



MICHIGAN

OFFICE OF THE AUDITOR GENERAL

AUDIT REPORT



THOMAS H. McTAVISH, C.P.A.
AUDITOR GENERAL

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– Article IV, Section 53 of the Michigan Constitution

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Michigan
Office of the Auditor General
REPORT SUMMARY

Performance Audit

Report Number:
641-0207-08

Michigan Tax Tribunal

*Department of Energy, Labor & Economic
Growth*

Released:
February 2010

The Michigan Tax Tribunal is a quasi-judicial agency that resides for administrative purposes only within the Department of Energy, Labor & Economic Growth. The Tribunal consists of 7 members appointed by the Governor, with the advice and consent of the Senate, for a term of four years. The Tribunal's jurisdiction includes property tax appeals as well as nonproperty tax matters as provided by law. The Tribunal is divided into two components: the Entire Tribunal, which utilizes a formal hearing process, and the Residential Property and Small Claims Division, which employs an informal hearing process.

Audit Objective:

To assess the efficiency and effectiveness of the Tribunal's processing of tax appeals.

Audit Conclusion:

We concluded that the Tribunal was not efficient and effective in its processing of tax appeals. We noted one material condition (Finding 1) and three reportable conditions (Findings 2 through 4).

Material Condition:

The Tribunal had not established a process to ensure that it resolved tax appeals in an efficient and timely manner (Finding 1).

Reportable Conditions:

The Tribunal needs to enhance training for new Tribunal members and establish a continuing education program for Tribunal members and hearing officers (Finding 2).

The Tribunal had not fully analyzed the efficiency or administrative effectiveness of using hearing officers from the State Office of Administrative Hearings and Rules (SOAHR) (Finding 3).

The Tribunal was not successful in its efforts to establish an interagency agreement with SOAHR (Finding 4).

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Audit Objective:

To assess the effectiveness of the Tribunal's efforts to ensure that State agencies were provided notice of tax disputes that significantly affected School Aid Fund payments and State education tax revenues.

Audit Conclusion:

We concluded that the Tribunal's efforts to ensure that State agencies were provided notice of tax disputes that significantly affected School Aid Fund payments and State education tax revenues were moderately effective. We noted one reportable condition (Finding 5).

Reportable Condition:

The Tribunal had not established administrative rules of practice and procedure that required petitioners to serve

notice to an agency of the State regarding property tax appeals affecting School Aid Fund payments, State education tax revenues, and the State's property assessment process (Finding 5).

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Agency Response:

Our audit report contains 5 findings and 6 corresponding recommendations. The Tribunal's preliminary response indicated that it agrees with all of the recommendations.

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A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: <http://audgen.michigan.gov>



Michigan Office of the Auditor General
201 N. Washington Square
Lansing, Michigan 48913

Thomas H. McTavish, C.P.A.
Auditor General

Scott M. Strong, C.P.A., C.I.A.
Deputy Auditor General



STATE OF MICHIGAN
OFFICE OF THE AUDITOR GENERAL
201 N. WASHINGTON SQUARE
LANSING, MICHIGAN 48913
(517) 334-8050
FAX (517) 334-8079

THOMAS H. MCTAVISH, C.P.A.
AUDITOR GENERAL

February 9, 2010

Ms. Patricia L. Halm, Chair
Michigan Tax Tribunal
and
Mr. Stanley F. Pruss, Director
Department of Energy, Labor & Economic Growth
Ottawa Building
Lansing, Michigan

Dear Ms. Halm and Mr. Pruss:

This is our report on the performance audit of the Michigan Tax Tribunal, Department of Energy, Labor & Economic Growth.

This report contains our report summary; description of agency; audit objectives, scope, and methodology and agency responses; comments, findings, recommendations, and agency preliminary responses; a history of appeals filed, presented as supplemental information; and a glossary of acronyms and terms.

Our comments, findings, and recommendations are organized by audit objective. The agency preliminary responses were taken from the agency's responses subsequent to our audit fieldwork. The *Michigan Compiled Laws* and administrative procedures require that the audited agency develop a formal response within 60 days after release of the audit report.

We appreciate the courtesy and cooperation extended to us during this audit.

AUDITOR GENERAL

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Description of Agency

The Michigan Tax Tribunal was created by Act 186, P.A. 1973. The Tribunal is a quasi-judicial agency consisting of 7 members appointed by the Governor, with the advice and consent of the Senate, for a term of four years. The statute requires that the members include at least 2 attorneys, 1 certified assessor holding the highest level of certification granted by the State assessors board, 1 professional real estate appraiser, and 1 certified public accountant. For administrative purposes only, the Tribunal resides within the Department of Energy, Labor & Economic Growth.

The Tribunal has exclusive and original jurisdiction over property tax appeals relating to assessment, valuation, rates, special assessments, allocation, equalization refund, or redetermination under State property tax laws. Also, the Tribunal adjudicates appeals of nonproperty tax matters as provided by law.

The Tribunal defines its mission as follows: "To provide all citizens with the opportunity to resolve state and local tax disputes at a fair and impartial hearing and to receive a timely written, quality decision that is based on the evidence submitted and the law."

The Tribunal is divided into two components: the Entire Tribunal* and the Residential Property and Small Claims Division*. The Entire Tribunal utilizes a formal hearing process to resolve more complex tax appeals. However, with the exception of principal residence and qualified agricultural property exemptions, any case may be filed in the Entire Tribunal. A formal record of the hearing is prepared, and attorneys typically represent the parties. The hearing is presided over by either a Tribunal member* or a hearing officer* appointed by the Tribunal to hold hearings.

The Residential Property and Small Claims Division employs an informal hearing process. Informal hearings may be presided over by a hearing referee*, a hearing officer, or a Tribunal member. A formal record of the hearing is not prepared, and parties usually represent themselves. The hearings typically require a half hour or less. Only certain cases may be filed in the Residential Property and Small Claims Division: disputes involving principal residence, poverty, and qualified agricultural property exemptions; disputes involving taxes other than property when the amount in dispute is

* See glossary at end of report for definition.

under \$20,000; and disputes involving property taxes when the State equalized value in contention is less than \$100,000.

For the fiscal year ended September 30, 2008, the Tribunal expended \$1.6 million and collected \$1.0 million in filing fees. In addition, in fiscal year 2007-08, the Tribunal was appropriated \$519,900 from corporation fees and security fees and recognized another \$773,618 in deferred revenue from filing fees that were collected in fiscal year 2006-07. Effective May 9, 2008, Act 126, P.A. 2008, amended Section 205.749 of the *Michigan Compiled Laws* to allow the Tribunal to deposit all fees collected in a newly created Michigan Tax Tribunal Fund, to be used solely for the operation of the Tribunal. Under the amendment, money remaining in the Fund at the close of the fiscal year does not revert to the General Fund.

As of September 30, 2009, the Tribunal had 18 full-time equated employees.

Audit Objectives, Scope, and Methodology and Agency Responses

Audit Objectives

Our performance audit* of the Michigan Tax Tribunal, Department of Energy, Labor & Economic Growth (DELEG), had the following objectives:

1. To assess the efficiency* and effectiveness* of the Tribunal's processing of tax appeals.
2. To assess the effectiveness of the Tribunal's efforts to ensure that State agencies were provided notice of tax disputes that significantly affected School Aid Fund payments and State education tax revenues.

Audit Scope

Our audit scope was to examine the Michigan Tax Tribunal's processing of tax appeals and related notice procedures. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit procedures, conducted from June 2008 through March 2009, included examination of Tribunal records and activities primarily for the period October 1, 2005 through September 30, 2008.

Audit Methodology

Our methodology included a preliminary review of the Tribunal's activities and functions. As part of our preliminary review, we interviewed various Tribunal staff and reviewed applicable statutes, policies and procedures, reports, management plans, and other reference materials.

To accomplish our first objective, we obtained and analyzed selected data regarding the Tribunal's processing of tax appeals. We reviewed the Tribunal's process for assigning cases to Tribunal members and hearing officers and procedures for scheduling, hearing, and deciding cases. We also reviewed the costs and benefits associated with

* See glossary at end of report for definition.

appointing hearing officers and contracting hearing referees to preside over cases on the Tribunal's behalf.

To accomplish our second audit objective, we obtained and reviewed the Tribunal's rules regarding notice to parties. Also, we evaluated the impact that select Tribunal decisions had on School Aid Fund payments and State education tax revenues.

When selecting activities or programs for audit, we use an approach based on assessment of risk and opportunity for improvement. Accordingly, we focus our audit efforts on activities or programs having the greatest probability for needing improvement as identified through a preliminary review. Our limited audit resources are used, by design, to identify where and how improvements can be made. Consequently, we prepare our performance audit reports on an exception basis.

Agency Responses

Our audit report contains 5 findings and 6 corresponding recommendations. The Tribunal's preliminary response indicated that it agrees with all of the recommendations.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion subsequent to our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require DELEG to develop a formal response to our audit findings and recommendations within 60 days after release of the audit report.

COMMENTS, FINDINGS, RECOMMENDATIONS,
AND AGENCY PRELIMINARY RESPONSES

PROCESSING OF TAX APPEALS

COMMENT

Background: The Michigan Tax Tribunal reported that 37,386 new tax appeals were filed by taxpayers during the audit period (October 1, 2005 through September 30, 2008). According to the Tribunal's docket reporting system, the Tribunal resolved 25,913 appeals during this period, which included new appeals filed (pending appeals) and appeals pending from prior years (backlogged appeals). Pending and backlogged appeals totaled 25,451 as of September 30, 2008.

Small Claims Cases

Of the 25,913 tax appeals resolved by the Tribunal during our audit period, 17,392 (67%) were small claims appeals*. Small claims appeals include the following: residential property and exemptions; nonresidential property and exemptions in which the State equalized value or taxable value in dispute is \$100,000 or less; and nonproperty tax matters and special assessment appeals of \$6,000 or less (\$20,000 or less effective May 2008). Such appeals consist of an informal hearing process of typically 30 minutes or less in which a formal record is not prepared and the parties usually represent themselves.

Entire Tribunal Cases

The remaining 8,521 (33%) tax appeals resolved by the Tribunal during our audit period consisted of the more complex Entire Tribunal cases. Entire Tribunal cases undergo a formal hearing process designed to resolve more complex appeals in which a formal record is prepared and attorneys typically represent the parties.

Dismissed, Settled, or Withdrawn Cases

Most tax disputes resolved by the Tribunal during our audit period did not require a hearing and an opinion and judgment. Of the 25,913 cases that the Tribunal completed during our audit period (17,392 small claims cases and 8,521 Entire Tribunal cases), 21,170 (82%) were dismissed, settled, or withdrawn prior to the Tribunal conducting a hearing and issuing an opinion and judgment. More significantly, during our three-year audit period, only 144 (2%) Entire Tribunal appeals actually required a hearing and an opinion and judgment in order to close the case.

* See glossary at end of report for definition.

During the most recent fiscal year of our audit period (fiscal year 2007-08), the Tribunal conducted a hearing and an opinion and judgment for only 21 Entire Tribunal cases.

Appeals Filed

During our audit period (fiscal years 2005-06 through 2007-08), appeals filed with the Tribunal totaled 8,898 for fiscal year 2005-06; 12,421 for fiscal year 2006-07; and 16,067 for fiscal year 2007-08 (see history of appeals filed, presented as supplemental information).

Audit Objective: To assess the efficiency and effectiveness of the Tribunal's processing of tax appeals.

Audit Conclusion: We concluded that the Tribunal was not efficient and effective in its processing of tax appeals. Our audit disclosed one material condition*. The Tribunal had not established a process to ensure that it resolved tax appeals in an efficient and timely manner (Finding 1).

Our audit also disclosed three reportable conditions* related to training for Tribunal members and hearing officers (Finding 2), use of hearing officers (Finding 3), and interagency agreement with the State Office of Administrative Hearings and Rules (SOAHR) (Finding 4).

FINDING

1. Resolution of Tax Appeals

The Tribunal had not established a process to ensure that it resolved tax appeals in an efficient and timely manner. As a result, the Tribunal's number of backlogged and pending appeals increased by 72%, from 14,824 in fiscal year 2005-06 to 25,451 in fiscal year 2007-08, which contributed to the significant delays in resolving taxpayers' appeals.

Section 205.751 of the *Michigan Compiled Laws* provides that a decision and opinion of the Tribunal shall be made within a reasonable period.

Although not binding on the Tribunal, by example, Michigan's trial courts are required by the State Court Administrative Office (SCAO) to develop and

* See glossary at end of report for definition.

implement caseflow management plans, including case processing goals, in accordance with Michigan Supreme Court Administrative Order No. 2003-7 and SCAO Model Local Administrative Order No. 22. The Orders establish the following standards for the timely resolution of cases that are heard in Michigan's trial courts:

Figure 1
SCAO Case Processing Goals for Michigan Trial Courts

Case Type	Percent Complete		Number of Months
General civil - District court	90%	within:	9 months
	98%	within:	12 months
	100%	within:	15 months
General civil - Circuit court	75%	within:	12 months
	95%	within:	18 months
	100%	within:	24 months
Appeals from administrative agencies	100%	within:	6 months
Summary civil (small claims)	100%	within:	4 months

Source: Michigan Supreme Court Administrative Order No. 2003-7.

Our review of the Tribunal's tax appeals process disclosed:

- a. The Tribunal had neither developed case processing goals nor established guidelines for the timely resolution of appeals.

Developing goals and establishing guidelines for the processing of cases would provide the Tribunal a basis on which to measure progress in the timely resolution of tax appeals.

On average, the Tribunal took 19 months to close a case completed during our audit period. The following table shows how long it took the Tribunal to close cases completed during our audit period and demonstrates the need for the

Tribunal to establish its own standards for case processing and the timely resolution of appeals:

Figure 2
Tribunal Cases Completed by Number of Months
For Fiscal Years 2005-06 Through 2007-08

Case Type	Cases Completed	Percent	Number of Months to Complete
Small claims	10,124	58%	12 months
	15,843	91%	24 months
	17,392	100%	116 months
Entire Tribunal	2,654	31%	12 months
	5,714	67%	24 months
	8,521	100%	142 months
Total	12,778	49%	12 months
	21,557	83%	24 months
	25,913	100%	142 months

- b. The Tribunal did not schedule cases for hearing in a timely manner.

Scheduling hearings in a timely manner helps to resolve cases in a timely manner. In addition, as observed by Tribunal members and staff, scheduling a case for hearing can be an incentive for parties to negotiate a settlement or other resolution prior to incurring the additional time and costs associated with litigation.

As of October 3, 2008, there were 7,428 appeals pending scheduling for a hearing. Of these cases, 4,469 (60%) were pending scheduling for more than six months, 683 (9%) were pending scheduling for more than one year, and 6 were pending scheduling for more than two years.

Although not binding on the Tribunal, SCAO Model Local Administrative Order No. 22 indicates that courts should adopt a scheduling policy whereby all

cases will be set in a manner that minimizes delay for the parties and ensures case progress so that pending cases are meeting established time guidelines.

- c. For cases in which a hearing was held, the Tribunal had not issued judgments and decisions within a timely period after holding the hearing.

After holding a hearing, judgments and decisions should be issued promptly while recollection remains high and the details of the case are most familiar in order to avoid inefficiencies in the completion of the case, such as having to reconstruct the case or review the file more intensely in order to refresh a memory regarding events in the case.

The Tribunal's records disclosed that, as of October 3, 2008, there were 188 appeals that had been heard by the Tribunal, which were awaiting only a judgment and decision. Of these appeals, 79 (42%) had been heard more than six months earlier; 39 (21%) had been heard more than one year earlier; 6 cases (3%) had been heard more than two years earlier; and 3 (2%) had been heard more than three years earlier.

- d. The Tribunal had not developed a plan to address its growing backlog of pending appeals.

The ongoing volume of cases being filed with the Tribunal each year, relative to the Tribunal's annual case output and corresponding backlog of pending appeals, necessitates that the Tribunal develop a plan to increase its annual output of cases through either improved efficiencies and/or additional resources.

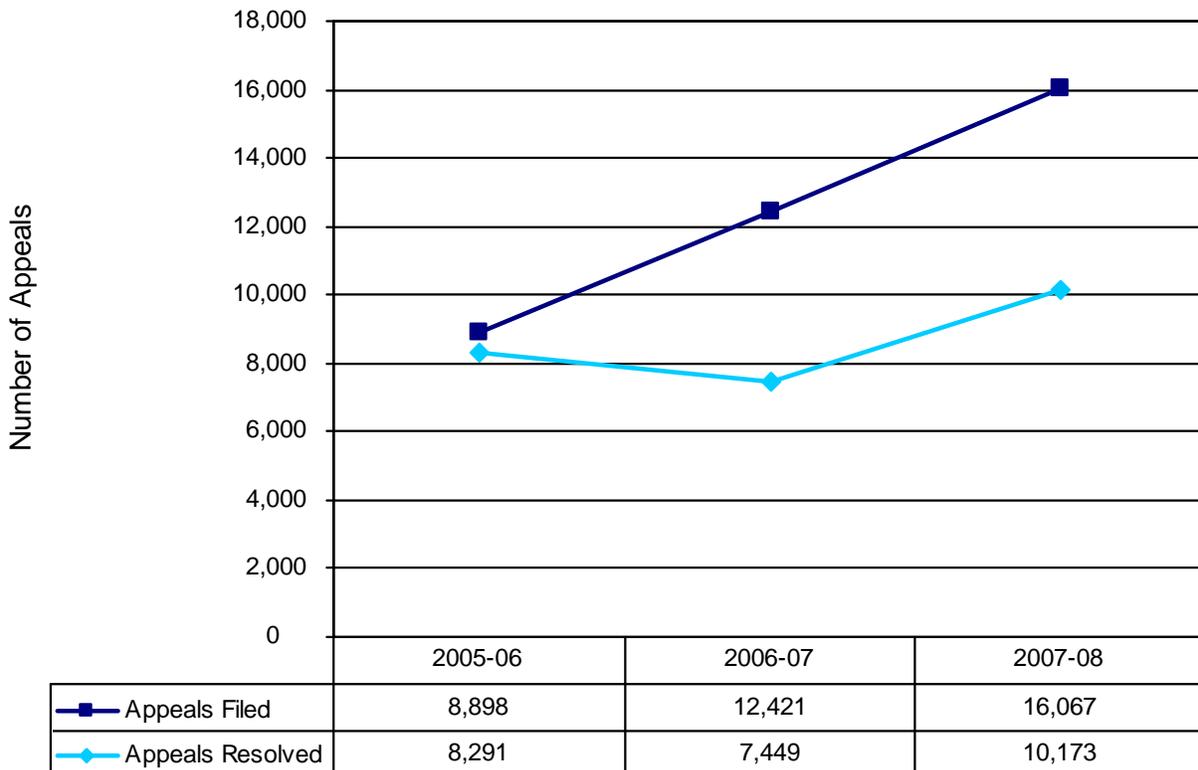
Our review of the Tribunal's volume of cases disclosed:

(1) Appeals Filed and Resolved

The number of cases that the Tribunal resolved annually during our audit period was not sufficient to keep pace with the number of appeals filed annually during the respective fiscal years (fiscal years 2005-06 through 2007-08).

As shown in Figure 3, the number of appeals filed at the Tribunal grew markedly during our audit period, while the resolution of those appeals lagged behind the volume of incoming cases:

Figure 3
 Appeals Filed and Resolved by Fiscal Year
 For Fiscal Years 2005-06 through 2007-08



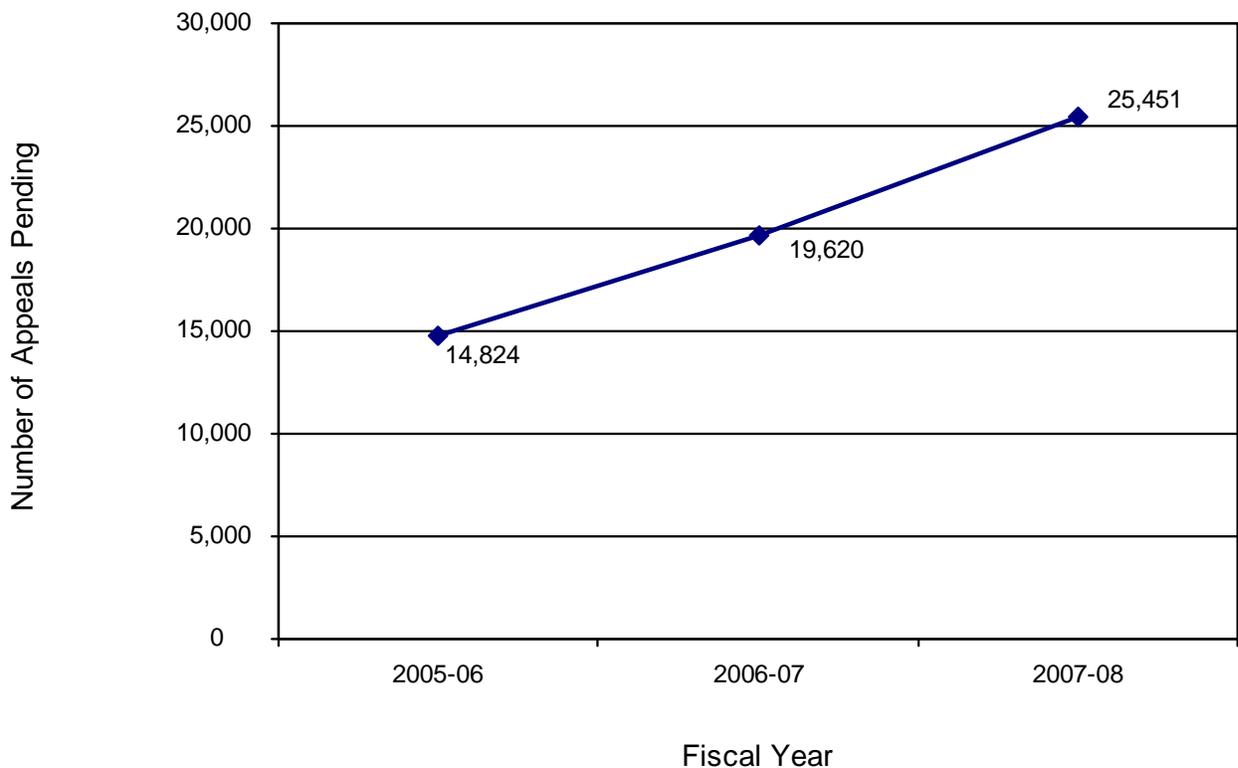
The Tribunal resolved 60% and 63% of its incoming cases filed in fiscal years 2006-07 and 2007-08, respectively. The Tribunal cannot address the increasing number of backlogged and pending appeals as long as it continues to take in substantially more cases each year than it is able to resolve.

(2) Backlogged and Pending Appeals

The Tribunal's number of backlogged and pending appeals continued to grow during our audit period, with the trend in volume of annual appeals filed relative to the number of appeals resolved being unmanageable.

As shown in Figure 3, the Tribunal resolved as many as 10,173 cases in one year during our audit period. However, as illustrated in Figure 4, the Tribunal's backlogged and pending appeals grew by 30% or more each year during our audit period and stood at 25,451 at the end of the audit period, which is nearly 2.5 times the highest annual case output generated by the Tribunal during our audit period:

Figure 4
Backlogged and Pending Appeals



While the Tribunal must dedicate resources to resolving prior year backlogged appeals, its efforts to resolve current year appeals on a timely basis are diminished.

Unless the Tribunal adopts a comprehensive and efficient process to address the current trend, the Tribunal's backlogged and pending appeals may more than double within the next five years to nearly 5 times the highest annual case output generated by the Tribunal during our audit period.

- e. The Tribunal had not established standards and procedures necessary to oversee the Tribunal members' work performance.

Establishing standards and procedures for the Tribunal members' work performance would assist the Tribunal to improve its efficiency in processing tax appeals by periodically evaluating the Tribunal members' work performance and productivity, identifying the training needs of members, and validating the reasonableness of established performance standards needed to facilitate improvement in the Tribunal's caseload production.

Our review disclosed:

- (1) The Tribunal had not established a standard protocol for the assignment of cases to the Tribunal members.

The Tax Tribunal Act sets forth the qualifications and experience necessary for appointment to the Michigan Tax Tribunal as an assessor, an appraiser, an attorney, a certified public accountant, or an at-large member. At completion of our fieldwork, the Tribunal consisted of 4 attorneys (2 attorney members and 2 at-large members), 1 assessor, and 1 certified public accountant.

As a multidisciplinary body, the Tribunal recognizes that all of its members may not necessarily be qualified to hear every type of case. However, the Tribunal had not established a standard protocol for the assignment of cases to Tribunal members of the various disciplines or among those members possessing similar credentials. To establish a fair and measurable method of case assignment for the Tribunal members, the Tribunal needs a method of case assignment that maximizes the productivity and performance of Tribunal members across various professional disciplines, while providing accountability through measurable results.

- (2) The Tribunal had not devised standards for the caseload production expected from Tribunal members.

The Tribunal assigned cases to Tribunal members without establishing tangible dates for when cases should be completed or specific amounts of time needed to complete the cases.

To effectively evaluate work performance and identify training needs, the Tribunal needs to adopt measurable expectations for the Tribunal members' productivity and caseload production.

- (3) The Tribunal had not established a process to efficiently evaluate the work performance and productivity of individual Tribunal members.

The efficient evaluation of Tribunal member work performance and productivity is needed to formulate work performance standards, as well as to enforce adopted performance standards and identify training needs.

RECOMMENDATION

We recommend that the Tribunal establish an efficient process for resolving tax appeals.

AGENCY PRELIMINARY RESPONSE

The Tribunal agrees. The Tribunal stated that it is exploring the feasibility of establishing meaningful case processing goals and guidelines for the timely resolution of appeals. However, the Tribunal indicated that without additional resources, it does not believe that establishing these goals and guidelines will achieve the desired result.

The Tribunal stated that its process is unlike that of a circuit court where there are no fixed deadlines and appeals may be filed year-round. In the Entire Tribunal Division, valuation appeals must be filed each year by May 31 and appeals must be filed in the Residential Property and Small Claims Division by July 31. The result, according to the Tribunal, is a massive ebb and flow of appeals for which resolution efficiency cannot be accurately gauged and managed merely by goals and guidelines; thus, additional resources are required.

The Tribunal also stated that during the audit period, it had changed its procedure for scheduling Entire Tribunal appeals to a procedure similar to that utilized by circuit courts. The Tribunal indicated that this new procedure did not work, and as

of May 2009, the Tribunal reverted back to its previous scheduling procedure. The Tribunal further stated that it will continue to monitor the current scheduling practices to ensure timeliness.

In addition, the Tribunal stated that it will develop goals for issuing decisions timely after a hearing is held and indicated that it had taken the following steps to increase the number of appeals resolved annually:

- (1) The Tribunal and SOAHR have reached an agreement wherein hearing referees are hired to hear small claims appeals. The Tribunal stated that this has significantly increased the number of resolved small claims appeals.
- (2) Two hearing officers are now hearing Entire Tribunal appeals. The Tribunal stated that this had helped to reduce the number of pending Entire Tribunal appeals.
- (3) The Tribunal stated that it has hired three limited-term employees solely for the purpose of docketing appeals and processing small claims opinions.

The Tribunal further stated that it agrees that criteria for evaluating the members must be established and that evaluations should occur on an ongoing basis. The Tribunal indicated that it would develop a standard protocol for the assignment of cases to Tribunal members. The Tribunal also indicated that it has established caseload production standards for small claims appeals and is working to establish standards for Entire Tribunal appeals. The Tribunal also stated that it agrees that more could be done to collect the data needed to evaluate the work performance of each Tribunal member but, in order for more to be done in this area, the Tribunal's docketing system would have to be replaced by a case management system.

FINDING

2. Training for Tribunal Members and Hearing Officers

The Tribunal needs to enhance training for new Tribunal members and establish a continuing education program for Tribunal members and hearing officers.

Training and continuing education in both the procedural and substantive aspects of the Tribunal's responsibilities would promote the consistent application of

complex tax law and assessment practices by Tribunal members and hearing officers alike, thus enhancing the Tribunal's efforts in the efficient performance of its duties.

The jurisdiction of the Tribunal is diverse and widespread. For example, Section 205.731 of the *Michigan Compiled Laws* provides that the Tribunal has exclusive and original jurisdiction over all assessment, valuation, rates, special assessments, allocation, and equalization, as well as refund, credits, or redetermination of taxes levied under the property tax laws of the State. Likewise, pursuant to Section 205.22 of the *Michigan Compiled Laws*, the Tribunal also shares concurrent jurisdiction over nonproperty tax appeals involving taxes levied by the Michigan Department of Treasury, including individual; business; sales, use and withholding; tobacco products; motor fuel; and oil and natural gas severance taxes.

In addition, the Tribunal's statutory design requiring that the Tribunal members be from a diverse background of professions and disciplines necessitates both introductory and ongoing training activity. For example, the majority of the Tribunal's cases involve property tax and typically involve the assessment and valuation of real and personal property. However, only 2 of the Tribunal's 7 members are required to have background in the valuation or assessment of property (the assessor and appraiser members). Similarly, the Tribunal hearings routinely require members to rule on legal matters, such as court procedure, evidence, and statutory construction. However, only 2 of the Tribunal's 7 members are required to be attorneys.

Our review disclosed:

- a. The Tribunal's training and continuing education did not provide Tribunal members sufficient familiarity with procedural, evidentiary, and substantive areas of the law in order to preside over hearings of various complexity and duration.
- b. The Tribunal's training and continuing education did not provide Tribunal members and hearing officers sufficient familiarity in taxation to hear cases involving the specialized area of taxation law, including a diverse assortment of taxes pursuant to the Revenue Act (Sections 205.1 - 205.3 of the *Michigan*

Compiled Laws) as well as the General Property Tax Act (Sections 211.1 - 211.157 of the *Michigan Compiled Laws*).

- c. The Tribunal's training and continuing education did not provide Tribunal members and hearing officers sufficient familiarity with appraisal and assessment practices related to the majority of the Tribunal cases involving the vast and sometimes complex area of property tax law. These cases often include matters involving the valuation, assessment, and appraisal of some of the most complex and unique industrial, commercial, residential, and agricultural properties in the State.

RECOMMENDATION

We recommend that the Tribunal enhance training for Tribunal members and establish a continuing education program for Tribunal members and hearing officers.

AGENCY PRELIMINARY RESPONSE

The Tribunal agrees and stated that it will seek additional training opportunities and develop continuing education programs as the budget permits.

FINDING

3. Use of Hearing Officers

The Tribunal had not fully analyzed the efficiency or administrative effectiveness of using hearing officers from SOAHR.

An analysis of using hearing officers from SOAHR compared with the Tribunal appointing hearing officers and contracting hearing referees directly would help ensure that taxpayer hearings and proposed decisions are prepared for Tribunal members in the most efficient and administratively effective manner.

Sections 205.726 and 205.761, respectively, of the *Michigan Compiled Laws* authorized the Tribunal to appoint hearing officers and to contract hearing referees to conduct hearings on the Tribunal's behalf. Based on the hearings, hearing officers and hearing referees submit proposed decisions, which are considered and decided ultimately by Tribunal members. However, effective March 27, 2005, Executive Reorganization Order No. 2005-1, codified at Section 445.2021 of the

Michigan Compiled Laws, transferred the Tribunal's authority to appoint hearing officers and contract hearing referees to SOAHR.

Subsequently, the Tribunal was required to use SOAHR employees exclusively to conduct all of its tax hearings, except those heard directly by Tribunal members. Department of Energy, Labor & Economic Growth's (DELEG's) appropriation included the costs of salaries, fringe benefits, overhead, and other direct expenditures incurred by SOAHR in conducting hearings on the Tribunal's behalf.

From fiscal year 2005-06 through fiscal year 2007-08, DELEG reported that SOAHR incurred costs of \$1.9 million to conduct 6,502 hearings on the Tribunal's behalf. SOAHR's annual costs incurred to conduct hearings on the Tribunal's behalf totaled \$557,438, \$670,196, and \$648,391, which translated to a per case cost of \$524, \$801, and \$472, for fiscal years 2005-06, 2006-07, and 2007-08, respectively. Prior to the implementation of Executive Reorganization Order No. 2005-1, the Tribunal contracted hearing referees at a per case cost of only \$70.

If the Tribunal had been able to use the \$1.9 million to directly contract for hearing referees, either of the following outcomes would have been possible:

- a. Based on a per case cost of \$70, the Tribunal could have contracted for hearing referees to hear a total of 26,800 cases instead of hearing only 6,502 cases. Such action would have reduced the Tribunal's backlog by an additional 20,298 cases during fiscal years 2005-06 through 2007-08.
- b. Based on a per case cost of \$70, the Tribunal could have contracted hearing referees to hear the equivalent number of cases assigned to SOAHR (6,502) for only \$455,140, thus saving \$1.4 million in hearings costs during fiscal years 2005-06 through 2007-08.

RECOMMENDATIONS

We recommend that the Tribunal fully analyze the efficiency and administrative effectiveness of using hearing officers from SOAHR.

If the Tribunal's analysis supports the efficiency and effectiveness of alternatives to the use of hearing officers from SOAHR, we also recommend that the Tribunal seek the means to achieve such alternatives.

AGENCY PRELIMINARY RESPONSE

The Tribunal agrees. The Tribunal stated that it completed an analysis of the efficiency and administrative effectiveness of using hearing officers from SOAHR and, after completing this analysis in February 2009, the Tribunal reached agreement with SOAHR consistent with Executive Reorganization Order No. 2005-1 wherein SOAHR agreed to contract with hearing referees to hear small claims appeals. The Tribunal also stated that, because hearing costs have been significantly reduced, the Tribunal has been able to increase the number of small claims appeals scheduled for hearing each month from approximately 200 to 1,000.

FINDING

4. Interagency Agreement With SOAHR

The Tribunal was not successful in its efforts to establish an interagency agreement with SOAHR. As a result, the timely and effective delivery of hearing services and the assignment of personnel were not fulfilled in accordance with the requirements of Executive Reorganization Order No. 2005-1.

SOAHR was established effective March 27, 2005 under Executive Reorganization Order No. 2005-1 to consolidate the State's administrative hearing functions, which included Tribunal hearing officers and hearing referees. Section II of Executive Reorganization Order No. 2005-1 provides:

To assure the timely and effective delivery of services related to administrative hearing functions . . . and the assignment of personnel to perform administrative hearing functions with expertise in the appropriate subject areas and the law, the SOAHR shall develop an interagency agreement relating to the provision of services with each principal department that includes a Department or Agency affected by the transfers under Section III.

Our review disclosed the following effects on the Tribunal's ability to effectively manage its cases because of the absence of an interagency agreement between the Tribunal and SOAHR:

- a. The Tribunal was limited in its ability to select which SOAHR employees were assigned to conduct the Tribunal hearings.

Executive Reorganization Order No. 2005-1 requires interagency agreements to ensure the assignment of personnel to perform administrative hearing functions who have expertise in the appropriate subject areas and the law.

SOAHR employs a panel of attorneys who are experts in State administrative law to hear cases on behalf of State agencies, including the Tribunal. However, the background, training, and experience of SOAHR's employees varied considerably and did not necessarily include tax law. The Tribunal hearings may involve complex matters of tax law that require a considerable level of expertise to perform properly and cost-effectively. Conversely, the Tribunal hearings may also involve relatively straightforward tax appeals in its Residential Property and Small Claims Division. While small claims cases may not require as high of a level of expertise in taxation, the corresponding costs of employees' salaries may be unnecessarily high, especially when SOAHR assigns and incurs costs for highly compensated legal experts from other fields of law unrelated to taxation.

The Tribunal's inability to impact who hears its cases may affect both the effectiveness of the hearings and proposed decisions rendered, as well as the administrative efficiencies to be gained from opting for lower cost contracted hearing referees when deemed practical, as described in Finding 3.

- b. The Tribunal was limited in its ability to impose standards for the preparation of proposed decisions submitted by SOAHR employees to the Tribunal members for consideration and decision because SOAHR employees reported to SOAHR management, not the Tribunal. The Tribunal's ability to enforce uniformity in the work product of SOAHR employees helps to limit the number of proposed decisions that the Tribunal must rehear or modify, which improves efficiencies in the processing of cases. The Tribunal informed us that a lack of uniformity in SOAHR's proposed decisions limited their usefulness and resulted in increased work modifying proposed decisions and rehearing cases.

RECOMMENDATION

We recommend that the Tribunal renew its efforts to establish an interagency agreement with SOAHR.

AGENCY PRELIMINARY RESPONSE

The Tribunal concurs and informed us that it is in the process of negotiating an interagency agreement with SOAHR.

NOTICE OF TAX DISPUTES THAT SIGNIFICANTLY AFFECTED SCHOOL AID FUND PAYMENTS AND STATE EDUCATION TAX REVENUES

COMMENT

Audit Objective: To assess the effectiveness of the Tribunal's efforts to ensure that State agencies were provided notice of tax disputes that significantly affected School Aid Fund payments and State education tax revenues.

Audit Conclusion: We concluded that the Tribunal's efforts to ensure that State agencies were provided notice of tax disputes that significantly affected School Aid Fund payments and State education tax revenues were moderately effective. Our audit disclosed one reportable condition related to notice of property tax appeals affecting the State (Finding 5).

FINDING

5. Notice of Property Tax Appeals Affecting the State

The Tribunal had not established administrative rules of practice and procedure that required petitioners to serve notice to an agency of the State regarding property tax appeals affecting School Aid Fund payments, State education tax revenues, and the State's property assessment process.

The State may have an interest in property tax appeals which affect the State's budget, including expenditures (School Aid Fund) and revenues (State education tax). The State may also have an interest in property tax appeals affecting the State's property assessment process supervised by the State Tax Commission. Without being served notice of such appeals, the State may be denied the

opportunity to contest such cases in order to defend the State's interests and to prepare for the outcome of a settlement or a Tribunal decision.

Section 205.732 of the *Michigan Compiled Laws* empowers the Tribunal to promulgate rules for practice and procedure before the Tribunal. *Michigan Administrative Code* R 205.1208 requires that tax appeals be served upon the local unit that assessed the amount being appealed. A copy of the tax appeal is also required to be delivered to the local school district, county equalization director, and county clerk, whose jurisdictions may be affected by the results of a tax appeal.

However, a copy of the tax appeal is not required to be delivered to a relevant agency of the State. State government is also impacted by the results of property tax appeals, including the following:

a. State Education Tax

Section 211.903 of the *Michigan Compiled Laws* provides for a 6-mill State education tax on property. This tax is based on the taxable value of assessed property and is deposited in the School Aid Fund for distribution to the State's schools. State revenues decline when property tax appeals result in reductions to the taxable value of property upon which the State education tax is based.

b. School Aid Fund

School Aid Fund payments are impacted when property tax appeals result in reductions to the taxable value of assessed property. Section 388.1620 of the *Michigan Compiled Laws* requires the State to fund the difference between a school district's foundation allowance and what is generated by the local school millage. When taxable value declines, the revenue generated by the local school millage also declines, which may increase the amount of school aid that the State must pay out of the School Aid Fund to meet the school district's foundation allowance.

c. State Tax Commission

Property assessments may be impacted by decisions rendered by the Tribunal in property tax appeals. The State's property assessment process is overseen by the State Tax Commission. Section 211.150 of the *Michigan Compiled Laws* provides that the State Tax Commission is responsible for supervision of local assessing officers and investigation of claims of improper property tax assessment. However, in property tax appeals, the Tribunal is responsible for making its own determination of a property's taxable value pursuant to Section 27a of the General Property Tax Act.

Property tax appeals may impact the State even more significantly in total dollars than the other parties who are required by the Tribunal's rules to be served notice. For example, as illustrated in the following chart, three recently resolved property tax appeals cost the State more in lost revenue and increased expenditures than any of the other principal governmental units or school districts affected:

Dow Chemical and Midland Cogeneration Venture Cases
Property Tax Appeals for Tax Years 1997 - 2007
Dollar Impact on Public Schools and County, City, and State Governments

Case Name	Midland Public Schools	Midland County	City of Midland	State of Michigan
Dow Chemical Tax Years 1997 - 2006	\$2,469,048	\$5,633,250	\$8,716,445	\$15,403,259
Midland Cogeneration Venture Tax Years 1997 - 2000	4,021,806	7,730,351	13,682,885	21,009,106
Midland Cogeneration Venture Tax Years 2001 - 2007	2,997,671	19,662,026	36,301,727	60,250,621
Total	<u>\$9,488,525</u>	<u>\$33,025,627</u>	<u>\$58,701,057</u>	<u>\$96,662,985</u>

And yet, the Tribunal had not established its administrative rules of practice and procedure to ensure that the entity most impacted by the property tax appeals (the State of Michigan) received notice of the appeals.

RECOMMENDATION

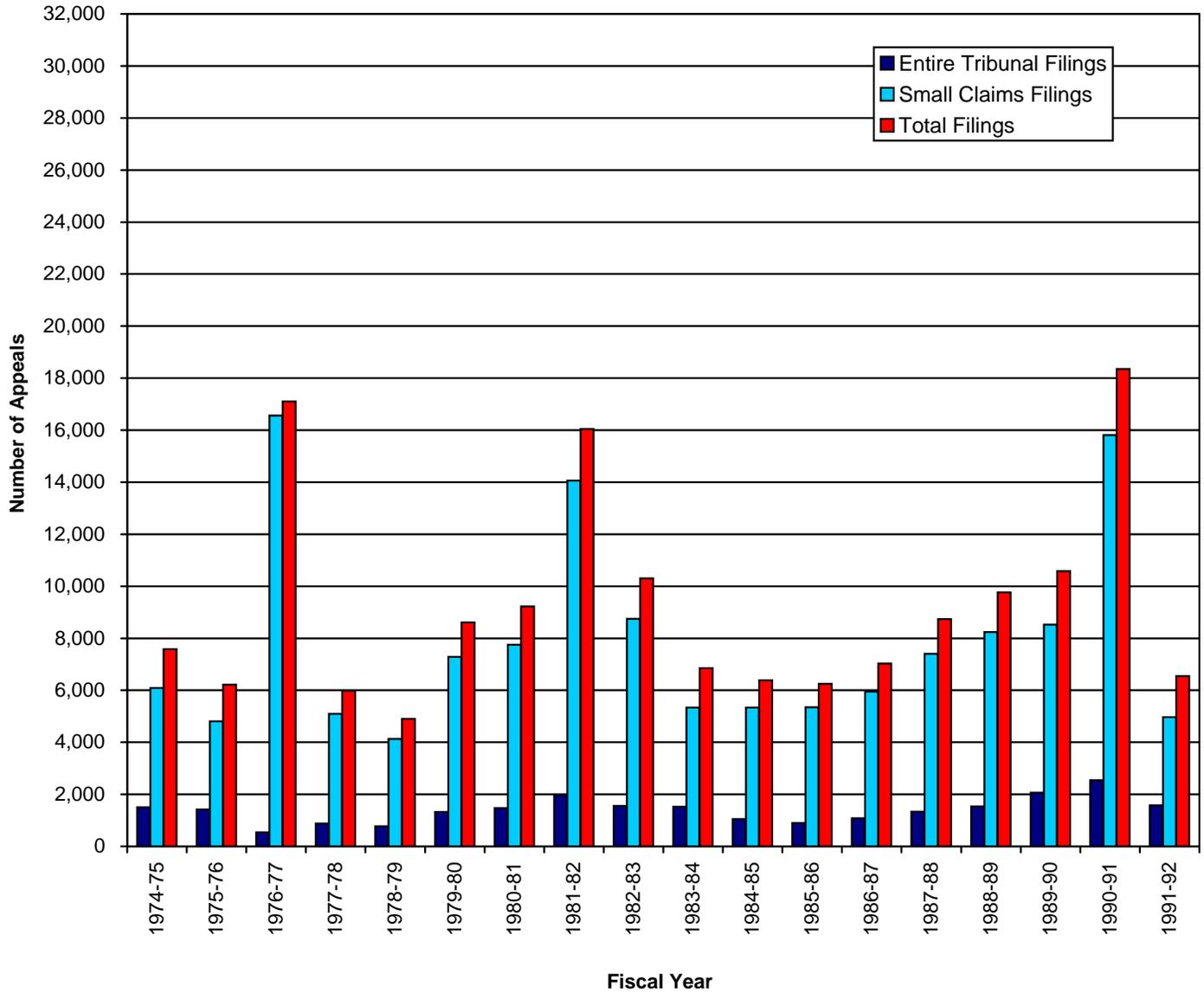
We recommend that the Tribunal establish administrative rules of practice and procedure that requires petitioners to serve notice to an agency of the State regarding property tax appeals affecting School Aid Fund payments, State education tax revenues, and the State's property assessment process.

AGENCY PRELIMINARY RESPONSE

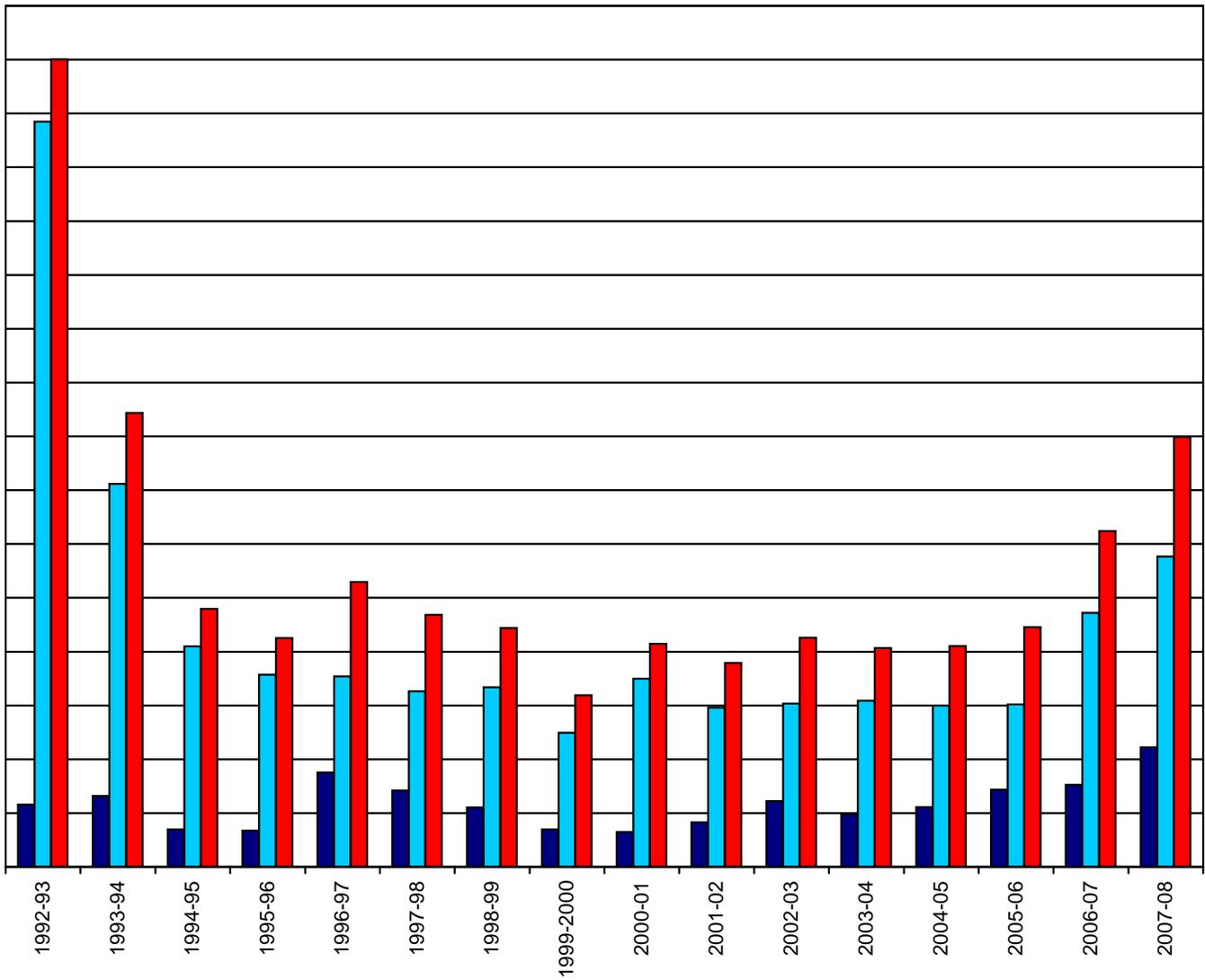
The Tribunal agrees. On October 17, 2009, the Tribunal's Rules (*Michigan Administrative Code* R 205.1208) were amended to add the State Treasurer as an official upon whom a petition must be served to commence a property tax appeal.

SUPPLEMENTAL INFORMATION

MICHIGAN TAX TRIBUNAL
 History of Appeals Filed
Fiscal Years 1974-75 through 2007-08



Source: Michigan Tax Tribunal.



GLOSSARY

Glossary of Acronyms and Terms

DELEG	Department of Energy, Labor & Economic Growth.
effectiveness	Success in achieving mission and goals.
efficiency	Achieving the most outputs and outcomes practical with the minimum amount of resources.
Entire Tribunal	The Tribunal component that utilizes a formal hearing process designed to resolve more complex appeals, for which a formal record is prepared and attorneys typically represent the parties.
hearing officer	An employee appointed to hold hearings and propose decisions for consideration and decision by one or more Tribunal members.
hearing referee	A qualified person other than an employee who is contracted to hold hearings in the Tribunal's Residential Property and Small Claims Division and propose decisions for consideration and decision by one or more Tribunal members.
material condition	A reportable condition that could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
performance audit	An economy and efficiency audit or a program audit that is designed to provide an independent assessment of the performance of a governmental entity, program, activity, or function to improve program operations, to facilitate decision making by parties responsible for overseeing or initiating corrective action, and to improve public accountability.

reportable condition	A matter that, in the auditor's judgment, falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the objectives of the audit; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.
Residential Property and Small Claims Division	The Tribunal component that handles appeals limited to disputes involving residential property, disputes involving exemptions, tax disputes of less than \$20,000, or disputes of property value of less than \$100,000. These appeals involve an informal hearing process of typically 30 minutes or less for which no formal record is prepared and the parties usually represent themselves.
SCAO	State Court Administrative Office.
small claims appeals	Appeals that are heard in the Residential Property and Small Claims Division.
SOAHR	State Office of Administrative Hearings and Rules.
Tribunal member	An individual appointed by the Governor, with the advice and consent of the Senate, to hear and decide proceedings under the Tribunal's jurisdiction.

