

Daily Tax Report: State

Detroit Homeowners' Tax Notice Class Suit Revived on Appeal (1)

By Perry Cooper

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A proposed class action filed by Detroit homeowners will proceed after a divided Sixth Circuit ruled their challenge to the untimely mailing of property tax assessment notices was properly filed in federal court.

A trial court dismissed the suit under the Tax Injunction Act, which it said barred its ability to hear the suit because Michigan courts could provide a "plain, speedy, and efficient" remedy. Two judges of the US Court of Appeals for the Sixth Circuit reversed the dismissal Monday in an opinion by Judge Julia Smith Gibbons, finding that a state remedy is "uncertain" because the tax assessment notices were insufficient to protect the homeowners' rights to appeal.

Judge Danny J. Boggs dissented, arguing "there is no evidence that taxpayers lacked notice, and plenty of evidence to the contrary."

Class attorney Samuel E. Schoenburg of Goldman Ismail Tomaselli Brennan & Baum LLP said in an email that his team is "pleased that a federal court will hear claims regarding Detroit's untimely and excessive 2017 tax notices on the merits, and we look forward to pursuing those claims vigorously upon remand."

In 2017, Detroit sent out over 260,000 tax assessment notices to homeowners four days before the deadline to protest the amounts at the Board of Assessors. It extended the deadline for filing and allowed challengers to skip straight to the Board of Review, but didn't notify each homeowner directly of the change.

Homeowners led by Deborah Howard, Flossie Byrd, William and Billie Hickey, and Jeffrey Stevenson filed a would-be class action in federal court against the city, Wayne County, and several government officials, arguing the untimely mailings violated their due process rights.

The appeals court disagreed with the trial court's dismissal, finding that "while some news outlets reported on the extension and waiver, it is not 'extremely likely' the news reached each homeowner who received an assessment notice with unambiguous contrary information."

Boggs argued the city shouldn't have been expected to send individualized notice to each taxpayer, and that its notice was effective because more than 2,500 property owners challenged their assessments. "Not only that, but close to 1,100 property owners availed themselves of the right to skip directly to the Board of Review—the very process the majority describes as woefully insufficient to provide taxpayers with adequate notice," he said.

The majority rejected those arguments. "The fact that around one percent of homeowners navigated the murky modified appeal process does not demonstrate the adequacy of the process or cure the uncertainty of the remedy," it said.

Judge John B. Nalbandian joined the majority opinion.

Wayne County attorney Theodore W. Seitz of Dykema Gossett PLLC and the Detroit City Law Department didn't immediately respond to requests for comment. The state attorney general's office declined to comment.

The case is Howard v. Detroit, 6th Cir., No. 21-1261, 7/11/22.

(Updates ultimate paragraph to show state declined to comment.)

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