



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
LANSING

STANLEY "SKIP" PRUSS  
DIRECTOR

emailed 4/23/10 (ael)

April 23, 2010

Mr. Doug Ringler, Director  
Office of Internal Audit Services  
Department of Management & Budget  
Romney Building – Seventh Floor  
111 S. Capitol, P.O. Box 30026  
Lansing, Michigan 48909

Dear Mr. Ringler:

Per State Administrative Guide to State Government, Part VII Chapter 4, Section 100, we are enclosing our response to comments made in the Office of the Auditor General's Performance Audit of the Michigan Tax Tribunal for the Department of Energy, Labor and Economic Growth for the period October 1, 2005 through September 30, 2008.

If you have any questions regarding this report, please feel free to call me at 636-0287.

Sincerely,

**(SIGNED)**

Allen Williams, Director  
Office of Audit & Financial Compliance

Enclosure

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## **AUDIT RESPONSE SUMMARY**

### **Performance Audit of the Michigan Tax Tribunal Michigan Department of Labor and Economic Growth (October 1, 2005 through September 30, 2008)**

**I. Citations complied with:**

- # 1a.
- # 1d.
- # 3.
- # 5.

**II. Citations to be complied with:**

- # 1b. Expected date of compliance is December 31, 2010
- # 1c. Expected date of compliance is December 31, 2010
- # 1e (2). Expected date of compliance is December 31, 2010
- # 1e (3). Expected date of compliance is December 31, 2010
- # 2. Expected date of compliance is April 1, 2011
- # 4. Expected date of compliance is December 31, 2010

**III. Citations agency disagrees with:**

- # 1e (1).

**Financial Audit Including the Provisions of the Single Audit Act  
Michigan Department of Labor and Economic Growth  
(October 1, 2005 through September 30, 2008)  
Agency Response**

**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.*

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

**Response:** DELEG agrees with this finding and has complied. Performance measures have recently been established for Michigan Tax Tribunal members and performance reviews will be conducted on an annual basis.

The Tribunal continues to believe that it is difficult, if not impossible, to develop case processing goals similar to those established by the State Court Administrative Office. The Tribunal's 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; appeals must be filed in the Small Claims division by July 31. The result is a massive ebb and flow of appeals for which resolution efficiency cannot be accurately gauged and managed merely by goals and guidelines.

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

**Response:** DELEG agrees with this finding and will achieve compliance soon. The Tribunal's utilization of hearing referees for small claims cases has significantly reduced the number of small claims cases that are ready for hearing. As of April, 2010, Small Claims cases filed in 2009 are being scheduled for all jurisdictions except those in Wayne County. Within a few months, Wayne Counties' 2009 cases will begin to be schedule. In June, in the Entire Tribunal, the first prehearings scheduled as a result of returning to a Prehearing General Call format will occur. By September, 2010, all cases 2009 and older will have been scheduled on a Prehearing General Call. The Tribunal will continue to monitor the current scheduling practices to ensure timeliness. The estimated date for full compliance is December 31, 2010.

- 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.*

**Response:** DELEG agrees with this finding and will comply. The Tribunal recently established performance measures for issuing decisions timely after a hearing is held. Pursuant to the performance measures, 90% of the Entire Tribunal

cases heard by a Tribunal member must be completed within 90 days of the last day of the hearing; and 95% of the Small Claims cases heard by a Tribunal member must be completed within 60 days of the hearing. The Tribunal will continue to monitor the achievement of these goals to ensure timeliness. The estimated date for full compliance is December 31, 2010.

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

**Response:** DELEG agrees with this recommendation and has complied. The Tribunal has taken the following steps to increase the number of appeals resolved annually: (1) The Tribunal and State Office of Administrative Hearings and Rules (SOAHR) have reached an agreement wherein hearing referees are hired to hear Small Claims appeals. This has significantly increased the number of resolved Small Claims appeals; (2) two hearing officers are now hearing Entire Tribunal appeals. This had helped to reduce the number of pending Entire Tribunal appeals; and (3) The Tribunal has hired three limited term employees solely for the purpose of docketing appeals and processing Small Claims opinions.

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

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

**Response:** DELEG respectfully **disagrees** with this finding. The Tribunal agreed to explore the feasibility of establishing meaningful case processing goals and guidelines for the timely resolution of appeals. After assessing the feasibility, the Tribunal concluded that no formulaic system of assignment would insure that the most appropriate member would be assigned to a particular case. By statute, the Tribunal is a multidisciplinary body. As such, not all members are qualified to hear all types of cases. Moreover, it is not possible to determine how complicated a case will be until well after the case has progressed. For these reasons cases must be assigned based upon experience and aptitude and not upon a standard protocol.

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

**Response:** DELEG agrees with this finding and will comply. The Tribunal has established standards for Small Claims appeals and is working to establish standards for Entire Tribunal appeals. The estimated date of full compliance is December 31, 2010.

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

**Response:** DELEG partially agrees with this finding but will comply. The Tribunal believes that it did collect enough data to evaluate the work performance of each Tribunal member. However, the Tribunal agrees that more could be done in this area, but in order for this to occur the Tribunal's docketing system would have to be replaced by a case management system. The Tribunal will establish criteria for evaluating the members and will perform evaluations on an ongoing basis.

## **2. Training for Tribunal Members and Hearing Officers**

*The Tribunal had not established training and continuing education programs for Tribunal members and hearing officers.*

**Response:** DELEG agrees with this finding and is in the process of complying. The Tribunal believes it had already established some training procedures for Tribunal members and hearing officers in the areas of taxation and assessment. Ongoing in-house training has been provided to the hearing referees. Newer Tribunal members have also attended this training. Tribunal members will receive training at the annual Tax Judge's Conference in September 2010. The Tribunal continues to explore other options for training and education for Tribunal members and hearing referees. The estimated date of full compliance is April 1, 2011.

## **3. Use of Hearing Officers**

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

**Response:** DELEG agrees with this recommendation and has complied. In February 2009, the Tribunal completed an analysis of the efficiency and administrative effectiveness of using hearing officers from SOAHR. Afterwards, the Tribunal reached an agreement with SOAHR consistent with Executive Reorganization Order No. 2005-1 wherein SOAHR agreed to contract with hearing referees to hear Small Claims appeals. 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. The Tribunal will continue to utilize hearing referees hired by SOAHR on a contractual basis as this is the most efficient and effective manner to resolve these cases.

## **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.*

**Response:** DELEG agrees with this finding and will comply. The Tribunal is in the process of negotiating an interagency agreement with SOAHR. The expected date of compliance is December 31, 2010.

**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.*

**Response:** DELEG agrees with this finding and has complied. On October 17, 2009, the Tribunal's Rules were amended to add the treasurer of the state of Michigan as an official upon whom a petition must be served to commence a property tax appeal. See *Michigan Administrative Code R 205.1208*.