

STATE OF MICHIGAN
IN THE COURT OF APPEALS

TERRIE E. TAYLOR,

Petitioner-Appellant,

vs.

CITY OF TRAVERSE CITY,

Respondent-Appellee.

Court of Appeals Docket No. 287565

Michigan Tax Tribunal No. 321766

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**BRIEF OF AMICI CURIAE THE MICHIGAN MUNICIPAL LEAGUE
AND THE MICHIGAN TOWNSHIPS ASSOCIATION IN SUPPORT OF
RESPONDENT-APPELLEE'S BRIEF ON APPEAL**

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STATEMENT OF BASIS OF JURISDICTION

Amici Curiae adopt the jurisdictional summary in the Respondent-Appellee City of Traverse City's Brief on Appeal.

STATEMENT OF QUESTION PRESENTED

WHEN A JOINT TENANCY CREATED BETWEEN TWO PERSONS IS TERMINATED BY THE DEATH OF ONE PERSON AND NEITHER PERSON WAS A JOINT TENANT WHEN THE JOINT TENANCY WAS INITIALLY CREATED, DOES THE TRANSFER OF TITLE BY OPERATION OF LAW TO THE SURVIVING PERSON CONSTITUTE A TRANSFER OF OWNERSHIP WHICH IS NOT EXEMPT UNDER MCL 211.27A(7)(H)?

Petitioner-Appellant answers:	No
Respondent-Appellee answers:	Yes
The Michigan Tax Tribunal answers:	Yes
Amici Curiae answers:	Yes

STATEMENT OF FACTS

Amici Curiae adopt the Counter-Statement of Facts in the Respondent-Appellee
City of Traverse City's Brief on Appeal.

DESCRIPTION OF AMICI CURIAE

The Michigan Municipal League

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 521 Michigan local governments of which 450 are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a Board of Directors. The purpose of the Legal Defense Fund, which was established in 1983, is to represent the member local governments in litigation of statewide significance. It provides support and assistance to cities and villages and their attorneys in court cases and other matters where the issues have a broad impact on both the municipality involved and on other municipalities in the State. This brief of Amici Curiae is authorized by the Legal Defense Fund's Board of Directors.

The Michigan Townships Association

The Michigan Townships Association ("MTA") is a non-profit organization formed in 1953 to provide a unified voice for Michigan's township governments and to help township leaders govern more efficiently and improve the services they provide to residents. More than 99% of Michigan's 1,242 townships are MTA members. Through its website, seminars, publications, county chapters, written communication, telephone calls, monthly electronic newsletters and legislative faxes, MTA keeps members informed of current issues facing townships.

INTRODUCTION

In 1994, Michigan voters amended the Michigan Constitution and placed a “cap” on increases to property tax assessments. As a result, the assessments on existing property cannot increase annually by more than the cost of living (up to a maximum of 5%). This cap only applies while the property is held by an owner. Upon a statutorily defined “transfer of ownership,” the property is “uncapped” and can be reassessed at the applicable proportion of current true cash value.

This case involves the application of the limited joint tenancy exception to the “uncapping” of a property’s taxable value upon an ownership transfer as provided for in the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, et seq.).

The Amici Curiae rely on the proper application of the General Property Tax Act for the assessment of real property and the levy and collection of taxes to support the vital community services they provide to their constituents. Amici Curiae have a vital stake in the outcome of this case in that this decision will determine whether the limited joint tenancy exception to “uncapping” of a property’s taxable value upon an ownership transfer remains true to its original intent as plainly written by the Legislature, or whether it is expanded beyond the plain words of the statute permitting a loop hole for joint tenancy to serve as a continuing and unintended tax shelter.

ARGUMENT

I. WHEN A JOINT TENANCY CREATED BETWEEN TWO PERSONS IS TERMINATED BY THE DEATH OF ONE PERSON AND NEITHER PERSON WAS A JOINT TENANT WHEN THE JOINT TENANCY WAS INITIALLY CREATED, THE TRANSFER OF TITLE BY OPERATION OF LAW TO THE SURVIVING PERSON CONSTITUTES A TRANSFER OF OWNERSHIP WHICH IS NOT EXEMPT UNDER MCL 211.27A(7)(H).

A. MCL 211.27a governs circumstances when a property's taxable value is reset to its state equalized value upon a transfer of ownership.

Article 9, Section 3 of the State Constitution provides, in pertinent part, that when ownership of a parcel of property is transferred *as defined by law*, the parcel shall be assessed at the applicable proportion of current true cash value. Mich. Const. 1963 Art. 9 Sec. 3. The Michigan Supreme Court has interpreted the phrase "as defined by law" as a constitutional grant of authority to the legislature to determine what constitutes a transfer. *See WPW Acquisition v City of Troy*, 466 Mich 117, 126; 643 NW2d 564 (2002).

Under the authority of Article 9, Section 3, the Legislature enacted MCL 211.27a ("Section 27a"). Section 27a sets forth provisions governing the assessment of property, annual adjustment to property values, and events constituting the transfer of ownership of property.

Section 27a(3) provides for the uncapping of a property's value upon a transfer of ownership:

Upon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer. MCL 211.27a(3).

Section 27a(6) defines a "transfer of ownership" to mean "the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest." MCL 211.27a(6).

Section 27a(7) provides that certain property transfers are exempt from being considered a transfer of ownership for uncapping purposes. MCL 211.27a(7). The exemption at issue in this case appears in Section 27a(7)(h) which states:

A transfer creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. For purposes of this subdivision, a person is an original owner of property owned by that person's spouse. MCL 211.27a(7)(h).

Section 27a(7)(h) provides a two-part test (the "Joint Tenancy Exception"). The first part of the test applies to all joint tenancy transactions and requires that one of the persons be an original owner of the property before the joint tenancy is initially created. The second part of the test applies only to joint tenancy transactions in which the property is already held in joint tenancy at the time of the transaction.

Thus, under the first part of the test, a transaction creating a joint tenancy (when the property is not already held in joint tenancy) is exempt from being considered a transfer of ownership for uncapping purposes if at least one of the persons was an original owner of the property before the joint tenancy was initially created.

For property which is already held in joint tenancy, both parts of the test must be met: (i) at least one of the persons was an original owner of the property before the joint

tenancy was created and (ii) at least one of the persons must have been a joint tenant when the joint tenancy was initially created and that person must have remained a joint tenant since the joint tenancy was initially created.

The property transfer at issue in this case fails the second part of the Joint Tenancy Exception test and therefore the property was properly uncapped in accordance with Section 27a by the Appellee.

The facts at issue in this case are straightforward and undisputed. Prior to the property interest created in Appellant, father was the sole owner of the property. On August 3, 2005, father created a joint tenancy in the property between himself and his daughter, the Appellant. This was the first property transfer. This transfer was exempt under the Joint Tenancy Exception, specifically the first part of the test, as the transaction created a joint tenancy between two persons, father and Appellant, and at least one of the persons, father, was an original owner of the property before the joint tenancy was initially created. At the time of the first transfer, the property was owned by the father in the entirety so only the first part of the Joint Tenancy Exception test was applicable.

Shortly after the creation of the joint tenancy between father and appellant, father died. By operation of law, immediately upon the death of father the joint tenancy was terminated and Appellant became the surviving owner. It is this second property transfer that is at issue. This second property transfer satisfied the first part of the test for the Joint Tenancy Exception, but it failed the second part of the test.

At the time of father's death, the property was held in joint tenancy among father and appellant. Father was an original owner, and in fact the sole owner, prior to the

creation of the joint tenancy. Appellant had no ownership interest prior to the creation of the joint tenancy. Most importantly, neither father nor Appellant were a joint tenant when the joint tenancy was initially created (the first transfer).

Section 27a(7)(h) specifically requires that “if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created.” In this case neither the father nor the appellant was a joint tenant when the joint tenancy was initially created. Father and appellant both became joint tenants through the creation of the first transfer, but neither was a joint tenant prior to that time. Thus the second part of the test was not satisfied.

This Court has considered the Joint Tenancy Exception in a previous case, *Moshier v Whitewater Township*, 277 Mich App 403; 745 NW2d 523 (2007). However, the facts in *Moshier, supra* are distinguishable from the facts in this case. The problem in *Moshier* was that the Michigan Tax Tribunal had incorrectly interpreted the Joint Tenancy Exception to require the recipient, or transferee of the property, to be an original owner of the property. The first part of the test of the Joint Tenancy Exception requires only one of the persons to the transaction be an original owner, not that the recipient or transferee be an original owner.

The facts in *Moshier* also satisfied the second part test of the Joint Tenancy Exception. In *Moshier*, the father and mother originally held the property as tenants in common (making both “original owners”). The first property transfer in *Moshier* took place when the father and mother created a joint tenancy between themselves and their son. Soon after this first property transfer, the father died. Upon the death of the father,

his interest passed to the surviving joint tenants constituting the second property transfer. This is the critical distinction, as mother and son now held the property as joint tenants before the next property transfer. The third and final property transfer in *Moshier* occurred when mother quit claimed her interest in the property to son.

Analyzing the third property transfer in *Moshier*, that transfer satisfied the first part of the Joint Tenancy Exception test as the mother was an original owner of the property. The third property transfer in *Moshier* also satisfied the second part of the Joint Tenancy Exception test because at least one of the parties was a joint tenant when the joint tenancy was initially created. At the time of the third property transfer, the mother and son both held the property in joint tenancy that was created by the second property transfer. Prior to the second property transfer, the mother and son also held the property in joint tenancy along with their father. Thus, both mother and son were joint tenants when the joint tenancy of the second property transfer was originally created. Therefore, the termination of the joint tenancy qualified as an exception under Section 27a(7)(h). Unlike the facts in the case at hand, where neither the father nor Appellant were a joint tenant when the joint tenancy was initially created.

B. Tax Exceptions are Narrowly Construed in Favor of Taxing Authority.

This case involves an appeal from an order of the Michigan Tax Tribunal. This Court's review is "limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Michigan Bell Telephone v Department of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994).

Statutes providing property tax exemptions must be narrowly construed in favor of the taxing authority. *Liberty Hill Housing Corp. v City of Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008). On appeal, courts generally defer to the Tax Tribunal's interpretations of statutes which it is delegated to administer. *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 492; 644 NW2d 47 (2002) (quoting *Rose Hill Center v Holly Twp.*, 224 Mich App 28; 568 NW2d 332 (1997)). This Court should narrowly construe the Joint Tenancy Exception and not allow the exception to be expanded from what the Legislature intended to be a narrow exception to a tool for perpetual tax shelters through joint tenancy transfers.

C. Alternative Interpretation Leads to Absurd Results.

Any other interpretation of the second part of the Joint Tenancy Exception test would lead to absurd results and would circumvent the statute allowing joint tenancy property transfers to serve in perpetuity as tax shelters from the uncapping. Rules of statutory interpretation require that courts avoid interpretations that produce absurd results. *E.g. Jennings v. Southwood*, 446 Mich 125, 133; 521 NW2d 230 (1994). For example, to interpret the second part of the Joint Tenancy Exception test as requiring only that one of the parties to the transaction was or became a joint tenant at the time of creation of any joint tenancy would produce absurd results. Under this interpretation parties wishing to avoid uncapping could easily structure the property transfer as a joint tenancy which through a subsequent transfer is terminated. So long as one of the parties was an original owner, the new owner having been added as a joint tenant would take the property in the entirety upon termination of the joint tenancy and avoid uncapping.

For example, if Property Owner A wished to sell his home to Party B, the property transfer could be structured through a joint tenancy to avoid an uncapping even though the parties are unrelated. Property Owner A, the original owner of the property in its entirety, could create a joint tenancy in himself and Party B. This transfer is exempt under the first part of the Joint Tenancy Exception test as Property Owner A is an original owner of the property. Prior to this first transfer the property is not held in a joint tenancy so the second part of the Joint Tenancy Exception test does not apply.

Next, Property Owner A could quit claim his entire interest in the property to Party B terminating the joint tenancy and leaving Party B as the new owner of the property in its entirety. Again, this second transfer would satisfy the first part of the Joint Tenancy Exception test as Property Owner A was an original owner of the property. Because the property is held in joint tenancy upon the second transfer, the second part of the Joint Tenancy Exception test is also applied. Now under an expansive reading of the second part of the Joint Tenancy Exception test, this second transfer could arguably satisfy its requirements because Property Owner A and Party B both became joint tenants as a result of the first property transfer. However, if the Joint Tenancy Exception is narrowly construed as intended by the Legislature, the second transfer fails the second part of the Joint Tenancy Exception test and the property would be subject to uncapping. The second transfer would fail the second part of the Joint Tenancy Exception test for the same reason as the facts in this case, neither Property Owner A or Party B were a joint tenant when the joint tenancy was initially created, they both became joint tenants through the first property transfer, but neither was a joint tenant prior to that first transfer.

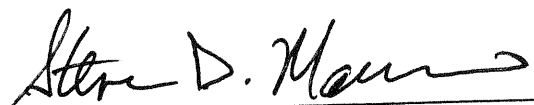
In narrowly crafting limited exceptions to property values uncapping, the Legislature could not have intended to exempt this type of perpetual tax shelter and an interpretation leading to such absurd results should not be adopted by this Court.

CONCLUSION AND RELIEF REQUESTED

Amici Curiae have a vital stake in the outcome of this case as their municipal constituents rely on the proper application of the General Property Tax Act, and specifically the narrow interpretations of exceptions contained within that act, for the assessment of real property and the levy and collection of taxes to support vital community services. The Legislature has narrowly defined the Joint Tenancy Exception and its interpretation should not be expanded allowing for an exception that would result in a loophole creating a property tax shelter.

For the reasons set forth above, Amici Curiae respectfully request that this Court affirm the decision of the Michigan Tax Tribunal upholding the uncapping of Appellant's property.

Respectfully submitted,
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