



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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GOVERNOR

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DATE: June 9, 2020
TO: Assessors, Equalization Directors and Interested Persons
FROM: State Tax Commission
SUBJECT: Guidance for 2020 July Boards of Review following Executive Order 2020-87

Governor Whitmer's Executive Order 2020-87 included provisions for the expansion of the authority of the 2020 July Boards of Review. The State Tax Commission is issuing this memorandum under the authority granted to them in MCL 209.104 to provide guidance related to conducting the 2020 July Boards of Review in accordance with Executive Order 2020-87. Unless the Executive Order specifically provides otherwise, the existing published guidance of the State Tax Commission still applies for 2020 July Boards of Review.

1. If a local unit was able to meet for the required 12 hours at their March Board of Review meetings and address all of the protests, do they still need to open the July Board of Review to hear value or classification protests?

Executive Order 2020-87(3)(b) provides that "boards of review acting in July must also meet to hear protests under Section 30 of the GPTA, MCL 211.30, and any other matters that are properly before a March Board of Review under MCL 211.30." In addition, Boards of Review meeting in July "must allow a resident taxpayer to file his or her protest before the board of review by letter without personal appearance by the taxpayer or his or her agent," the same option already available for non-resident taxpayers by statute.

These provisions show an intention to ensure taxpayers are provided due process, including those who may have been unable to appear or protest before the March Board of Review due to COVID-19. Taxpayers are not required to provide proof that they were unable to appear at the March Board of Review due to COVID-19. As long as there was no protest or decision by the March Board of Review on the same issue, a taxpayer has the right to protest to the July Board of Review.

Even if a local unit held a March Board of Review and issued decisions to the affected taxpayers, Executive Order 2020-87 suspends strict compliance with certain jurisdictional limitations and July Boards of Review should allow for protests related to valuation, classification, and any other matter properly before a March Board of Review under MCL 211.30 in order to ensure that due process is satisfied and to be sure that each local unit of government fully satisfies its statutory duties. Local units are reminded that caselaw exists providing taxpayers a right to appeal to the State Tax Commission or Tax Tribunal if the taxpayer can show local units did not provide a chance to be heard, or if there was insufficient notice or the Board of Review process was futile.

See Executive Order 2020-87(3)(b), (d)

2. Do local units need to open the July Boards of Review for all new protests?

Yes. Pursuant to Executive Order 2020-87 the July Board of Review must hear protests related to matters that would have otherwise been heard by the March Board of Review; this is not an opportunity “for a rehearing or reconsideration by a July Board of Review of a protest, request, or other property tax matter that was previously denied by a March Board of Review.” Additionally, the July Board of Review must hear protests that the 2020 March Board of Review was unable to act on.

If the July Board of Review has no regular business under MCL 211.53b, locals units should still hold a July Board of Review for appeals provided by the Executive Order (i.e. appeals that could have been heard in March) in order to provide due process and to ensure that each local unit is “able to complete the duties” of the March Board of Review. Again, local units are reminded that caselaw requires taxpayers be given notice and an opportunity to be heard and if these requirements are shown to not have been met, the taxpayer may still be provided an opportunity to appeal to the State Tax Commission or Tax Tribunal.

See Executive Order 2020-87(3)(a), (b), (d)

3. If a taxpayer protested to the March Board of Review and a decision was issued by the March Board of Review, can the taxpayer appeal to the July Board of Review?

No. If the March Board of Review issued a decision for a parcel of property then that decision must be appealed to the Michigan Tax Tribunal (or to the State Tax Commission if the appeal is related to classification). That same taxpayer cannot file a second protest to the July Board of Review if there was a protest and decision by the March Board of Review on the same issue. The July Board of Review has no authority to reconsider a determination made by the March Board of Review.

See Executive Order 2020-87(3)(b), (d), (f)

4. What tax years are within the jurisdiction of the July Boards of Review under the Executive Order?

Under the Executive Order, the July Boards of Review are granted the same authority as the 2020 March Board of Review. July Boards of Review acting under MCL 211.30 would have authority to make changes for the 2020 tax year only. **As a reminder, July Boards of Review are to consider the valuation and status of any property under appeal as of “tax day” which is December 31, 2019, when making their decisions.**

The July Boards of Review may also need to hear appeals of qualified errors and other matters allowed under MCL 211.53b. MCL 211.53b gives the Board authority to consider prior tax years. July Boards of Review are reminded to pay specific attention to the type of protest before them and to only act on those years for which they have authority. It is recommended that July Board of Review members review the information available under the “Board of Review Information” heading on the State Tax Commission’s website at <https://www.michigan.gov/statetaxcommission>.

5. Are local units required to send out new assessment notices to taxpayers prior to the July Board of Review?

No. Executive Order 2020-87 does not require the re-issuance of assessment notices.

6. Is a new Form 2691 (L-4037), *State Tax Commission Assessment Roll Certification*, required to be prepared and signed by the assessor and the July Board of Review?

No. The L-4037, which certifies the 2020 assessment roll, is not to be revised or resubmitted, and no new L-4037 is required following the July Board of Review.

Further, the assessor should not be preparing a “new” 2020 assessment roll prior to the July Board of Review.

7. Are the notice requirements for the July Board of Review the same as for the March Board of Review?

No. There are no specific notice requirements for the July Boards of Review, but public bodies must always post meeting notices in accordance with the Open Meetings Act.

Local units will be required to provide notice of the 2020 July Board of Review under the provisions of the Open Meetings Act. The Executive Order states that boards of review meeting in July to hear protests must provide notice in the manner required under the Open Meetings Act, MCL 15.261 *et seq.*, as modified by any applicable executive order that the time notice is required. The provision of such notice satisfies the minimum requirements of due process. Further information regarding the Open Meetings Act is available in the *Open Meetings Act Handbook* prepared by the Michigan Department of Attorney General. The Handbook is available online at www.michigan.gov/ag.

See Executive Order 2020-87(6)

8. Do taxpayers have to protest at an “assessor review” before protesting to the July Board of Review under the Executive Order?

No. While MCL 211.107(1) allows a city or township charter to establish procedures that require protests to first be heard by the assessor or other agency of the city or township (commonly referred to as “assessor review”), the Executive Order does not contain this requirement and also does not require that an additional “assessor review” meeting be held. For those local units that have an “assessor review” taxpayers do not have to appear at the previously scheduled “assessor review” to be able to protest to the July Board of Review.

The Executive Order specifically states that to the extent the Order creates a conflict with any deadline or other requirement set by a local unit of government’s charter or ordinances, the contents of the Executive Order controls.

See Executive Order 2020-87(5)

9. Can taxpayers protest to the July Boards of Review by letter?

Yes. MCL 211.30 already provides that non-resident taxpayers may protest by letter. The Executive Order states that *resident taxpayers* must also be allowed to file a protest to the July

Board of Review by letter without a personal appearance by the taxpayer or an agent. The local unit does not have to adopt an ordinance or resolution to allow resident taxpayers to protest by letter, as this is already provided for and required by the Executive Order, which is controlling.

See Executive Order 2020-87(3)(c), (5)

10. Can a taxpayer who missed the February 20, 2020 deadline for filing Form 5278 or Form 5076 and who did not late file directly to the March Board of Review file a protest to the July Board of Review?

Yes. P.A. 261-264 of 2017 changed the appeal procedure for both the Small Business Taxpayer Exemption and the Eligible Manufacturing Personal Property Exemption. Taxpayers who missed the February 20, 2020 filing deadline for either exemption could file a late application directly with the March Board of Review. Executive Order 2020-87 extends March Board of Review authority to the July Board of Review. This means that Form 5278 and 5076 can be late filed with the July Board of Review. The July Board of Review should grant the exemption as long as the taxpayer otherwise qualifies for the exemption. Assessors and boards of review are reminded that the request for the exemption must be initiated by the taxpayer.

See Executive Order 2020-87(3)(b)

11. What are the requirements for the number of hours the July Boards of Review must be in session, taking appointments, and conducting the meetings virtually?

Unlike the March Boards of Review, there are no specific statutory requirements regarding the number of hours that a July Board of Review must meet. The hours for meetings held in July may be established by the Board of Review.

Because the authority for July Boards of Review is expanded beyond just matters under MCL 211.53b for the 2020 tax year, July Boards of Review may need to remain open longer than in prior years to ensure all protests can be heard. It is recommended that local units schedule appointments before the July Board of Review to ensure all taxpayers wishing to protest can be heard. To ensure all persons wishing to protest have an opportunity to appear and be heard, July Boards of Review should consider holding some in-sessions hours after 5pm.

The ability to conduct virtual meetings of the July Boards of Review will depend on whether there is an Executive Order in place at the time of the conducting of the meetings that allows for virtual meetings under the Open Meetings Act. Executive Order 2020-75 addresses the Open Meetings Act and is currently set to expire on June 30, 2020. For up-to-date resources regarding COVID-19 information for local governments and school districts please visit https://www.michigan.gov/treasury/0,4679,7-121-1751_98769---,00.html

12. What is the deadline for issuing decisions following the July Board of Review?

Local units must issue decisions on any protests before the July Board of Review under the Executive Order by September 1, 2020.

13. How do assessors enter the July Board of Review changes under the Executive Order in their CAMA software?

Assessors should enter the change as a July Board of Review action in their CAMA software. It is recommended that assessors include a comment that the change was due to an assessment or classification appeal.

Assessors **should not** enter the change as a March Board of Review decision, as this will erroneously recalculate the starting equalized values.

14. Will decisions made by the July Board of Review impact millage rollback calculations?

No. Decisions made at the July Board of review will have no impact on the millage rollback calculations. Millage reduction calculations are completed by June 1st and any changes after that, including those made at the July Board of Review would not have an effect on the current year.

If there are Headlee losses or additions, assessors are reminded that they will need to make those adjustments to the 2021 assessment roll.

15. Will decisions made by the July Board of Review impact equalization for 2020?

No. Determinations made at the July Board of Review acting under the authority granted to them by the Executive Order will not require any changes to the equalization that was already completed. Any changes made by the July Board of Review would be processed by the assessor in the same way that any other changes occurring after completion of the assessment roll would normally be made.