

# Boards of Review



Prepared by the Michigan State Tax Commission

Issued October 26, 2010

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## **Introduction**

This document is designed to provide basic information regarding Boards of Review including how they are created, what their role and authorities are and Michigan law that governs them.

All questions and answers in this document will refer to Townships in as much as this offers a uniform set of standards.

A Board of Review is not the assessor and the assessor is not the Board of Review. Every citizen who appears before the Board of Review is in fact challenging a decision of the assessor and it is the Board of Review's responsibility to make an independent judgment based on the facts and on law.

## **Background Information**

### **Who can be a member of a Board of Review?**

Three, six, or nine electors of the Township shall be appointed by the Township to serve as the Board of Review. If 6 or 9 are appointed, they are divided into Boards of 3 individuals for the purpose of hearing and deciding.

The size, composition, and manner of appointment of the Board of Review of a Township may be prescribed by Township Charter or Ordinance and a City may be prescribed by City Charter.

### **Can a member of the Township Board serve on the Board of Review?**

No. A Township Board member may not serve as a Board of Review member.

### **What about having a relative of the assessor serving on the Board of Review?**

According to Michigan Law, a spouse, mother, father, sister, brother, son or daughter including an adopted child, of the assessor is not eligible to serve on the Board of Review or to fill any vacancy on the board.

### **Do Board of Review members have to be property owners?**

At least 2/3 of the members shall be property taxpayers of the Township.

### **What terms do Board of Review members serve?**

A Township Board shall appoint members to the Board of Review for terms of two years, with all terms expiring on odd numbered years. All members shall qualify by taking an oath of office within 10 days of being appointed.

### **How many Board members make up a quorum?**

Two of the three members of a Board of Review must be present for there to be any transaction of business.

**If we have more than one Review Board, can the members move around between the Boards?**

No, the three member committees originally formed must remain intact. There cannot be a transfer of a member or members to another committee.

**Can the Township appoint alternates to the Board?**

A Township Board may appoint not more than 2 alternate members for the same terms as regular members of the Board of Review. Each alternate member shall be a property taxpayer of the Township. Alternate members shall qualify by taking the oath of office within 10 days after appointment.

**What does an alternate member do?**

An alternate member may be called to perform the duties of a regular member of the Board of Review in the absence of a regular member. An alternate member may also be called to perform the duties of a regular member of the Board of Review for the purpose of reaching a decision in which a regular member has abstained for reasons of conflict of interest.

**Can anyone be an alternate member?**

A member of the Township Board is not eligible to serve as an alternate member or to fill any vacancy. A spouse, mother, father, sister, brother, son, or daughter, including an adopted child, of the assessor is not eligible to serve as an alternate member or to fill any vacancy.

**Board of Review Meetings**

**When is the Board of Review required to meet?**

The Board of Review is required to meet in March of each year. If there is business to conduct, the Board of Review shall also meet in July or December or both July and December.

**March meeting:**

There are two required meetings of the March Board of Review. They shall meet on the Tuesday immediately following the first Monday in March for the purpose of an organizational meeting. The Board of Review shall also meet on the second Monday in March for the purpose of hearing taxpayer appeals. The governing body of a Township may authorize an alternative starting date for this meeting, either the Tuesday or the Wednesday following the second Monday in March. Other dates for public hearings may be scheduled in accordance with Act 267. P.A. 1976, Open Meetings Act.

**July meeting:**

The July Board meets on the Tuesday following the third Monday in July if there is business to conduct. An alternative start date may be approved by resolution but it has to be during this week.

**December meeting:**

The December Board meets on the Tuesday following the second Monday in December if there is business to conduct. An alternative start date may be approved by resolution but it has to be during this week.

**What is the purpose of each meeting?**

**March organizational meeting:**

The Board of Review receives the assessment roll for the current year and proceeds to examine the roll. The Board of Review is not required to receive and hear taxpayers at this meeting; however, it may receive and consider written protests for assessment change.

**Other Required March meeting:**

The Board of Review receives written protests or appeals and allows for personal appearances by taxpayers or their agents who are protesting a property tax issue that is within the jurisdiction of the Board of Review, and shall act on each protest as provided for in Michigan Law.

**July and December meetings:**

The July and December Boards of Review may convene for the purpose of correcting qualified errors (see discussion of each later in this document), for the current year and the immediately preceding or year only.

**Are there requirements governing the hours, starting times, etc. for Board of Review meetings?**

Yes, beginning with the second March Board of Review meetings in which the public is offered the opportunity to present a protest, accommodation must be made to allow for both daytime and evening hours.

The first session must start no earlier than 9 a.m. and not later than 3 p.m. and continue in session during the day for not less than 6 hours. The board shall hold at least 3 hours of its required sessions after 6 P.M.

Hours for meetings, held in July or December may be established by the Board of Review.

**Is the Board of Review subject to the Open Meetings Act?**

Yes, the business which the board may perform must be conducted at an open public meeting as provided in Act 267, P.A. 1976, Open Meetings Act.

**Is there a date by which the March Board has to finish work on the roll?**

The review of assessments by the boards of review shall be completed on or before the first Monday in April. MCL 211.30a.

## **Does everyone wishing to file an appeal have to appear in person at the Board of Review meeting?**

A non-resident taxpayer may file a protest in writing and is not required to make a personal appearance.

The governing body of a Township or City may, by ordinance or resolution, permit resident taxpayers to file a protest to the Board of Review in writing without personal appearance. If an ordinance or resolution is adopted to allow residents to file protests in writing, it must be noted in the assessment change notice required by MCL 211.24c and on each notice or publication of the meeting of the Board of Review.

## **Is there a requirement for providing notice of the meeting?**

Notice of the meeting of the Board of Review shall be given at least one week prior to the meeting in a generally circulated newspaper serving the area in 3 successive issues. If a newspaper is not available, the notice shall be posted in 5 conspicuous places in the Township MCL 211.29(6) . There are no specific notice requirements for the July and December Boards but public bodies must always post meeting notices in accordance with the Open Meetings Act.

## **Is the Assessor the Secretary of the Board of Review?**

No. The Township supervisor shall be secretary of the full Board of Review and keep a record of proceedings and changes made in the roll and file the record with the Township or City Clerk. If the supervisor is absent, the board appoints one of its members to serve as secretary. MCL 211.33.

## **How does the Board of Review notify taxpayers of their decisions?**

Every person who makes a request, protest, or application to the March Board of Review must be notified in writing of the Board of Review's action and information regarding the right of further appeal, not later than the first Monday in June.

Regarding its July and December meetings, "the board of review shall file an affidavit within 30 days relative to the qualified error with the proper officials and all affected official records shall be corrected. If the qualified error results in an overpayment or underpayment, the rebate, including any interest paid, shall be made to the taxpayer or the taxpayer shall be notified and payment made within 30 days of the notice."

# **Responsibilities and Authorities of the Board of Review**

## **What are the authorities of the March Board of Review?**

The March Board of Review has authority to change the current year's assessments. The March Board of Review DOES NOT have the authority to make any change assessments for any prior year.

The March Board also cannot make any decisions on principal residence exemptions or applications for **new** qualified agricultural exemptions.

## **Do the July and December Boards have different authorities than the March Board of Review?**

Yes. The July and December Boards of Review are empowered to correct qualified errors and to consider appeals related to Principal Residence Exemptions, Qualified Agricultural Exemptions and Poverty Exemptions.

### **What is a qualified error?**

Please see Bulletin 3 of 2010. A “qualified error” means 1 or more of the following:

1. A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes.
2. A mutual mistake of fact.
3. An adjustment under section 27a(4) (erroneous uncapping of taxable value, corrections can be made for the current year and 3 prior years) or an exemption under section 7hh(3)(b) (regarding qualified start up business filings) of the General Property Tax Act (211.7hh).
4. An error of measurement or calculation of the physical dimensions or components of the real property being assessed.
5. An error of omission or inclusion of a part of the real property being assessed.
6. An error regarding the correct taxable status of the real property being assessed.
7. An error made by the taxpayer in preparing their personal property statement.

### **What is the definition of a clerical error?**

On March 29, 1996 the Michigan Court of Appeals clarified the meaning of the term “clerical error”. The Court of Appeals states that the July and December Boards of Review are allowed to correct clerical errors of a typographical or transpositional nature. The July and December Boards of Review are NOT allowed to revalue or reappraise property when the reason for the action is that the assessor did not originally consider all relevant information.

### **What is the definition of a mutual mistake of fact?**

On March 31, 2010, the Michigan Supreme Court clarified the meaning of the term “mutual mistake of fact”. The Court previously defined “mutual mistake of fact” in *Ford Motor Co v City of Woodhaven*, 475 Mich 425; 716 NW2d 247 (2006) as follows: “a ‘mutual mistake of fact’ is “an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.” To qualify under the statute, the “mutual mistake of fact” must be one that occurs only between the assessor and the taxpayer. The mutual mistake cannot be imputed to the assessor on an agency theory unless the assessor makes a mistake in performing his/her duties in spreading and assessing the tax.

### **What are the Board of Review members responsibilities once they finish their work?**

After the March Board of Review completes its review of the assessment roll, a majority of the entire board membership must endorse a statement that the roll is the assessment roll of the Township for the year in which it was prepared and approved by the Board of Review MCL 211.30(5).

### **What are the authorities of the Board related to property classification?**

A person or entity may petition the **March** Board of Review regarding the classification of property. July or December Boards cannot change classification.

When considering the petition, it is necessary to remember that the zoning of a particular property does not dictate the classification of a property for assessment purposes. It may, however, be an influencing factor. A question and answer document that explains property classification is available on the State Tax Commission website at [www.michigan.gov/statetaxcommission](http://www.michigan.gov/statetaxcommission).

Boards of Review must, with their notice of denial of a classification appeal, provide STC Form 2167 to the petitioner. Form 2167 is the form used to appeal a classification decision by the Board of Review to the State Tax Commission.

### **What are the Board of Reviews Authorities related to Assessed Values?**

Property must be assessed at 50% of True Cash Value and the Assessed Value must be uniform with the assessments of other similar properties.

According to the Michigan Supreme Court, a Board of Review may NOT make wholesale or across the board adjustments to assessments. A Board of Review must consider each parcel and act upon it individually. A Board of Review DOES NOT have the authority to make changes to alter, evade or defeat an equalization factor assigned by the county or the state.

If the Board of Review changes an Assessed Value, it must also consider whether this change has caused the tentative Taxable Value to change. This could happen because tentative Taxable Value is the lower of the Assessed Value and the Capped Value. Also, changing the assessed value of items added to or removed from the property will likely cause a change in Taxable Value.

### **Does the Board have any authority over Taxable Value?**

The law requires that the assessment roll must show the Tentative Taxable Value for each parcel of property. Once the Capped Value and the Assessed Value are properly calculated, the Tentative Taxable Value is the lower of the two (assuming there has not been a "transfer of ownership" on the property).

A Board of Review cannot raise or lower the Tentative Taxable Value, unless they also raise or lower the Assessed Value and/or the Capped Value. An exception could occur if there was a "transfer of ownership" on a property in the prior year and the assessor had not uncapped the Taxable Value or if the opposite occurred.



## **Can the Board of Review reject outright the roll prepared by the Assessor and prepare our own roll?**

The Board of Review may not reject or prepare an assessment roll but must consider only the assessment roll prepared by the assessor. If a Board of Review believes there are significant problems with the roll presented by the assessor they should contact the STC.

## **What is the Board of Reviews authority over Property Tax Exemptions?**

Property tax exemptions are to be granted only according to authorizing provisions of the law. Generally, it holds true that the Courts require a NARROW construction of exemptions. In order to qualify for exemption, a property must have the qualifications required by the specific authorizing statute.

## **What is a Principal Residence Exemption?**

Properties qualified as a homeowners principal residence, are exempt from some school operating taxes (usually 18 mills). This exemption does not apply to Taxable Value but applies to millages only.

## **Does the Board have any authority over Principal Residence Exemptions?**

The **March** Board of Review has no authority to consider or act upon protests or appeals of Homeowner's Principal Residence Exemptions. If the assessor denies a homeowner's principal residence exemption, the owner may appeal to the Michigan Tax Tribunal within 35 days after the notice of denial, NOT to the March Board of Review.

The July and December Boards of Review do have authority to grant a principal residence exemption for the current year and up to three prior years. Appeals from these decisions are also made within 35 days to the Michigan Tax Tribunal.

## **What are the Boards authorities over poverty exemptions?**

The March, July and December Boards can hear poverty exemptions. However, the July and December Boards cannot consider poverty exemptions denied at the March Board. MCL 211.7u (5) states:

*(5) The Board of Review shall follow the policy and guidelines of the local assessing unit in granting or denying an exemption under this section unless the Board of Review determines there are substantial and compelling reasons why there should be a deviation from the policy and guidelines and the substantial and compelling reasons are communicated in writing to the claimant.*

Please see Bulletin 7 of 2010 for detailed poverty guidelines and the State Tax Commission annual Bulletin, which details changes for the next assessment year and provides federal guidelines on poverty levels.

**Note:** PA 390 of 1994 states that the poverty exemption guidelines established by the governing body of the local assessing unit shall also include an asset level test. An asset test means the amount of cash, fixed assets or other property that could be used, or converted to cash for use in the payment of property taxes. The asset test should calculate

a maximum amount permitted and all other assets (excluding the value of the principal residence) above that amount should be considered as available.

### **Does the Board have any authority related to Qualified Agricultural Property Exemptions?**

The **March** Board of Review has authority only to consider and act on protests for the current year regarding the assessor's discontinuance of the immediately preceding year's Qualified Agricultural Exemption.

If an assessor believes that a property for which a qualified agricultural property exemption has been granted in the prior year will not be qualified agricultural property in the current tax year, the assessor may deny or modify the exemption. The assessor must notify the owner in writing and mail the notice to the owner not less than 10 days before the second meeting of the March Board of Review. A taxpayer may then appeal the assessor's determination to the March Board of Review.

Properties that meet the requirements of the qualified agricultural property exemption as of May 1 of the current tax year shall be exempted by the assessor from the 18 mills starting with the current year tax bills. If the assessor denies a current year exemption because the property does not qualify as of May 1, the owner may appeal that denial to the July or December Board of Review.

A question and answer document that explains the Qualified Agriculture Program is available at [www.michigan.gov/statetaxcommission](http://www.michigan.gov/statetaxcommission).

### **What are the authorities of the Board related to Industrial Facilities Tax Roll (IFT) Certificates?**

In this document we will only briefly touch on the subject of IFT's.

The **March** Board of Review may adjust the property's land assessment on the ad valorem roll; land is not covered by an IFT. The March Board of Review may adjust the IFT roll assessment of a "New" Industrial Facilities Tax Certificate.

The IFT Roll assessment of a property with a "Rehabilitation" certificate or "Replacement" certificate CANNOT have its assessment altered by a March Board of Review during the life of the certificate.

### **What about other issues like Downtown Development Authorities, Tax Increment Finance Authorities, and Local Development Finance Authorities?**

There are no separate assessment rolls for these authorities. The March Board of Review does have the authority to consider and/or alter the assessed and taxable values for the CURRENT year only for properties within these districts.

### **How should the Board of Review note changes in the Assessment Roll?**

State Tax Commission Bulletin 14 of 1994 states that the assessment roll shall have a Board of Review column large enough to accommodate changes to the Assessed Value, the Capped Value, and the Tentative Taxable Value. The changes to each of these must

be recorded separately on the roll and must be made in ink. This may be accomplished by placing an "A" behind a revised Assessed Value, a "C" behind a revised Capped Value, and a "T" behind a revised Tentative Taxable Value.

### **Do we need to keep documentation of why we made changes to the roll?**

The State Tax Commission is requiring that all Boards of Review maintain appropriate documentation of their decisions including: minutes, a copy of the form 4035 and a copy of the form 4035a whenever the Board of Review makes a change that causes the Taxable Value to change. The 4035 must include a detailed reason why the Board made their determination.

The following are changes, which could cause Taxable Value to change and therefore require a 4035a:

- 1) A change in the amount of a LOSS (used in the Capped Value formula).
- 2) A change in the amount of an ADDITION (used in the Capped Value formula).
- 3) A change in the amount of the current year Assessed Value.

Minutes must include:

- a. Date, time and place of meetings.
- b. Members present and members absent and notation of any correspondence received.
- c. A log should be kept that identifies the hearing date, the petition number, the petitioner's name, the parcel number, type of appearance, type of appeal and action of the board of review.
- d. Actual hours in session should be recorded daily, and time of daily adjournments recorded. Date and time of closing of the final March session should be recorded.

### **Who keeps the minutes and documentation?**

Minutes and documentation should be filed with the Clerk of the local unit of government.

### **When a Board of Review makes a change to value is that change permanent?**

MCL 211.30c requires that when the March Board of Review or the Michigan Tax Tribunal REDUCES the Assessed Value or taxable value of a property that reduced amount must be used as the BASIS for calculating the assessment in the immediately succeeding year.

**IMPORTANT NOTE:** This only applies to CHANGES when the MTT hearing is held in the same calendar year as the year of the assessment being appealed. Therefore, if the MTT hearing for a 2007 assessment appeal isn't held until 2008, the resulting assessment does not have to be used as the basis for the 2008 assessment. It does, however, become the basis for assessment in 2009.

Boards of review are cautioned that the “BASIS” for an assessment does not necessarily become the assessment. The dictionary defines basis as the base, foundation, or chief supporting factor of anything. Assessments have to be at 50% of True Cash Value and uniform. Also, the fact that an assessment reduced by a Board of Review may become the “basis” of the next year’s assessment is not, in and of itself, a legitimate reason for a Board of Review to reduce an assessment.

## **Introduction to Assessing**

It is the responsibility of the assessor to assess property in accordance with the law and accepted practices. A Board of Review is not the assessor. The Board of Review is, in fact, embodied to hear petitions that challenge a decision of the assessor and it is the Board of Reviews responsibility to make an independent judgment based on the facts and on law.

This section is intended to provide only an introduction to assessing, answering the very basic questions a member of a Board of Review might encounter. The assessor will be able to provide examples and offer greater detail than is provided here and should be consulted if the Board has questions regarding their authorities, statute or questions regarding a specific property.

### **What is Proposal A?**

On March 15, 1994 the voters of the State of Michigan approved Proposal A. Prior to Proposal A, property taxes were based on ***State Equalized Value***. Proposal A established ***Taxable Value*** as the basis for calculation of property value.

### **What is Assessed Value and is it still important?**

Michigan law requires that all property be uniformly assessed at 50% of the usual selling price, or sometimes called the True Cash Value. Each year, Assessors must still prepare an assessment roll that contains “traditional” Assessed Valuations at 50 % of True Cash Value.

### **What is Taxable Value?**

Except when there is a transfer of ownership in the prior year, Taxable Value for a parcel of property is the LOWER of:

***State Equalized Value*** for the parcel, or

The ***Capped Value*** for the parcel.

### **Okay, what is State Equalized Value?**

State Equalized Value or SEV is the Assessed Value, as adjusted by State and County Equalization multipliers. Usually equalization multipliers are 1.0000 and when they are, Assessed Value and SEV are equal.

## What is Capped Value?

Capped Value is calculated by adjusting the prior year value of the property by any additions or losses and multiplying by the inflation rate multiplier (IRM). The IRM is calculated based on statute and cannot be greater than 1.05 (1 + 5%).

The Capped Value formula is: (Prior Year Taxable Value – Losses) X (IRM)+ Additions.

## What is the Inflation Rate Multiplier and how is it calculated?

**Inflation Rate** is defined in the Statute as the ratio of the general price level for the state fiscal year ending in the calendar year immediately preceding the current year divided by the general price level for the state fiscal year ending in the calendar year before the year immediately preceding the current year.

The Statute also defines **General Price** as the annual average of the 12 monthly values for the United States consumer price index for all urban consumers as defined and officially reported by the United States Department of Labor, Bureau of Labor Statistics.

Based on this statutory requirement, a sample calculation for 2008 is as follows:

A. The 12 monthly values for October 2005 through September 2006 are averaged.

B. The 12 monthly values for October 2006 through September 2007 are averaged.

The ratio of B divided by A is calculated and this becomes the IRM.

## Does the Board have any authority over Capped Values?

STC Bulletin No. 14 of 1994 states: an assessment roll must contain the Capped Value for each parcel of real property.

If correct figures have been used in the Capped Value formula for the prior year Taxable Value and for the current Inflation Rate Multiplier, the Board of Review cannot make a change that results in a different capped value of the property.

The Board of Review may change the amount of the Losses and Additions used in the Capped Value formula, if they determine they are improper. Only factual information should be used to amend the Losses or Additions in the Capped Value formula.

STC Bulletins 3 of 1995, 18 of 1995 and 3 of 1997, address the procedures required by law for determining the amount of Losses and Additions for calculation of the cap on Taxable Value.

### **IMPORTANT NOTE:**

The Michigan Supreme Court ruled in *WPW Acquisition Company v City of Troy* (No. 118750) that an increase in value attributable to an increase in a property's occupancy rate is NOT a legal addition in the Capped Value formula.

## **What is Uncapping?**

When a property transfers ownership as defined by law, the property's Taxable Value uncaps the following year. A property on which a "Transfer of Ownership" occurred shall have its Taxable Value uncapped the following year. For example, a property that transferred in 2010 will have the 2011 Taxable Value equal to its 2011 SEV.

A Question and Answer document regarding many common Transfer of Ownership questions is available at [www.michigan.gov/statetaxcommission](http://www.michigan.gov/statetaxcommission).

## **Does the Property then "recap"?**

The growth in Taxable Value of transferred properties will then be capped again in the second year following the "Transfer of Ownership".

## **What are the authorities of the Board over transfers of ownership and uncapping?**

The assessor of each Township and City is required by law to review all of the transfers and conveyances, which occurred in the prior year and determine which of these transfers and conveyances are "Transfers of Ownership".

The determination by the assessor that a particular transfer or conveyance is a "Transfer of Ownership" and that the property's Taxable Value should be uncapped is subject to review by the March Board of Review either on the Board's own initiative or at the request of a property owner.

Public Act (PA) 23 of 2005 granted the July or December Board of Review the authority to correct the Taxable Value of property which was previously uncapped if the assessor later determines there had NOT been a transfer of ownership of that property after all. This authority applies to the current year and the 3 immediately preceding years. Bulletin 9 of 2005 provides more detailed information.

## **Can a Board of Review set the SEV or Assessed Value at the sales price of the property?**

No. This practice is illegal in Michigan. An individual sale price IS NOT the same as True Cash Value (similar to market value) of the property due to a variety of reasons, including among those an uninformed buyer, an uninformed seller, insufficient marketing time, buyer and seller are relatives, and other reasons. Actual price is seldom equal to value.

Section 27(5) of the General Property Tax Act states the following: "Beginning December 31, 1994, the purchase price paid in a transfer of property is not the presumptive True Cash Value of the property transferred. In determining the True Cash Value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of the same classification in the assessing jurisdiction."

Therefore, a Board of Review does NOT have the authority to change an assessment solely on the sales price.

**Is this what the State Tax Commission means when it says a Board of Review or Assessor cannot “follow sales”?**

Yes. “Following sales” is defined in the assessor’s manual as the practice of ignoring the assessment of properties, which have not recently been sold while making significant changes to the assessments of properties, which have been sold. The practice of “following sales” is a serious violation of the law. The practice of following sales results in assessments that are not uniform.

**We get a lot of complaints that taxes are going up when markets are going down and/or people can’t sell their homes for the value on the roll. How should we address these issues?**

County Equalization Studies are prepared by Equalization Departments and submitted by an Equalization Department to the State Tax Commission on or before December 31 annually. These studies help adjust the level of Assessed Values for changes in local markets. One year or 12 month studies may be used where there is evidence of a declining real estate markets. The simple fact that a person cannot sell their home for the value on the roll does not make that value incorrect.

Because of the gap between Assessed Value and Taxable Value resulting from the Taxable Value cap, the Assessed Value of a home may decrease while Taxable Value and the taxes increase.

**Example:**

Last year a home had a True Cash Value of \$200,000, SEV of \$100,000 and a Taxable Value of \$80,000. The sales study for the neighborhood shows the True Cash Value of the property has decreased to \$180,000. In this example the Inflation Rate Multiplier is 1.023.

Current Assessed Value is:	\$90,000
Current SEV is:	\$90,000
IRM = 1.023	
Capped Value is:	
(\$80,000 x 1.023) =	\$81,840
Taxable Value is:	\$81,840 (lesser of \$90,000 SEV or \$81,400 Capped Value)