is required for a classification appeal but instead the initial appeal should be filed with the State Tax Commission, if not the Tax Tribunal itself. Local boards of review do not have expertise with respect to property classification. Just as SB 1039 eliminates board of review protests for determinations of exemption for a personal residence or qualified agricultural property, so too the board of review protest should be eliminated for

classification appeals. Indeed, with the system currently proposed, taxpayers often might have to file a classification appeal at the board of review, the Tax Commission and the Tax Tribunal. That is very inefficient. In 2006, the Legislature wisely eliminated board of review protests for cases involving the valuation of industrial and commercial properties and the Legislature should now do the same for classification protests. The General Property Tax Act also should be amended to be consistent with this change.

- 2) As a practical matter, currently for most Tribunal appeals, Tribunal Act section 35a(6) provides for the appeals to be filed by a party in interest. This makes sense because often it is not the property owner who is the real taxpayer, such as the many lessees who pay taxes under net leases. Therefore in Section 35a(10), p 8 line 22 where it says "taxpayer" and Section 35a(11), p. 9 line 19, where it says "owner," these words should be replaced by a "party in interest," because the owner or person who pays the tax may not be the party who will ultimately bear the burden of the tax. **Furthermore**, it would be wise for the Legislature to add a provision defining a "*party in interest*" to include, but not be limited to one who has an ownership interest in the property involved in the matter and a party who may bear the cost that ultimately will result if the relief requested is denied.
- 3) We also think that proposed Section 35a (11) should specify that where an Assessor appeals a State Tax Commission classification decision to the Tax Tribunal, the Assessor shall serve the Petition upon the party listed on the tax roll as the taxpayer and any party who was involved with the State Tax Commission's classification proceeding which has resulted in the Tribunal appeal.
- 4) Last on these technical issues, we'd suggest SB 1038, which amends the General Property Tax Act, where applicable, should be modified to reflect the above changes so the two bills are consistent.

Regarding the removal of Tribunal Members, we recognize that there may be times when a Governor should remove a Tribunal Member. However, it is not clear to us how the removal process would work under Sec. 21(3). Maybe Sec. 21(3) should provide more details about the notice and hearing.

On a final note -- we do object, again, to the insertion of a tie-bar between SB 1039 and SB 1040. We understand the logic of tie-barring SB 1038 and 1039 because so many of the Tribunal and Property Tax Act changes are related. However, SB 1040 is a worthy bill and the pay to play injustice should end regardless of what happens with SB 1038 and SB 1039. We respectfully ask that SB 1040 not be tie-barred to SB 1038 and 1039.

Thank you again for the opportunity to be here and we'd be happy to take any questions.

The Michigan Chamber of Commerce is a statewide business organization representing approximately 6,400 employers, trade associations and local chambers of commerce. The Michigan Chamber represents businesses of every size and type in all 83 counties of the state. Michigan Chamber member businesses provide jobs to 1.5 million residents. The Michigan Chamber was established in 1959 to be an advocate for Michigan's job providers in the legislative, political and legal process.