STATE OF MICHIGAN
DEPARTMENT OF TREASURY

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DATE: March 21, 2011

TO: Assessors and Equalization Directors

FROM: Kelli Sobel, Executive Director State Tax Commission

SUBJECT: Klooster v City of Charlevoix Case

On March 10, 2011, the Michigan Supreme Court issued a decision in the case of *Klooster v City of Charlevoix* which reversed the decision previously made in that case by the Michigan Court of Appeals. The decision will significantly affect the analysis used by Michigan assessors in determining whether a "transfer of ownership" of property has occurred, as that phrase is defined in Michigan Compiled Laws 211.27a(6), in cases involving the creation, modification or termination of joint tenancy ownerships. The most immediate effect of the *Klooster* decision will be to require assessors to review all decisions previously made relating to the uncapping of the taxable value of real property where a joint tenancy has been created, modified or terminated. This review may necessitate examination of conveyances dating back to the beginning of Proposal A in 1995.

At the outset, the State Tax Commission observes that the Supreme Court's decision provides the definitive interpretation of the language of MCL 211.27a(7)(h), one that is not subject to discussion or disagreement. Any change which is made, if at all, requires legislative action.

PROPERTY TAX ADMINISTRATION ISSUES

If the assessor has uncapped the 2011 taxable value in response to the death during 2010 of a co-tenant of a joint tenancy, then the March board of review must consider whether that uncapping should be reversed. However, both the assessor and the March board of review members are cautioned that:

- If a sole surviving co-tenant created a new joint tenancy during 2010 by adding a co-tenant or co-tenants in joint tenancy to the ownership of the property after the date of death of the co-tenant whose demise prompted the assessor to uncap,

OR

- If none of the surviving co-tenants were included as co-tenants when the "the joint tenancy was initially created," as that concept is defined by the Supreme Court in *Klooster*,

then the uncapping of the taxable value may have been correct, although for the wrong reason. If the assessor determines that the board of review mistakenly reversed an uncapping made for the 2011 assessment year, the State Tax Commission expects the assessor to appeal the board of review's decision to the Michigan Tax Tribunal.

With regard to uncapping decisions which have been made in previous years, there are three factual variations which must be addressed. Each of these variations will require a different response, and one variation may require the assessor to act at the earliest possible moment, preferably before the close of the March 2011 board of review. It is expected, however, that this factual variation which requires immediate attention by the March board of review will be an uncommon occurrence. In other words, in most cases, the State Tax Commission directs that the uncapping or recapping of taxable value for years prior to 2011 which is necessitated by the Supreme Court's decision in *Klooster* should not be addressed at the March board of review.

These variations, and the appropriate response for each, are as follow:

Variation One:

There may be instances where the assessor has, in the past, mistakenly uncapped the taxable value. Such mistakes must be corrected to the extent permitted by law. In those cases, although the March board of review arguably has jurisdiction to correct the 2011 taxable value, pursuant to its authority under MCL 211.29 and MCL 211.30, the State Tax Commission directs that such corrections should, instead, be addressed at the July or December 2011 board of review, when the 2011, 2010, 2009 and/or 2008 taxable values can be corrected as a mistaken uncapping, pursuant to MCL 211.27a(4). The Commission directs that these corrections should be made at the July or December board of review for several reasons, which include the following:

- Full relief cannot be granted by the March board of review, since the March board only has jurisdiction, if at all, over the 2011 assessments.

- Since the legislature has provided a specific procedure for recapping the taxable value after a mistaken uncapping, there is doubt whether the March board of review has jurisdiction to recap, even for 2011.

- Since the assessor will be required to recalculate taxable value beginning in the year of the mistaken uncapping, the calculations will be complicated and the Commission doubts that the necessary analysis and calculations can be adequately addressed while the March board of review is in progress.

- An investigation by the assessor might be necessary prior to taking action, in order to assure that the co-tenant whose death prompted the uncapping was an "original owner" before the "initial joint tenancy was created." Such an investigation is necessary for the reason that the *Klooster* decision indicates that a transfer of ownership occurred when the "initial" joint tenancy was created if the person, or persons who owned the property before the "initial joint tenancy" was created (or their spouse or spouses), did not acquire that ownership interest under circumstances which caused or (in the case of pre-1995 transactions, under circumstances which

would have caused) an uncapping of taxable value. In other words, it might be necessary to undertake a delayed uncapping of taxable value, back to the year following the year that the "initial" joint tenancy was created.

- An investigation by the assessor might be necessary prior to taking action, in order to assure that there has not been another previously unrecognized uncapping event, either at the time of, or before, or after, the co-tenant's death which prompted the assessor's uncapping decision. The *Klooster* decision provides that if a sole surviving co-tenant created a new joint tenancy by adding a co-tenant or co-tenants in joint tenancy to the ownership of the property after the death of the co-tenant whose demise prompted the assessor to uncap; or if none of the surviving co-tenants were included as co-tenants when the "the joint tenancy was initially created" as that concept is defined by the Supreme Court in *Klooster,* then either the creation of the new joint tenancy or the death of the co-tenant whose ownership of the property dated back to the "initial joint tenancy" might be an uncapping event. It should be noted that since *Klooster* found the death of a co-tenant in joint tenancy to be a "conveyance," if none of the surviving co-tenants were included as co-tenants when the "the joint tenancy was initially created" as that concept is defined by the Supreme Court in *Klooster,* then an uncapping occurred when the last "original owner" in the joint tenancy died.

Variation Two:

There may be instances where there was a transfer of ownership, as defined by the Court in *Klooster*, but no Transfer Affidavit (Form 2766, formerly L-4260) was filed, or a Transfer Affidavit was filed by the taxpayer that indicated an exception to uncapping based on MCL 211.27a(7)(h). If the assessor mistakenly failed to uncap the taxable value of the property, perhaps arising from the assessor's and/or the board of review's reliance on the Court of Appeals' decision in *Klooster* and/or in *Mosier v Whitewater Township*, then the error must be corrected to the extent permitted by law. These instances are more fully discussed as part of the discussion of Variation One above, and include instances where the owner before the creation of the "initial" joint tenancy was not an "original owner," instances where the death of a co-tenant in joint tenancy was not recognized as an uncapping event despite the fact that the death left title to the property in the name(s) of (a) co-tenant(s) who (was) (were) not among the co-tenants when the "initial" joint tenancy was created and instances where a sole surviving co-tenant who was an "original owner" in the previous joint tenancy conveyed the property into a new joint tenancy.

The correction of this factual variation requires that the assessor proceed *without* the action of either the March, or the July or December board of review. This is accomplished by completing Form 3214 (formerly L-4054) for each assessment year following the year in which the transfer of ownership occurred and following the instructions contained in State Tax Commission Bulletin 8 of 1996. (Assessors should note that the procedure for correcting a failure to uncap due to an assessor's error is no longer the recommended procedure and, in such cases, the procedure described in Variation Three below is to be used.)

Variation Three:

There may be instances where there was a transfer of ownership, as defined by the Court in *Klooster*, and the taxpayer filed a Transfer Affidavit (Form 2766, formerly L-4260) which indicated that a transfer of ownership had occurred, but the assessor mistakenly failed to uncap the taxable value of the property, perhaps arising from the fact that the assessor and/or the board of review relied on the Court of Appeal's decision in *Klooster* and/or on the Court of Appeals decision in *Mosier v Whitewater Township*. It is this third variation which should be addressed by the March 2011 board of review, if possible. It is the State Tax Commission's interpretation that the 2011 March board of review has the authority, within the jurisdiction granted to it by MCL 211.29 and MCL 211.30, to correct the current years (the 2011) taxable value so that it conforms with the law. However, the July 2011 and December 2011 boards of review do not have the jurisdiction to uncap the taxable value for 2011, or for prior years. This means that if the 2011 taxable value is not corrected by the 2011 March board of review, there will never be another opportunity to correct the 2011 taxable value, although it is the Commission's interpretation that the March board of review, in future years, continues to have the authority to correct the taxable value for the assessment year in which it is sitting. Assessors and March board of review members are cautioned that for the purpose of correcting the 2011 assessment year, the taxable value must be recalculated starting from the year following the year that the transfer of ownership occurred.

DISCUSSION OF THE SUPREME COURT'S DECISION: *Klooster v City of Charlevoix*, Michigan Supreme Court Docket # 140423 (2011).

The issue before the Court was the interpretation of MCL 211.27a(7)(h), which provides that certain conveyances into, or modifying, a joint tenancy are not transfers of ownership.

The father, James, quit-claimed to himself and to his son, Nathan, as joint tenants, with rights of survivorship, on August 11, 2004. Thereafter, on January 11, 2005, James died, leaving Nathan as the sole owner. On September 10, 2005, Nathan quit-claimed to himself and to his brother, Charles, as joint tenants, with rights of survivorship. The assessor uncapped the taxable value for the 2006 assessment year. After an appeal by the taxpayer, the Tax Tribunal ruled that the taxable value uncapped for the 2006 assessment year arising from the fact that Nathan was not an "original owner," or an already existing joint tenant before the August 11, 2004 joint tenancy was created.

The Michigan Court of Appeals reversed the Tax Tribunal. In reading MCL 211.27a(7)(h) the Court of Appeals found that the exception to uncapping applied for the reason that the language of that subsection, when it stated that there was no transfer of ownership "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 has remained a joint tenant since the joint tenancy was initially created" should be construed to mean that the death of a joint tenant does not constitute a transfer of ownership, even if the joint tenant who dies was the sole original owner. The Court reached this conclusion for the reason that the death of the father, James, who clearly was an "original owner," did not constitute a "conveyance" and that his death could not, therefore, result in an uncapping event. The Court

concluded that there had been no "conveyance" for the reason that a "conveyance" within the meaning of MCL 211.27a(7)(h) could not occur absent a transfer of title by a written instrument.

The Michigan Supreme Court reversed the determination of the Michigan Court of Appeals, and based its decision on the following analysis:

1. That MCL 211.27a(7)(h) establishes requirements for excepting three separate and distinct types of conveyances from the definition of a "transfer of ownership":

    - The termination of a joint tenancy;
    - The creation of a joint tenancy where the property was not previously held in joint tenancy; or
    - The creation of a successive joint tenancy.

    The Court determined that the analysis was different for each of these types of conveyance.

2. In the case of the *creation* of a joint tenancy, the Court held that it was necessary to determine the "original owner" of the property at the time the initial joint tenancy was created. It further held that in order to identify an "original owner" one must first identify the most recent transfer of ownership which uncapped the property and then determine who owned the property as a result of that uncapping conveyance. The Court noted that for purposes of analyzing the *creation* of a joint tenancy, there were three (and apparently only three) possible ways to be an "original owner":

    - A sole owner at the time of the last uncapping event;
    - A joint owner at the time of the last uncapping event; or
    - The spouse of either a sole or joint owner of the property at the time of the last uncapping event.

    The Court indicated that if the owner before the creation of the "initial" joint tenancy acquired his or her interest prior the adoption of Proposal A, then it was necessary to determine whether the owner acquired his or her ownership in a transaction that would have been an uncapping event if Proposal A had been enacted at the time of the event.

3. In analyzing whether the *creation* of a joint tenancy resulted in an uncapping event, the court determined that if the "original owner" continued as a co-tenant after the joint tenancy was created, then there was no transfer of ownership arising from the *creation* of the joint tenancy.

4. The Court then proceeded to state that the phrase "conveyance at issue" as used in MCL 211.27a(7)(h) is either the *creation* or *termination* of the joint tenancy that *may*, or *may not*, uncap the property for reassessment purposes, and that it is *not* the preceding uncapping event which is used to determine who is an "original owner" at the time the joint tenancy was initially created. The Court noted that, in every analysis, it is important to determine, at the outset, whether the property is being conveyed from a previous joint tenancy or from some other type of ownership estate.

5. In the case of the *termination* of a joint tenancy or the *creation of a successive* joint tenancy, the phrase "original owner" is applicable only to the extent that one must examine the ownership both before and after the "conveyance at issue" to ensure that the continuity of original ownership bridges the transfer. In other words, at the *termination* of a joint tenancy, or the *creation of a successive* joint tenancy, the identity of the ownership before the joint tenancy was created is only relevant to the extent that it might be necessary to ensure that there has been uninterrupted continuity of original ownership.

6. The Court also identified the concept of "continuous-tenancy" (as the Court calls it) which applies only to conveyances *terminating* a joint tenancy and conveyances *creating a successive* joint tenancy. It identified this concept arising from the statutory language of MCL 211.27a(7)(h) which states:

   > … 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.

   The Court determined that in the context of conveyances *terminating* a joint tenancy and conveyances *creating a successive* joint tenancy, the concept of "original owner" only pertains to the continuous tenancy of at least one of the joint tenants from the time that a particular joint tenancy was originally created until the time the joint tenancy was terminated. In order to identify the "original owners," the Court indicated that one looked to the "initial" joint tenancy, even if there have been "successive" joint tenancies after the "initial" joint tenancy was made.

7. The Supreme Court determined that the concept established by using the word "conveyance" in MCL 211.27a(7)(h) is not limited to instances where there was a written instrument and, therefore, it found that the Court of Appeals had committed an error in making its determination that the death of James, the father, was not a "conveyance." The Supreme Court specifically held that an estate in land passed to Nathan upon the death of his father, James, and that the death of James resulted in a "conveyance" within the meaning of MCL 211.27a(7)(h). Although the Court concluded that the death of James was a "conveyance," it deemed it to be a separate question whether the conveyance was a "transfer of ownership" that uncapped the taxable value.

8. The Court determined that the case before it in *Klooster* was one in which the effect of the "termination of a joint tenancy" was at issue. Therefore, it held that the applicable statutory language was:

> A transfer … 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. (Emphasis added.)

9. The Court addressed the meaning of the word "when" in the statutory language (as set forth in **bold** above) and, in doing so, contrasted its use with the use of the word "before" in the same section of statute (as also set forth in **bold** above). It determined that, as used in preceding statutory language, a person who became a joint tenant as a result of a conveyance was deemed to be a "joint tenant when the joint tenancy was originally created." The son, Nathan, was a joint tenant "when" his father, James initially created the joint tenancy, and "remained a joint tenant since the joint tenancy was initially created," until it was terminated by the death of his father. Therefore, the "conveyance" caused by the death of the father was not a transfer of ownership under MCL 211.27a(7)(h).

10. However, when Nathan added his brother, Charles, as a joint tenant later in the same year, he created a "non-successive joint tenancy" (the property went from a state of sole ownership into a new joint tenancy. Since there had not been an uncapping of the taxable value when Nathan acquired his interest in the property, he was not an "original owner" for purposes of creating a new joint tenancy, and his act resulted in a transfer of ownership.

EXAMPLES

Example # 1

John and his spouse, Mary, purchased Blackacre in 2004. In 2005, Mary conveyed her interest to John by quit claim deed and, thereafter in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

No. Since there was a transfer of ownership which uncapped the taxable value when John and Mary purchased the property in 2004, John was an "original owner" who continued to have an interest after the creation of the joint tenancy.

Example # 2

John and his spouse, Mary, purchased Blackacre in 1987. In 2005, Mary conveyed her interest to John by quit claim deed and, thereafter in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

No. Since there would have been a transfer of ownership which uncapped the taxable value if Proposal A had been in effect when John and Mary purchased the property in 1987, John was an "original owner" who continued to have an interest after the creation of the joint tenancy.

Example # 3

Mary purchased Blackacre in 2004. In 2005, Mary conveyed her entire interest in Blackacre to her husband, John, by quit claim deed. Thereafter in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

No. Since there was a transfer of ownership which uncapped the taxable value when Mary purchased the property in 2004, she was an "original owner." The statute itself and the Court in the *Klooster* decision both indicate that a spouse who receives property from the other spouse "stands in the shoes" of that other spouse. Therefore, John was an "original owner" who continued to have an interest after the creation of the joint tenancy.

Example # 4

Mary purchased Blackacre in 2004. In early 2005, Mary died and, pursuant to probate court distribution, her entire interest in Blackacre was received by her husband, John, in the fall of 2005. Thereafter in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

No. Since there was a transfer of ownership which uncapped the taxable value when Mary purchased the property in 2004, she was an "original owner." The Court in the *Klooster* decision and MCL 211.27a(7)(a) indicate that a spouse who receives property by any means from the other spouse "stands in the shoes" of that other spouse. Therefore, John was an "original owner" who continued to have an interest after the creation of the joint tenancy.

Example # 5

John and his spouse, Mary, purchased Blackacre in 2004. In 2005, Mary conveyed her interest to John by quit claim deed and, thereafter in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Did the taxable value uncap in 2006?

No. Since there was a transfer of ownership which uncapped the taxable value when John and Mary purchased the property in 2004, John was an "original owner" who continued to have an interest after the creation of the joint tenancy. Further, the Court in the *Klooster* decision indicates that when the "initial" joint tenancy is created, any co-tenant who acquires an ownership interest from the creation of

that "initial" joint tenancy is an "original owner." Since Michael became an "original owner" when the "initial" joint tenancy was created, and since that ownership interest continued until the death of John (the *Klooster* court refers to it as the "continuous-tenancy" requirement), the taxable value did not uncap when John died.

Example # 6

John and his spouse, Mary, purchased Blackacre in 2004. In 2005, Mary conveyed her interest to John by quit claim deed and, thereafter in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Michael immediately conveyed to himself and his brother, Peter, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

Yes. These facts are, in substance, those in the *Klooster* case itself. As indicated in the answer to Example # 5 above, since Michael became an "original owner" when the "initial" joint tenancy was created, and since that ownership interest continued until the death of John (the *Klooster* court refers to it as the "continuous-tenancy" requirement), the taxable value did not uncap when John died. However, when Michael, as the sole surviving co-tenant, created the joint tenancy with his brother, Peter, the creation of the joint tenancy itself was an uncapping event for the reason that Michael was not an "original owner" at the time of the creation of the "initial" joint tenancy with Peter. The reason that Michael was not an "original owner," was that he had not acquired his ownership interest in a transaction that resulted in an uncapping of the taxable value.

Example # 7

John and his spouse, Mary, purchased Blackacre in 2004. In 2005, Mary conveyed her interest to John by quit claim deed and, thereafter in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. In 2006, John and Michael added Michael's brother, Peter, as an additional joint tenant, thereby expanding the joint tenancy by making John, Michael and Peter joint tenants with rights of survivorship. Did the taxable value uncap in 2007?

No. John and Michael became "original owners" when the "initial" joint tenancy was created. The *Klooster* court indicates that both John and Michael derive their status as "original owners" from the creation of the "initial" joint tenancy. In other words, John no longer derived his status as an original owner from the fact that he had initially acquired an interest in the property through a transaction that resulted in an uncapping. Since both John and Michael are "original owners" whose ownership interest has continued in the "successor" joint tenancy that added Peter, the "continuous-tenancy" requirement is met and the taxable value did not uncap when Peter was added.

Example # 8

Same facts as Example # 7 above, except that in 2007 John, Michael and Peter conveyed to John and Peter alone, as joint tenants, with rights of survivorship, thereby "contracting" the joint tenancy by removing Michael. Did the taxable value uncap in 2008?

No. John is still an "original owner" arising from the fact that he was one of the joint tenants when the "initial" joint tenancy was created, and John has continued as a joint tenant (has met the "continuous-tenancy" requirement) from the time that the "initial" joint tenancy was created.

Example # 9

Same facts as Example # 8 above, except that in 2008 John and Peter re-added Michael as a joint tenant, by conveying from themselves to themselves and Michael as joint tenants with rights of survivorship. Did the taxable value uncap in 2009?

No. Again, John is still an "original owner" arising from the fact that he was one of the joint tenants when the "initial" joint tenancy was created, and John has continued as a joint tenant (has met the "continuous-tenancy" requirement) from the time that the "initial" joint tenancy was created.

Example #10

Same facts as Example # 9 above, except that in 2009 John dies. Does the taxable value uncap in 2010?

Yes. When Michael was removed as a joint tenant in 2007 and then re-added in 2008 he was still an "original owner" arising from the fact that he was one of the joint tenants when the "initial" joint tenancy was created in 2005, but he did not meet the "continuous-tenancy" requirement. Further, as indicated in Example # 12 below, Peter is not an "original owner." Since there is no "original owner" who meets the "continuous-tenancy" requirement, the death of John results in an uncapping of the taxable value.

Example #11

John and his spouse, Mary, purchased Blackacre in 2004. In 2005, Mary conveyed her interest to John by quit claim deed and, thereafter in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. In 2006, John and Michael added Michael's brother, Peter, as an additional joint tenant, thereby making John, Michael and Peter joint tenants with rights of survivorship. Later in 2006, John died. Did the taxable value uncap in 2007?

No. Michael (along with his father, John) became an "original owner" when the "initial" joint tenancy was created. Since Michael is an "original owner" of the "initial" joint tenancy, whose ownership interest was continued in the successor joint tenancy that added Peter, and since Michael continues to be a member of the "successor" joint tenancy that resulted from John's death, the "continuous-tenancy" requirement is met and the taxable value did not uncap when John died. It should be noted that John's death was a "conveyance" and the reason there was not an uncapping is that Michael was an "original owner" whose interest continued after the death of John (and has been continuous since the time the "initial" joint tenancy was created).

Example # 12

Using the same facts as Example # 11 above, but adding the fact that Michael dies in 2007, did the taxable value uncap in 2008?

Yes. Since Peter was not an "original owner" when the "initial" joint tenancy was created, he cannot rely on MCL 211.27a(7)(h) as an exception to uncapping.

Example # 13

John purchased Blackacre in 2000. In 2002 John sold Blackacre under land contract to Alfred. This transaction resulted in an uncapping of the taxable value in 2003, pursuant to MCL 211.27a(6)(b). In 2005, Alfred defaulted on the terms of the land contract and John forfeited the land contract through an action in the district court, thereby terminating Alfred's interest as purchaser. Pursuant to the provisions of said MCL 211.27a(7)(d), this forfeiture did not result in an uncapping of the taxable value. However, still in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

Yes. Since a land contract is deemed to be a conveyance under MCL 211.27a(6)(b), John was no longer deemed to be the owner after the land contract was made. Further, since the taxable value did not uncap when the land contract forfeiture was completed, John did not regain his status as an "original owner." Since John was not an "original owner" when he created the joint tenancy with Michael, the creation of the joint tenancy resulted in an uncapping of the taxable value. It should be noted that the result would be the same if the land contract was foreclosed through a Circuit Court judicial foreclosure. Further, if John had deeded the property and taken back a mortgage note and mortgage which was later foreclosed, the result would have been the same but with the additional wrinkle that if John and Michael failed to transfer the property within one year of the end of the foreclosure redemption period, the expiration of that one year period would itself be treated as an uncapping event.

Example # 14

John, the sole owner of Blackacre, who acquired his ownership in a 2002 purchase transaction, wishes to sell Blackacre to Alfred. A written agreement is made during 2008 which provides that Alfred will purchase a joint tenancy interest in Blackacre for the sum of $100,000. As part of that written agreement, Alfred is granted the option, for an additional consideration of $10, to purchase John's remaining joint tenancy interest, at any time within the 1-year period following the date of the agreement, for the additional sum of $100,000. The sale of the joint tenancy interest is completed, the deed is recorded and the funds are escrowed pending issuance of the final policy of title insurance. During the escrow period, Alfred exercises his option to purchase John's remaining joint tenancy interest and the sale is completed before any of the funds from the first purchase transaction are released from escrow. The deed conveying John's remaining joint tenancy interest is recorded before the escrow is discharged, although it indicates a different date of execution than the deed which created the joint tenancy. Does the taxable value uncap in the year following the completion of the transactions?

No. John was an "original owner" arising from the fact that the taxable value uncapped when he purchased the property in 2002. Therefore, when the joint tenancy with Alfred was created, the taxable value did not uncap. Further, when Alfred acquired his interest as a joint tenant, he became an "original owner." When Alfred later purchased John's remaining joint tenancy interest, he was deemed to be an "original owner" whose interest "continued" for the entire time that the joint tenancy existed. Therefore, when the joint tenancy was terminated, no uncapping of taxable value occurred. It should be noted that there is nothing in either MCL 211.27a(7)(h) or in the *Klooster* decision which makes any distinction between a joint tenancy that arises from a donative intent (an intention to make a gift) and an intention to complete a sale transaction. It should also be noted that Alfred is not an "original owner" if he later creates a joint tenancy, for the reason that the taxable value did not uncap when he acquired his ownership interest.

Example # 15

John and his spouse, Mary, purchased Blackacre in 2004. In 2005, Mary conveyed her interest to John by quit claim deed and, thereafter in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Michael immediately conveyed to himself and his spouse, Judy, by a conveyance which simply indicated that the property was conveyed to Michael and Judy, as husband and wife. In 2006, Michael and Judy conveyed to Michael, Judy and to their daughter, Sally, all three as joint tenants, with rights of survivorship. Did the taxable value uncap in 2007?

Yes. As indicated in the answer to Example # 5 above, since Michael became an "original owner" when the "initial" joint tenancy was created, and since that ownership interest continued until the death of John (the *Klooster* court refers to it as the "continuous-tenancy" requirement), the taxable value did not uncap when John died. Further, when Michael conveyed to himself and his spouse, Judy, there was no uncapping for the reason that the conveyance of an interest to a spouse is not a transfer of ownership, pursuant to MCL 211.27a(7)(a). However, when Michael and Judy, created the joint tenancy with their daughter, Sally, it was an uncapping event, for the reason that at the time of the creation of the "initial" joint tenancy with Sally, neither Michael nor Judy was an "original owner," for the reason that they had not acquired their ownership interest in a transaction that resulted in an uncapping of the taxable value. It should be noted that in the absence of another specific designation, when a husband and wife take title to real property it is presumed that they took title as tenants by the entireties. A tenancy by the entireties can exist only between a husband and wife and the effect is to treat them together as a single person. However, it is possible for a husband and a wife to hold title as joint tenants, or as tenants in common, if a specific intention to create one of those estates is indicated. Even if such a different form of ownership is indicated, the result is the same, since the conveyance to the spouse does not place him or her in any better position than was the spouse who made the conveyance. Further, assessors must be mindful of the fact that a wife may join in a deed conveying property in which she has no ownership interest, solely for the purpose of eliminating her inchoate dower rights, and assessors should not presume that a wife was an owner simply arising from the fact that she joined in the execution of an instrument of conveyance.

Example # 16

John and his spouse, Mary, purchased Blackacre in 2004. In 2005, Mary conveyed her interest to John by quit claim deed and, thereafter in 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Michael immediately conveyed a 1% interest in the property to his daughter, Roberta, as a tenant in common. At the time, Roberta was a Michigan resident who resided on the property, and the conveyance was made for the purpose of allowing her to claim the Principal Residence Exemption. In 2007, Michael and Roberta conveyed to themselves, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2008?

Yes, as to an undivided 99% interest in the property. The original 1% conveyed to Roberta in 2005 resulted, or should have resulted, in an uncapping of the undivided 1% interest which she received as a tenant in common. This uncapping made Roberta an "original owner." However, she was an "original owner" of *only an undivided 1% interest*, as a tenant in common, with her father. When the joint tenancy interest was created, the effect was that Michael, as the sole surviving co-tenant of the previous joint tenancy with his father, John, could not rely on that "initial" joint tenancy to make him an "original

owner" when he conveyed the property into a new joint tenancy. The creation of this new joint tenancy itself was an uncapping event. Michael was not an "original owner" when the joint tenancy was created, for the reason that he had not acquired his remaining 99% undivided ownership interest in a transaction that resulted in an uncapping of the taxable value.

CONCLUSION

The Supreme Court's decision in *Klooster* will create many challenges for assessors. If the preceding discussion has not made it clear already, assessors are advised that one of the most common challenges they will encounter relates to the fact that there will be instances where a sole owner, or a husband and wife who are the sole owners, may not be "original owners" if they create a joint tenancy. If the individual, or the husband and wife, are not "original owners," the effect is that the creation of the joint tenancy itself will be an uncapping event. Further, the most common reason that a person, or a husband and wife, may not be "original owners" is if he, she or they, have acquired ownership as the sole survivors of a previous joint tenancy. This means that when a joint tenancy is created, assessors must examine the chain of title dating back at least to the instrument immediately prior to the one under which the creators of the joint tenancy obtained their ownership interest, and perhaps even further back in the chain of title.

The State Tax Commission is currently considering whether it is practical for it to prepare an assessor checklist, and/or a voluntary taxpayer questionnaire, to assist in the review process. In any event, assessors are reminded that the burden is on the taxpayer to inform them of transactions that result in the uncapping of taxable value and that unless the taxpayer delivers a Property Transfer Affidavit, Form 2766, which indicates that a transfer of ownership has occurred, the taxpayer is at risk that he or she will be liable for additional taxes if it is later determined that there was no "original owner" when a joint tenancy was created. Assessors might wish to respectfully point out that cooperation by the taxpayer may be in his or her best interest.