

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

C & J Investments of Grayling, LLC  
Petitioner,

v

MTT Docket No. 306256

City of Grayling,  
Respondent.

Tribunal Judge Presiding  
Sherry A. Lee

**OPINION AND JUDGMENT**

**INTRODUCTION**

A hearing on the briefs of the real property assessment matter in the above-captioned case was held before the Michigan Tax Tribunal on October 13, 2005 in its Lansing, Michigan offices. Petitioner, C & J Investments of Grayling, LLC, was represented by attorney William L. Carey. Respondent, City of Grayling, was represented by attorney David R. Sabin. Petitioner is appealing the taxable values for 2003, 2004 and 2005, contending that Respondent should not have uncapped the taxable value of the subject parcels as the conveyances at issue were in fact not transfers of ownership. Respondent contends that the 2002 transaction involving the subject parcels is a transfer of ownership for purposes of MCL 211.27a because it was a conveyance of property from a trust to someone other than the sole present beneficiary of the trust, the spouse or both.

**SUMMARY OF CASE**

The subject property consists of two parcels of commercial real property located in Grayling, Michigan. The property is used for office rental purposes. On July 19, 2002, William L. Carey and Annette E. Carey, husband and wife and Annette E. Carey, Trustee of the Annette E. Carey Revocable Trust (“the Trust”), conveyed both parcels by quit claim deeds to C & J Investments

of Grayling, LLC (“C & J”). Respondent sent notices to Petitioner in April, 2004, indicating a transfer of ownership had occurred that required Respondent to uncap the taxable value of the subject property for the tax year 2003 and, therefore, revise the taxable value for both the years 2003 and 2004. Petitioner contends that the 2002 transfer of property did not constitute a “transfer of ownership” for purposes of MCL 211.27a because the transferor and transferee entities were “commonly controlled” by the Trust, therefore, Respondent cannot uncap the taxable value of the subject parcels because the conveyances meet the exception set forth at MCL 211.27a(7)(l). Respondent contends that the 2002 conveyances involving the subject property are transfers of ownership for purposes of MCL 211.27a because a conveyance of property from a trust constitutes a transfer of ownership unless it is a distribution to the sole present beneficiary, the spouse, or both the sole beneficiary and spouse. Respondent further contends the transfers cannot fall under the “common control” exemption of MCL 211.27a(7)(l) because there are two members of C & J, including the Trust, each having a 50% interest and the Trust is not a legal entity nor is it engaged in a business activity. The Tribunal found that the entities involved, the Trust and the limited liability company of which the Trust is a member cannot be considered entities under common control. The Tribunal concluded the conveyances of property occurring in 2002 were transfers of ownership and, in accordance with MCL 211.27a(3), the subject property’s taxable value must be uncapped in 2003, the year following the transfer.

### **FINDINGS OF FACT**

The property in contention consists of two parcels of commercial real property located in Grayling, Michigan. The parcels are described as Parcel A, identification number 070-017-007-040-01 and Parcel B, identification number 070-017-007-040-02. The taxable value for Parcel A

was \$204,800 for 2003, \$149,600 for 2004 and \$133,400 for 2005. The taxable value for Parcel B was \$110,400 for 2003, \$112,939 for 2004 and \$108,900 for 2005. The subject property was divided into two parcels at some point prior to, or in conjunction with, the 2002 transfer.

The subject property is owned by C & J and was conveyed in a number of recorded transactions. On December 28, 1994, the subject property was conveyed to William L. Carey from Nelson A. Miles and Helen L. Miles by virtue of warranty deed. At this time the property had not been divided into two parcels. On March 1, 1995, William L. Carey quit claimed the subject property to William L. Carey and Annette E. Carey, husband and wife. On the same day, William L. Carey and Annette E. Carey quit claimed the subject property to the Annette E. Carey Revocable Trust. On July 19, 2002, William L. Carey and Annette E. Carey, husband and wife and Annette E. Carey, Trustee of the Annette E. Carey Revocable Trust, conveyed both parcels by quit claim deeds to C & J Investments of Grayling, LLC.

#### **PETITIONER'S CONTENTIONS AND EVIDENCE**

The subject property was at all relevant times prior to July 19, 2002 owned by the Trust and the Trust did not transfer more than 50% of its interest in the subject parcels. Further, one of two members of C & J is the Trust and each member holds a 50% interest in the limited liability company. Therefore, each of the members is a "controlling" member by statutory definition and a transfer of ownership did not occur as that term is defined by MCL 211.27(a)(6). Accordingly, Respondent should not have uncapped the taxable value of either of the subject parcels for the tax years at issue. Petitioner contends the taxable value for Parcel A should be \$122,399 for 2003, \$125,214 for 2004 and \$128,344.35 for 2005 and the taxable value for Parcel B should be \$76,514 for 2003, \$78,273 for 2004 and \$80,387.52 for 2005.

## **RESPONDENT'S CONTENTIONS AND EVIDENCE**

Although the conveyances at issue lists grantors as William L. Carey and Annette E. Carey, husband and wife and Annette E. Carey, Trustee of the Annette E. Carey Revocable Trust, both William L. Carey and Annette E. Carey had already divested themselves of their interests in the described property as evidenced in their conveyance to the Trust on March 1, 1995. Therefore, the grantor of subject property to C & J on July 19, 2002 would have been the Trust. A conveyance of property from a trust constitutes a transfer of ownership unless it is a distribution to the sole beneficiary, the spouse or both sole beneficiary and spouse pursuant to MCL 211.27a(6)(d) or comes within some other exemption. Respondent contends the conveyances in question are from the Trust to C&J and that they are not exempt from uncapping the taxable value of the subject property.

## **CONCLUSIONS OF LAW**

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value, as equalized, and that beginning in 1995 the taxable value is limited by statutorily determined general price increases, adjusted for additions and losses.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law...The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%...; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963, Art IX, Sec 3.

MCL 211.27a provides, in pertinent part:

Sec. 27a...(3) 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.

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(6) As used in this act, "transfer of ownership" means 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. *Transfer of ownership of property includes*, but is not limited to:

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(a) A conveyance by deed.

(c) A conveyance to a trust after December 31, 1994, except if the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both.

(d) A conveyance by distribution from a trust, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.

(e) A change in the sole present beneficiary or beneficiaries of a trust, except a change that adds or substitutes the spouse of the sole present beneficiary.

(h) A conveyance of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than 50% of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. Unless notification is provided under subsection (10), the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the assessing officer on a form provided by the state tax commission not more than 45 days after a conveyance of an ownership interest that constitutes a transfer of ownership under this subdivision.

(7) Transfer of ownership does not include the following:

(1) A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the state tax commission, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A corporation, partnership, limited liability company, limited liability partnership, or other legal entity that fails to comply with a request by the state tax commission under this subdivision is subject to a fine of \$200.00.

Because MCL 211.27a(7) sets forth exceptions to the general definition, unless a ¶ (6) conveyance is excluded under ¶ (7), it is considered a transfer of ownership.

### **Issues and Applicable Law**

In the matter before the Tribunal, the issues to be resolved by the Tribunal are (i) whether the Trust transferred more than 50% of its interest in the subject parcels, and (ii) whether, under MCL 211.27a(7)(l), the Trust and C & J are commonly controlled.

Petitioner argued the Trust did not transfer more than 50% of its interest in the subject parcels. Petitioner's Brief (PB) p 3. Under the facts of this case, prior to the conveyances in question, both William L. Carey and Annette E. Carey had already divested themselves of their interests in the described property as evidenced in their conveyance to the Trust on March 1, 1995. Respondent's Brief (RB) p 3. Therefore, the Trust held title, present interest and beneficial use of the subject property. Rather, the Trust held 100% ownership interest in Parcels A and B. Consequently, on July 19, 2002, the grantor of the subject property was the Trust. The transfers are not limited by the identification of a percentage of ownership transferred. Since the conveyance is by quit claim deed, the transfer was of whatever title the grantor possessed at the time of the transfer, i.e., all. RB p 3. The Tribunal finds that when it transferred title to C & J on July 19, 2002, the Trust transferred 100% of its interest in the subject parcels and it no longer held title to the subject property. However, the Trust held a 50% interest in the entity that held title to the property. The law states that a transfer of ownership occurs when more than 50% of the ownership interest of a legal entity changes. The Tribunal further finds as the substance of the conveyances was 100% of the real property ownership interest of the Trust, the statutory exception under MCL 211.27a(7)(h) does not apply to the facts in this case.

Petitioner further argued there are two members of C & J, one member is the Trust, each member has a 50% interest in the limited liability company and, therefore, each of the members is a “controlling” member by statutory definition. PB p 2. Accordingly, Petitioner claims a transfer of ownership did not occur pursuant to MCL 211.7s(7)(l). Respondent submits that a revocable trust does not qualify as a legal entity under Section (7)(l) to achieve exempt status. With regard to entities under common control, “entities” in this context means corporations, partnerships, limited liability companies, limited liability partnerships, or any other legal entity. RB p 4. Petitioner asserts, however, that a trust may be considered a legal entity for purposes of the common control argument. Petitioner’s Reply Brief (PRB) p 2. The State Tax Commission has directed that Michigan Revenue Administrative Bulletin 1989-48 is to be used in determining whether entities are commonly controlled. In accordance with this bulletin, entities under common control shall include any person as defined in MCL 208.6(1) including “an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, receiver, estate, **trust**, or any other group or combination acting as a unit.” [Emphasis added]. Therefore, the Tribunal finds that a trust is a legal entity.

However, Respondent asserts even if, *arguendo*, the Trust is a legal entity for purposes of the uncapping, the Trust is not engaged in a business activity with Petitioner nor is the Trust and Petitioner under common control. RB p 5. Petitioner submits it is obvious and apparent that the Trust is engaged in the business activity of managing commercial properties, among other activities. PRB p 2. For entities to be commonly controlled under Michigan Revenue Administrative Bulletin 1989-48, the entities must be engaged in a business activity. Black’s Law Dictionary, Seventh Edition, page 192, defines “business” as “[a] commercial enterprise

carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain.” Also, Black’s Law Dictionary, Seventh Edition, page 1500, defines “trade” as “[t]he business of buying and selling or bartering goods or services.” Entities that are not engaged in a business activity cannot be entities under common control under Michigan Revenue Administrative Bulletin 1989-48. In general, a trust is a legal entity that is able to own property and other assets. A revocable living trust (also known as a Family Trust or Living Trust) is used primarily to avoid probate, reduce estate taxes, preserve one’s privacy and manage one’s financial affairs. Thus, the Tribunal presumes for estate planning and other purposes, on March 1, 1995, William L. Carey and Annette E. Carey quit claimed the subject property to the Annette E. Carey Revocable Trust. As stated in Article 1.3 Purpose, “[t]his trust is established to provide management of assets during Settlor’s lifetime and to act as the means of distributing Settlor’s assets after Settlor has died. Trustee agrees to hold, administer, and distribute the assets it receives in accordance with this agreement.” According to the Operating Agreement for C & J, “[t]he company was formed on February 1, 2002 to acquire commercial real estate for investment purposes.” On July 19, 2002, the Trust conveyed both parcels by quit claim deeds to C & J, a limited liability company of which the Trust and Richard J. Jaskowski are members, each having a 50% interest in the company. The entities involved, the Trust and the limited liability company, cannot be considered entities under common control under Michigan Revenue Administrative Bulletin 1989-48 since no business activity exists in this situation. These entities also do not qualify as entities under common control under the State Tax Commission policy regarding common control outside Michigan Revenue Administrative Bulletin 1989-48. In the opinion of the State Tax Commission, circumstances where property or an ownership interest is conveyed from one entity to another entity and both entities are owned by the same individual(s)

with the same percentage of ownership constitute a common control situation. Clearly, however, the Trust consists solely of Annette E. Carey as Settlor and Trustee, and C & J, as a limited liability company, consists of both the Trust and Richard J. Jaskowski, members in equal proportion. A member of an LLC is considered to have either a present interest in property or beneficial use of property of an LLC based on the member's control of the LLC and, therefore, the property itself. Present interest has nothing to do with title but rather denotes control over the property. Initially, the Trust had total control over the subject property at all relevant times. The Trust held title, present interest and beneficial use of the subject property. When the Trust transferred title to the LLC on July 19, 2002, it continued to have a present interest in the subject property by virtue of its control over the LLC. However, that present interest was changed in substance given that its control in the LLC, based on its membership interest in the titleholder entity, is 50%. Although title has transferred to a different entity, actual control over the property has changed based on the controlling interests in the entity. These entities do not qualify as entities under common control for the reason that their ownership interests were not identical before and after the transfer. The property transfers are, therefore, transfers of ownership as no statutory exception or exemption applies and the Tribunal concludes, in accordance with MCL 211.27a(3), the subject property's taxable value must be uncapped in 2003, the year following the transfer.

The Tribunal further concludes for tax years 2003, 2004 and 2005 that the true cash values and revised assessments of the subject property are as follows:

The original taxable values on the roll and the revised taxable values for the subject property are:

<b>Property Tax Code</b>	<b>Year</b>	<b>Original Taxable Value</b>	<b>Revised Taxable Value</b>
070-017-007-040-01	2003	\$204,800	\$204,800
070-017-007-040-01	2004	\$149,600	\$149,600
070-017-007-040-01	2005	\$149,600	\$149,600

<b>Property Tax Code</b>	<b>Year</b>	<b>Original Taxable Value</b>	<b>Revised Taxable Value</b>
070-017-007-040-02	2003	\$110,400	\$110,400
070-017-007-040-02	2004	\$112,939	\$112,939
070-017-007-040-02	2005	\$108,900	\$108,900

### **JUDGMENT**

IT IS ORDERED that the subject property's true cash, assessed and taxable values shall be revised for the tax years at issue as provided in the "Conclusions of Law" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 20 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Order. As provided in 1994 PA 254 and

1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After January 1, 1996, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for the calendar year 1998, (iv) after December 31, 1998, at a rate of 6.01% for the calendar year 1999, (v) after December 31, 1999, at a rate of 5.49% for the calendar year 2000, (vi) after December 31, 2000, at a rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at a rate of 5.56% for calendar year 2002, (viii) after December 31, 2002, at a rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at a rate of 2.16% for 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005 and, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006.

This Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: May 26, 2006

By: Sherry A. Lee, Tribunal Judge