



MICHIGAN

OFFICE OF THE AUDITOR GENERAL



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AUDITOR GENERAL

The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

– Article IV, Section 53 of the Michigan Constitution

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August 31, 2012

The Honorable Kimbal R. Smith III, Chair
Michigan Tax Tribunal
and
Mr. Steven H. Hilfinger, Director
Department of Licensing and Regulatory Affairs
Ottawa Building
Lansing, Michigan

Dear Mr. Smith and Mr. Hilfinger:

This is our report on our follow-up of the material condition (Finding 1) and corresponding recommendation reported in the performance audit of the Michigan Tax Tribunal, Department of Energy, Labor & Economic Growth. That audit report was issued and distributed in February 2010. Additional copies are available on request or at <http://www.audgen.michigan.gov>. In April 2011, subsequent to our performance audit, Executive Order No. 2011-4 renamed the Department of Energy, Labor & Economic Growth as the Department of Licensing and Regulatory Affairs (LARA).

Our follow-up disclosed that LARA had partially complied with the recommendation. A reportable condition exists related to cases pending scheduling for more than 6 months (Finding 1, part b.).

If you have any questions, please call me or Scott M. Strong, C.P.A., C.I.A., Deputy Auditor General.

Sincerely,


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

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MICHIGAN TAX TRIBUNAL
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
FOLLOW-UP REPORT

INTRODUCTION

This report contains the results of our follow-up of the material condition* and corresponding recommendation and the agency preliminary response as reported in our performance audit* of the Michigan Tax Tribunal, Department of Energy, Labor & Economic Growth (641-0207-08), which was issued and distributed in February 2010. That audit report included 1 material condition (Finding 1) and 4 reportable conditions*.

PURPOSE OF FOLLOW-UP

The purpose of this follow-up was to determine whether the Department of Licensing and Regulatory Affairs (LARA) has taken appropriate corrective measures in response to the material condition and corresponding recommendation.

BACKGROUND

The Michigan Tax Tribunal (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 LARA.

Executive Order* No. 2011-4 renamed the Department of Energy, Labor & Economic Growth as the Department of Licensing and Regulatory Affairs (LARA). Also, Executive

* See glossary at end of report for definition.

Order No. 2011-4 created the Michigan Administrative Hearing System (MAHS) as an independent and autonomous agency within LARA and transferred the Michigan Tax Tribunal and any authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, and allocations of other funds to MAHS.

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. Only certain cases may be filed in the Residential Property and Small Claims Division, including disputes involving principal residence, poverty, and qualified agricultural property exemptions; disputes under \$20,000 involving taxes other than property; and disputes involving property taxes when the State equalized value in contention is less than \$100,000.

SCOPE

Our fieldwork was conducted during May and June 2012. To determine the status of compliance with our recommendation for Finding 1, we interviewed Tribunal staff

* See glossary at end of report for definition.

and obtained and analyzed selected data regarding the Tribunal's processing of tax appeals (see Exhibits 1 and 2). Also, we reviewed the Tribunal's process for assigning cases to Tribunal members and hearing officers and procedures for scheduling, hearing, and deciding cases. In addition, we compared selected cases from the tax docket system with the hard copy case files to determine the accuracy of the data.

FOLLOW-UP RESULTS

PROCESSING OF TAX APPEALS

RECOMMENDATION AND RESPONSE AS REPORTED IN FEBRUARY 2010:

1. Resolution of Tax Appeals

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.

* See glossary at end of report for definition.

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 the State Office of Administrative Hearings and Rules 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.

FOLLOW-UP CONCLUSION

We concluded that the Tribunal partially complied with this recommendation. Although the Tribunal has implemented a plan and continues to reduce the number of cases pending scheduling, a reportable condition exists because of the number of cases that remain in pending status as of May 24, 2012 (see part b.). Specifically, our follow-up disclosed:

- a. The Tribunal complied with the recommendation as it related to part a. of the finding. The Tribunal established standards for case processing and the

timely resolution of appeals. The standard for the small claims cases is resolution within 14 months of filing, and the standard for Entire Tribunal cases is resolution within 36 months of filing.

- b. The Tribunal partially complied with the recommendation as it related to part b. of the finding. Within the standards established for case processing and timely resolution of appeals, the Tribunal developed scheduling policies. As of May 24, 2012, the Tribunal had 7,971 appeals cases pending scheduling for a hearing. We determined that 2,538 (32%) of the 7,971 cases had been pending scheduling for more than 6 months. The 32% differs from the percentage reported by the Tribunal to the Legislature because the Tribunal reports only small claims cases and does not include Entire Tribunal cases. We determined that only 7 (less than 1%) of the 2,538 were small claims cases.

The 32% represents a significant improvement from October 3, 2008 when the Tribunal had 60% of Tribunal cases pending scheduling for more than 6 months. However, this 32% still represents a reportable condition.

- c. The Tribunal complied with the recommendation as it related to part c. of the finding. The Tribunal established a standard that judgments and decisions should be issued within 90 days after holding the hearing. We determined that as of May 24, 2012, 97% of judgments and decisions had been issued within 90 days of holding the hearing.
- d. The Tribunal complied with the recommendation as it related to part d. of the finding. The Tribunal developed an overall plan to address its growing backlog of pending appeals. Within the plan, the Tribunal contracted with hearing referees to assist with decreasing the number of pending appeals.

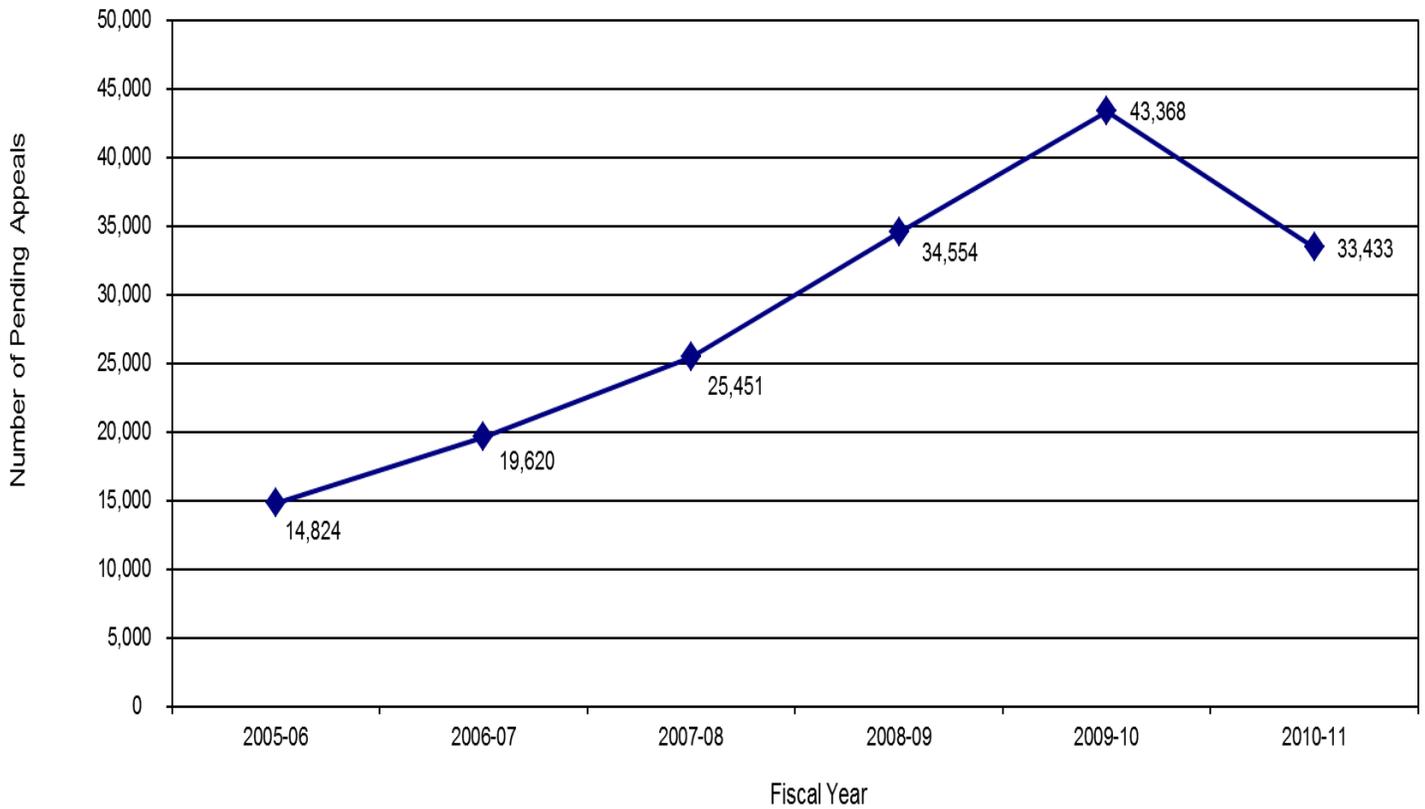
As a result of the Tribunal implementing its plan and contracting with hearing referees, we determined that the number of pending cases dropped from a peak of 43,368 during fiscal year 2009-10 to 19,162 as of May 24, 2012. Of the 19,162 pending appeals, 905 (5%) were pending for longer than the standards set by the Tribunal. This represents a significant improvement from the end of our prior audit period of September 30, 2008 when 6,978 (28%) of

25,179 cases were pending for longer than the established standards. Additional statistics regarding pending appeals and appeals filed and resolved are presented in Exhibits 1 and 2.

- e. The Tribunal complied with the recommendation regarding the three specific items in part e. of the finding:
 - (1) The Tribunal asserted to us that, because of the uniqueness of each case filed with the Tribunal as well as the unique qualifications of each appointed Tribunal member, a standard protocol for the assignment of cases has not been established. We determined that these assertions regarding the uniqueness of cases and Tribunal member qualifications have merit.
 - (2) The Tribunal has developed production standards that establish time expectations for the timely resolution of cases.
 - (3) The Tribunal has established a process to efficiently evaluate the work performance and productivity of individual Tribunal members. The Tribunal generates monthly reports for each Tribunal member that document productivity. These reports are submitted to the Tribunal Chair for review. Also, the Chair reviews the Court of Appeals' opinions for the Tribunal cases heard and keeps a log of these cases for review of the Court of Appeals' disposition of Tribunal members' decisions.

SUPPLEMENTAL INFORMATION

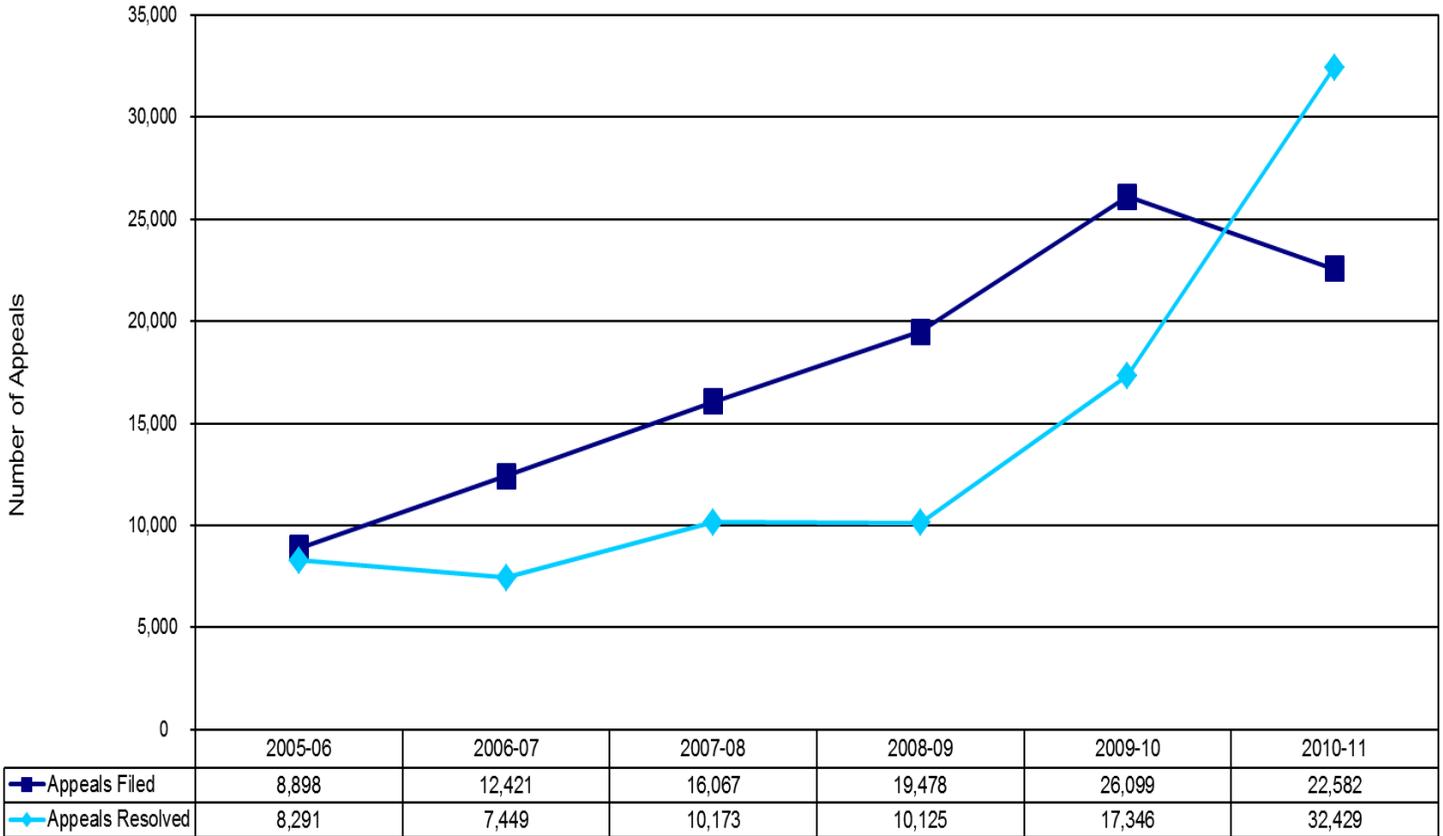
MICHIGAN TAX TRIBUNAL
Pending Appeals
Fiscal Year 2005-06 through Fiscal Year 2010-11*



* There were 19,162 pending appeals as of May 24, 2012.

Source: The Office of the Auditor General prepared this exhibit based on unaudited data obtained from the Michigan Tax Tribunal case management system.

MICHIGAN TAX TRIBUNAL
Appeals Filed and Resolved by Fiscal Year
Fiscal Year 2005-06 through Fiscal Year 2010-11*



* There were 9,035 appeals filed and 23,840 appeals resolved during the 8-month period ended May 24, 2012.

Source: The Office of the Auditor General prepared this exhibit based on unaudited data obtained from the Michigan Tax Tribunal case management system.

GLOSSARY

Glossary of Acronyms and Terms

efficient	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.
executive order	An official pronouncement of the Governor provided for in Article V, Section 2 of the Michigan Constitution.
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.
LARA	Department of Licensing and Regulatory Affairs.
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.
Michigan Administrative Hearing System (MAHS)	The agency that coordinates and leads State efforts to evaluate policies and procedures for contested administrative hearings and develops standards for the conduct of administrative hearings.

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, is less severe than a material condition and 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 audit objectives; 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.
Tribunal	Michigan Tax Tribunal.
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.

