

# PROPERTY TAX UPDATE

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## PROPERTY TAX EXEMPTION FOR FEDERALLY-QUALIFIED HEALTH CENTERS

As most of you know, the Michigan Supreme Court recently held (see *Wexford Medical Group v Cadillac*, 474 Mich 192; 713 N.W.2d. 734 (2006) that when determining whether a medical facility is exempt from property tax assessment pursuant to the charitable exemption provided by MCL 211.7o, the assessor must look at that institution's activities as whole to determine whether it offers charity or performs charitable work, but that no minimum standards or thresholds of charity need be established before an exemption can be granted. Although the exemption for medical facilities was broadened by the *Wexford* decision, it was still clear that where an exempt facility was leasing some or all of its real or personal property to a for-profit individual or entity, that portion of the real or personal property was taxable.

However, what many of you may not know is that effective beginning in 2005, a new exemption provision was enacted into law which exempts "federally-qualified health centers" (see MCL 211.7jj). Specifically,

MCL 211.7jj provides that the real and personal property of a federally-qualified health center, as defined in the federal social security act, is exempt from property taxation. A "federally-qualified health center" is defined (42 USC 1396d) as a health center serviced a medically underserved population that (i) receives a federal grant under Public Health Act Section 330 (or funding from such a grant by contract), or (ii) is identified by the health Resources and Services Administration and the Centers for Medicare and Medicaid Services as meeting the qualifications for a federal grant.

On its face, MCL 211.7jj seems to include all property owned by a federally-qualified health center, including property leased to for-profit individuals or entities. For example, the "owned and occupied" limitation found in other related exemption statutes was not included by the legislature in enacting the federally-qualified health center exemption statute. However, we believe that MCL 211.181,

(continued on next page)

*Property Tax Exemption for Federally-Qualified Health Centers (Continued)*

which provides that if real property (which is exempt from property taxes for any reason) is leased or otherwise made available to a private individual, association or corporation in connection with a for-profit business, then the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property. In this regard, a substantial amount of case law in Michigan has focused on exempt hospitals/medical facilities leasing space to for-profit doctors and has concluded that the leased real property owned by the exempt hospital/medical facility is taxable to the lessee (see, for example,

*Ralph A. Greenburg v City of Madison Heights*, 124 Mich.App. 168 (1983)).

Thus, in the event that a property owner claims exemption from all real and personal property tax because it qualifies as a federally-qualified health center, you should be aware that if some portion of its real property (but not its personal property) is leased to a for-profit individual or entity, your assessor should establish a separate parcel identification number for that portion of the leased real property and issue an assessment notice to the lessee.

## **PURCHASE PRICE AS PRESUMPTIVE TRUE CASH VALUE**

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Legislation has been introduced (HB 4361, Rep Rocca, 2/19/09) which would substantially change the rules regarding the assessment of recently transferred property. Specifically, this legislation would amend the General Property Tax Act by providing that the arm's length purchase price paid in a transfer of property is the presumptive true cash

value of the property transferred. This proposed legislation should be closely watched by assessors and township officials and given the general public's dissatisfaction with the assessment process it will likely not be the only such legislation proposed this year.

## **SUPERIOR HOTELS, LLV V MACKINAW TOWNSHIP**

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The property owner constructed a motel over a two-year period. For the first year of construction, the assessor determined the improvement to be 50% complete and determined the assessed value and taxable value of the property on that basis. For the second year of construction, the assessor correctly increased the percent complete to 100% and increased the assessed value accordingly. However, the assessor failed to increase the taxable value for the "addition" represented by the additional

50% completion of the improvement; instead, the assessor only increased the prior year taxable value by the inflation rate to determine the subsequent years taxable value.

Some years later the township recognized the error in calculating taxable value in the second year of construction and filed a "section 154" application to the State Tax Commission to "correct" the error made by the assessor in calculating taxable value.

Petitioner argued at the Tax Tribunal that MCL 211.154 does not grant jurisdiction to the State Tax Commission to correct an error in calculating taxable value. Specifically, Petitioner cited the statutory language that allows the State Tax Commission to place the “corrected assessment value” on the roll where the assessment has been “incorrectly reported or omitted”. Because the assessor had correctly calculated/determined the assessment for the property by adding the value of the final 50% completion of the improvement, Petitioner argued that the State Tax Commission was being asked to correct only taxable value and such correction was outside the scope of the STC’s

authority. The Tax Tribunal agreed with Petitioner that the STC lacked jurisdiction to simply correct an error in calculating taxable value since the assessment was correct.

The Court of Appeal has reversed the Tax Tribunal, concluding that the term “assessment” as used in MCL 211.154 includes “both ‘taxable value’ and 50% of true cash value”. Thus, assessors should be aware that where new construction was omitted in the calculation of taxable value only, Section 154 applications can be made to the State Tax Commission for correction.

## STATE TAX COMMISSION NOTICE

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The State Tax Commission has recently issued a notice informing assessors of various issues relating to 2009 Personal Property Statements filed by taxpayers.

As you know, personal property owners are required by statute to report the actual cost of personal property and the year of acquisition. The STC reports that many taxpayers are either adjusting the acquisition cost on their personal property statements to reflect what they consider the value of the personal property to be or are asserting

economic obsolescence in adjusting the reported acquisition costs. For example, the STC cites the Thomson Reuters Property Tax Service as applying an additional economic obsolescence factor to reported personal property costs.

Of particular concern to the STC is what it believes is incorrect reporting of Freestanding Communications Towers, Fluid and Gas Transmission Pipelines, Wireless Cellular Provider personal property and Construction Equipment Rental property.

The attorneys of the Foster Swift Administrative and Municipal Group have extensive experience representing townships before the Michigan Tax Tribunal. If you have any questions, please contact Steven Lasher at 517.371.8118 or [SLasher@FosterSwift.com](mailto:SLasher@FosterSwift.com).

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Steve focuses his practice primarily in the areas of Municipal Law and Business and Tax Law issues. A shareholder, Steve joined Foster, Swift in 1993. He has a long list of impressive credentials including, Adjunct Professor at both Alma College and Northwood University, where he has taught Ethics, Business Law, and Management. He appeared on the 1993 list of Who's Who in American Finance and is a Hearing Referee for the Michigan Tax Tribunal.

A native of Chicago, Illinois, Steve graduated from Wayne State University with high distinction and received his juris doctorate from Michigan State University's Detroit College of Law in 1977.

Admitted to practice in Michigan, Steve is active in the American Bar Association and the State Bar of Michigan as well as, the Tax, Business Law, and Public Utility Sections of both.

Steve has presented testimony numerous times on tax and finance matters before state and federal agencies and has volunteered substantial amounts of time to tax issues.

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