STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

William Lighthall Trust and
George C. Handy,
Petitioners,

v

MTT Docket No. 14-000323

City of Ann Arbor,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioners, William Lighthall Trust and George C. Handy, appeal the retroactive uncapping and increase in taxable value levied by Respondent, City of Ann Arbor, against Parcel No. 09-12-02-209-007 for 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, and 2014 . Gregory A. Nowak, Attorney, and Marie Baldysz Miller, Attorney, represented Petitioner, and Kristen D. Larcom, Attorney, represented Respondent.

A hearing on this matter was held on November 3, 2015. Petitioners' sole witness was Cone William Lighthall. Respondent presented no witnesses. At hearing, the parties presented their Joint Stipulation of Facts. Post hearing briefs were ordered at the end of the hearing, and were provided by the parties on December 22, 2015.

Based on the evidence, testimony, and case file, the Tribunal finds that the taxable values ("TV") of the subject property for each year in which the Tribunal has jurisdiction are as follows:

Parcel No.	Year	TV
09-12-02-209-007	2006	$313,745
09-12-02-209-007	2007	$325,353
09-12-02-209-007	2008	$415,402
09-12-02-209-007	2009	$433,679
09-12-02-209-007	2010	$432,377
09-12-02-209-007	2011	$439,727
09-12-02-209-007	2012	$451,599
09-12-02-209-007	2013	$462,437
09-12-02-209-007	2014	$469,835

PETITIONER'S CONTENTIONS

Petitioners contend that the property should not have been retroactively uncapped by Respondent in 2006 and forward, as the property had already transferred by deed or by law in 1998. Petitioners further contend that the Tribunal only has authority to accept or reject the changes to taxable value set forth by Respondent. Petitioners contend that Respondent's increases to taxable value should be rejected, and the taxable values for each year should revert back to their original values prior to Respondent's uncapping, and increase in the future only by the Consumer Price Index. Said contentions are as follows:

Year	Contention of Taxable Value
2006	$313,113
2007	$324,698
2008	$414,899
2009	$433,154
2010	$431,854
2011	$439,195
2012	$451,053
2013	$461,878
2014	$469,268

PETITIONERS' ADMITTED EXHIBITS

P-6 Washtenaw Probate Court Order dated August 12, 1999

P-12 Affidavit of George C. Handy*

P-13 Affidavit of Duane A. Renken*

P-14 Washtenaw Probate Court Order dated May 2, 2000, and Petition.

P-15 Letter dated January 17, 2001 from Duane Renken to Diane Holaday, George C. Handy and William Lighthall enclosing distribution checks and explaining the lower amount of income.

* Motions to Admit and Objections to these exhibits were taken under advisement at hearing. The Tribunal's ruling is explained below under CONCLUSIONS OF LAW.

PETITIONERS' WITNESS

Cone William Lighthall, ("Cone").

Cone testified that his grandfather built the subject in 1955, and died in 1957, upon which his wife Emma owned the subject, who later died in the late 1980s. Upon her death, ownership was split 50% to William C. Lighthall, and 50% to June Lighthall Handy, who died in 1998. At that time, June Lighthall Handy's interest went two her two children, George and Diane. Cone noted that the property manager started making distributions of surplus from the subject, to George and Diane, along with 50% to Cone's father, William.[1] The subject is a commercial building that contains several small businesses, including a bridal shop, nail salon, tailor, insurance agency and a stamp and coin shop.[2] Cone reiterated that his father's 50% interest is held by his father's trust. Cone is currently the trustee, as his father suffers from dementia. The subject is managed by Duane Renken for as long as Cone remembers.[3] Per Cone, Renken is responsible for making distributions to the owners. Cone requested that Renken go as far back as possible to find cancelled checks for distributions of income from the property first sent to George Handy and Diane Holaday, but no one's records went back that far.[4] He testified that he was involved in managing the subject as far back as 2001. Regarding the date of transfer of the subject, Cone testified as follows:

> Q. Now, I want to confirm that -- you testified earlier, Mr. Lighthall, that it was your recollection that George Handy and Diane Holaday acquired their interest in the property in 1998 or –
> A. It was '98. It was shortly after my aunt died, and she died in February.
> Q. Okay.
> A. In fact, she had visited us that summer, the summer before, and then she passed away, I believe, at George's place in Aiken. Yeah, it was, it had to have been '98, late as '99, but I think it was '98.
> Q. Is there any reason you can think of that Diane Holaday and George Handy would have been receiving distributions from the Lighthall building if they had not acquired an interest --
> A. No, they would not have gotten any.[5]

RESPONDENT'S CONTENTIONS

[1] T. p. 20-21
[2] T. p. 21
[3] T. p. 22
[4] T. p. 28-29
[5] T. p. 32-33

Respondent contends that a 50% interest of the property was transferred in 2005, pursuant to an affidavit of lost deed filed in 2013, referencing a 2005 deed, with a copy attached. While Respondent concedes that the settlor and main beneficiary of the June Handy Trust died in 1998, Respondent further contends that there is no reliable evidence of a transfer in 1998. Therefore, the Tribunal should affirm its retroactive uncapping to tax year 2006.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Affidavit of Lost Deed dated August 20, 2013, With copy of lost deed dated July 1, 2005

R-2 Letter dated January 29, 2014 from Patricia Forner to Petitioners explaining Respondent's decision to uncap the subject, copy of Affidavit of Lost Deed dated August 20, 2013, copy of Quitclaim Deed dated July 1, 2005, Assessor Affidavits of Uncapping, for tax years 2006, 2007, 2008, 2009, 2010, 2011, 2012 and 2013.

RESPONDENT'S WITNESSES

None

FINDINGS OF FACT

1. The subject property is real property located in the City of Ann Arbor at 3360 Washtenaw Ave.[6]
2. The property is classified as non-homestead and non-qualified agricultural commercial real property.[7]
3. The subject is a commercial building that contains several small businesses, including a bridal shop, nail salon, tailor, insurance agency and a stamp and coin shop.[8]
4. On February 3, 1998, the June Lighthall Handy Trust and the William C. Lighthall Trust each owned a 50% interest in the property as tenants in common.[9]
5. On February 3, 1998, June Lighthall Handy died.[10]
6. Neither an original nor a copy of the June Lighthall Handy Trust Agreement can be located.[11]

[6] ¶1, Joint Stipulation of Facts
[7] ¶2, Joint Stipulation of Facts
[8] T. p. 21
[9] ¶3, Joint Stipulation of Facts
[10] ¶4, Joint Stipulation of Facts
[11] ¶5, Joint Stipulation of Facts

7. On August 20, 2013, an Affidavit of Lost Deed concerning the property was recorded.[12]

8. A July 1, 2005 Quit Claim Deed ("2005 Deed") was attached as an exhibit to the Affidavit of Lost Deed.

   The 2005 Deed states:

   > That COMERICA BANK, as Successor Trustee to the June Lighthall Handy Trust Agreement u/a dated 01/22/92 as amended 12/30/97 whose address is P.O. Box 75000, Detroit, Michigan 48275-3228
   >
   > Quit Claims a one-half (1/2) undivided interest to GEORGE C. HANDY, a married man, whose address is . . . and a one-half (1/2) undivided interest to DIANE HANDY HOLADAY, . . . as tenants in common and not as tenants with rights of survivorship
   >
   > * * *
   >
   > THIS DEED IS TO REPLACE AN EARLIER EXECUTED QUIT CLAIM DEED DATED FEBRUARY 13, 1998, THAT WAS LOST OR NEVER RECORDED.[13]

9. Neither an original nor a copy of a deed that conveys the June Lighthall Handy Trust's 50% interest in the Property in 1998 can be located.[14]

10. No property transfer affidavits for the subject property can be located.[15]

11. On January 29, 2014, Respondent retroactively uncapped 50% of the property for tax years 2006, 2007, 2008, 2009, 2010, 2011, 2012 and 2013.[16]

12. Per R-2, Respondent's uncapping for the above-referenced years was based upon the Affidavit of Lost Deed dated August 20, 2013, and the attached copy of the lost deed dated July 1, 2005.

13. Pursuant to two orders of the Washtenaw Probate Court dated August 12, 1999 and May 2, 2000, the beneficiaries of the June Lighthall Handy Trust were George C. Handy III and Diane Handy Holaday.

14. Based upon P-15, the January 17, 2001 letter from Duane A. Renken to Diane Holaday, George C. Handy and William Lighthall, income from the subject property was distributed at least since 2000 to Holaday, Handy and Lighthall.

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[12] ¶6, Joint Stipulation of Facts
[13] ¶7, Joint Stipulation of Facts
[14] ¶8, Joint Stipulation of Facts
[15] ¶9, Joint Stipulation of Facts
[16] ¶10, Joint Stipulation of Facts

15. Based upon the recitations in the copy of the 2005 deed, and the affidavit of Co-Petitioner George C. Handy, the June Lighthall Handy Trust quit-claimed its 50% interest in the subject property on February 13, 1998, 50% to Co-Petitioner George C. Handy and 50% to Diane Handy Holaday.
16. George C. Handy III and Diane Handy Holaday received the beneficial use of 50% of the property either through the terms of the June Lighthall Handy Trust or intestate succession in 1998 upon the death of June Lighthall Handy.
17. Pursuant to Respondent's January 29, 2014 letter, uncapping calculations contained in the Assessor Affidavit for 2008, and the Affidavit of George C. Handy, Diane Handy Holaday transferred her 25% interest in the property to Co-Petitioner William Lighthall Trust in 2007.

CONCLUSIONS OF LAW

A proceeding before the Tax Tribunal is original, independent, and de novo.[17] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[18] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[19]

The issue in this matter is:

> Whether Petitioner has proven by a preponderance of the evidence that the subject property's taxable value was improperly uncapped under MCL 211.27a [and MCL 211.27b].

Under the General Property Tax Act, property taxes are based on the property's taxable value for the tax year(s) at issue.

> MCL 211.27a provides that a property's taxable value is the lesser of the property's state equalized or capped taxable value, and a property's capped taxable value is, absent a transfer of ownership, determined mathematically by taking into consideration the prior tax year's taxable value, physical losses to the property, the lesser of the rate of inflation or 5%, and physical additions to the property, including omitted property (i.e., property not previously assessed).

MCL 211.27a(6) defines "transfer of ownership," in relevant part, as follows:

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[17] MCL 205.735a(2).
[18] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[19] *Jones & Laughlin Steel Corp, supra* at 352-353.

> 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, the following:
>
> *(a) A conveyance by deed.*
> (b) *A conveyance by land contract*. . . .
> (*c) A conveyance to a trust* . . . .
> (*d) A conveyance by distribution from a trust*, except under any of the following conditions:
> (i) If the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.
> (ii) Beginning December 31, 2014, a distribution of residential real property . . . .[20]
> (e) A change in the sole present beneficiary or beneficiaries of a trust . . . .
> (f) A conveyance by distribution under a will *or by intestate succession*, except under any of the following conditions:
> (i) If the distributee is the decedent's spouse.
> (ii) Beginning December 31, 2014, for residential real property . . . .
> (g) A conveyance by lease . . . .
> (h) Except as otherwise provided in this subdivision, a conveyance of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. . . .
> (i) A transfer of property held as a tenancy in common, *except that portion of the property not subject to the ownership interest conveyed.*
> (j) A conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed. [Emphasis added to relevant portions].

This appeal was spawned by the filing on August 20, 2013, of an Affidavit of Lost Deed,[21] which was recorded along with a copy of a lost deed dated July 1, 2005. The lost deed contained language indicating that it replaced an earlier executed deed dated February 13, 1998. As a result of the 2013 filing, Respondent retroactively uncapped 50% of the subject property going back to tax year 2006. Petitioners argue that the property originally transferred in 1998, and should have been uncapped in 1999.

Ruling regarding P-12 and P-13

Petitioners offered exhibits P-12 and P13 into evidence, and Respondent objected on grounds of hearsay. Respondent noted that Duane Renken, whose affidavit constitutes P-13 was

[20] The subject is commercial property.
[21] A copy of the Affidavit and a copy of the 2005 deed can be found in Exhibit R-1.

not called as a witness. Respondent also argued that George Handy, Co-Petitioner in this matter, whose affidavit constitutes exhibit P-12 is also hearsay. Respondent conceded that Handy resided out of state.

MCL 205.746(1) states:

> (1) In a proceeding before the tribunal all parties may submit evidence. The tribunal shall make its decision in writing. *The tribunal may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.* Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law. An objection to an offer of evidence may be made. [Emphasis added].

While Mr. Renken's affidavit appears to be hearsay, the Tribunal finds that it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In fact, Respondent's actions in uncapping this matter relied wholly upon an affidavit. As to the content of Renken's affidavit, the crux of his out of court statement is that his business records do not date back as far as 1998, but he independently recalls making distributions of cash from the property to Diane Holaday and George Handy as far back as January, 1999. While Respondent was deprived of the opportunity to cross examine Mr. Renken, it is hard to imagine that any cross was likely to undermine these statements. Accordingly, the Tribunal accepts P-13 as evidence of a prior transfer of ownership.

Exhibit P-12 was the affidavit of Co-Petitioner George C. Handy. In this affidavit, made in South Carolina, Handy sets forth the dates of various transfers of the subject property, including the February 13, 1998 transfer referenced in the July 1, 2005 lost deed attached to the August 20, 2013 Affidavit of Lost Deed. It appears on the face of the affidavit that Handy was relying upon the July 1, 2005 lost deed for this date. Additional information contained in this affidavit includes an explanation of the additional 25% uncapping that had already occurred in 2008,[22] and a short explanation as to why the Washtenaw County Probate Court entered its 1999 and 2000 orders.[23] Again, this affidavit is of the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their affairs. While it is true that Handy is a party

[22] See ¶14 of P-12. Said evidence benefits Respondent in that it supports an additional 25% uncapping that occurred in 2008. Without that evidence, the Tribunal would have very little to support an additional uncapping of taxable value found in the introductory section of this opinion.
[23] See ¶12 of P-12.

to this litigation, he lives in South Carolina. Considering the expense and inconvenience of traveling, and the relatively minor amount of tax involved, it is understandable why he would not wish to attend a hearing in Lansing. The most that would likely be gleaned by cross examination is that Mr. Handy did not have an independent recollection of the dates of the events listed. Accordingly, the Tribunal also admits Exhibit P-12. It is also notable that Respondent presented no witnesses to contradict the sworn statements made by Renken and Handy in their affidavits.

Jurisdiction of MTT

MCL 211.27b allows an assessor to retroactively adjust the taxable value and levy additional taxes that would have been levied if the transfer of ownership had been recorded, plus interest and penalty from the date the tax would have been originally levied, if the transferee fails to timely notify the assessor of the transfer.[24] It has been stipulated to that "no property transfer affidavits for the Property can be located."[25] Subsection (6) of this statute allows for appeal to the Michigan Tax Tribunal, and states:

> (6) If the taxable value of property is increased under this section, the appropriate assessing officer shall immediately notify by first-class mail the owner of that property of that increase in taxable value. *A buyer, grantee, or other transferee may appeal any increase in taxable value or the levy of any additional taxes, interest, and penalties under subsection (1) to the Michigan tax tribunal within 35 days of receiving the notice of the increase in the property's taxable value. An appeal under this subsection is limited to the issues of whether a transfer of ownership has occurred and correcting arithmetic errors. A dispute regarding the valuation of the property is not a basis for appeal under this subsection.*[Emphasis added].

Here, having determined that 50% of the property's ownership transferred in 2005, Respondent retroactively uncapped the property by 50% for tax year 2006, and levied the additional tax. Petitioners do not dispute that there was a transfer of 50% of the ownership of the subject; rather, the claim is that the transfer occurred in 1998, and that Respondent's levy is erroneous, as the subject had already transferred to the same parties in 1998.

Citing Subsection (6), Petitioners further assert that the Tribunal's jurisdiction is limited to determining whether or not there was an uncapping, and correcting arithmetical errors. Petitioners argue that this limits the Tribunal to review up or down as to whether Respondent's

[24] §27b(1)(a) and (b)
[25] ¶9 Joint Stipulation of Facts

determination is correct, and if incorrect, to restore the original assessment. In other words, Petitioners argue that the Tribunal must find that (1) no uncapping occurred in 2006 because it occurred earlier between the same parties, and (2) the Tribunal is powerless to revise the taxable value to take account of the earlier uncapping, and therefore must reject Respondent's incorrectly determined taxable value, in favor of the previous taxable value on the tax roll, which Petitioners implicitly recognize is also incorrect. The Tribunal disagrees.

In *Michigan Properties v. Meridian Twp*,[26] the Supreme Court stated as follows:

> It is apparent from these provisions [MCL 205.731, 205.732, 205.735 and 205.735a] that the Tax Tribunal has original jurisdiction over appeals regarding the valuation of property by an assessor or a March board of review and that the tribunal reviews those appeals de novo. As part of the tribunal's powers, the tribunal can affirm, reverse, or modify the decision of a March board of review, and in doing so, the tribunal is authorized to determine the property's taxable value in accordance with MCL 211.27a.
>
> The Legislature has granted the tribunal the authority to enforce a March board of review's error corrections under MCL 211.29 and MCL 211.30. Thus, the Tax Tribunal has the authority to carry out a March board of review's duty to correct a previous erroneous taxable value in order to adjust the current taxable value, thereby bringing the taxable value back into compliance with the GPTA and Proposal A. Accordingly, the Tax Tribunal Act grants the Tax Tribunal the authority to provide the relief that Toll argues for in this case.
>
> *Thus, in Toll Northville, we agree with the Tax Tribunal that it has the ability to prospectively adjust the timely challenged taxable values of Toll's parcels for tax year 2001 and subsequent years because the tax year 2000 taxable value of the parent parcel was erroneous as a result of the inclusion of unconstitutional additions. Accordingly, we reverse the Court of Appeals' judgment pertaining to Toll in MJC/Lotus Group v. Brownstown Twp., 293 Mich.App. 1, 809 N.W.2d 605 (2011).*[27][Emphasis added].

In *Michigan Properties*, the Supreme Court reversed *MJC/Lotus Group*, which had held that the Tribunal was forbidden to consider the improper calculation of the subject's taxable value for prior years in determining the taxable value for years properly before it. Petitioners are apparently advocating a similar "exclusionary rule" in the present case.

[26] 491 Mich 518; 817 NW2d 548 (2012).
[27] *Id*., p. 543-545

Petitioners argue that *Michigan Properties* is inapposite because the present case does not involve an appeal to the Board of Review. In the second portion of *Michigan Properties* pertaining to *Toll Northville*, quoted above in part, the Supreme Court held that because the Tribunal has the power to affirm, reverse or modify a Board of Review, it must also have the same powers that a Board has. While the present case never came before the Board of Review, the same logic applies. While the Tribunal may not determine the property's true cash value, it is duty-bound to properly determine the taxable value under MCL 211.27a, per MCL 205.737(1). Accordingly, as in *Michigan Properties*, the Tribunal has jurisdiction to go back to years not under appeal to properly determine the taxable value for years in which it has jurisdiction. In the present case, the Tribunal's jurisdiction begins with tax year 2006, which is the first year modified by Respondent under MCL 211.27b and appealed to the Tribunal. Accordingly, the Tribunal has the power and duty to consider and review previous taxable values to properly determine the values for 2006 forward to 2014.

Alternatively, the Tribunal has the authority to correct arithmetic errors under MCL 211.27b(6). Taxable Value under MCL 211.27a "is determined mathematically. . .". Clearly, the taxable values urged by Petitioners are mathematically (and arithmetically)[28] incorrect. If the Tribunal accepts that 50% of the property's interest uncapped in 1998 after the death of June Handy, then the arithmetic calculation for 2006 and later taxable values are incorrect as it was on the tax roll prior to Respondent's uncapping, because each relies upon an erroneous value beginning in 1999.

Transfer of ownership

The discussion above is predicated upon a finding that the property in fact transferred in 1998. Respondent points out Petitioners' failure to produce either a 1998 deed, or the June Lighthall Handy Trust document itself, and argues that Petitioners have produced no credible evidence that the title in fact transferred prior to 2005. The Tribunal disagrees. Just as the existence of the subatomic particle Higgs Boson may be inferred through other observations, the existence of the missing deed, as well as the existence of the missing trust can be inferred by

[28] Arithmetic is defined as "the science or art of computing by positive real numbers, specif. by adding, subtracting, multiplying and dividing." *Webster's NewWorld Dictionary, 2nd College Edition* (1982). The calculation of Taxable Value for each year under MCL 211.27a encompasses those arithmetic functions.

other evidence. Keeping in mind that standard of proof that Petitioners must meet is the "preponderance of evidence standard," which means the greater weight, indirect evidence as to the transfer of ownership may be adequate to establish a transfer.

Petitioners have several pieces of evidence that have convinced the Tribunal it is more likely than not that the property transferred in 1998. First of all, the parties stipulated that June Lighthall Handy died on February 3, 1998,[29] and on the date of her death, the June Lighthall Handy Trust owned 50% of the subject.[30] Secondly, the parties Joint Stipulation states in part,

> 7. A July 1, 2005 Quit Claim Deed ("2005 Deed") was attached as an exhibit to the Affidavit of Lost Deed.
>
> The 2005 Deed states:
>
> > That COMERICA BANK, as Successor Trustee to the June Lighthall Handy Trust Agreement u/a dated 01/22/92 as amended 12/30/97 whose address is P.O. Box 75000, Detroit, Michigan 48275-3228
> >
> > Quit Claims a one-half (1/2) undivided interest to GEORGE C. HANDY, a married man, whose address is . . . and a one-half (1/2) undivided interest to DIANE HANDY HOLADAY, . . . as tenants in common and not as tenants with rights of survivorship
> >
> > * * *
> >
> > THIS DEED IS TO REPLACE AN EARLIER EXECUTED QUIT CLAIM DEED DATED FEBRUARY 13, 1998, THAT WAS LOST OR NEVER RECORDED.

While Respondent takes the position in 2014 that it must uncap the property effective 2006, based upon a copy of a lost deed dated July 1, 2005 which it assumes to be reliable, it also takes the position that the language contained in that very same document referencing a lost 1998 deed must be unreliable. The Tribunal finds Respondent's position to be logically inconsistent. Conveniently for Respondent, the resulting taxable value for the property is significantly higher if uncapped in 2006, as the spread between assessed and taxable value in that year is $127,011 as compared to a spread of a mere $530 in 1999.

[29] ¶4, Joint Statement of Facts
[30] ¶3, Joint Statement of Facts.

Next, Petitioners produced an Order of the Washtenaw Probate Court,[31] in *In RE June Lighthall Handy Trust Agreement U/A Dated January 22, 1992*,[32] wherein the court ordered the following on August 12, 1999:

> IT IS ORDERED that: The Trustee shall distribute trust assets according to the terms of paragraph TENTH of the Trust, equally to the two beneficiaries, George C. Handy, III and Diane Handy Holaday.
>
> Upon completion of the distribution and other duties required of the Trustee, the Trust shall terminate.

This Order clearly shows that there was a June Lighthall Handy Trust, which was the subject of probate proceedings, and that paragraph TENTH provided for the distribution of trust assets equally to George C. Handy, III and Diane Handy Holaday, the two children of June Lighthall Handy.

Petitioners also presented a second order of the Washtenaw Probate Court in this matter, dated May 2, 2000, which orders as follows:

> IT IS ORDERED THAT : The Trustee in its discretion shall retain in the trust a reserve for taxes and expenses which may be owed by the Trust. The Trustee shall distribute the balance of the Trust assets according to the terms of Paragraph TENTH of the Trust, equally to the two beneficiaries, GEORGE C. HANDY, III and DIANE HANDY HOLADAY.
>
> Upon completion of distribution and other duties required of the Trustee, the Trust shall terminate.

These two court orders conclusively prove that June Lighthall Handy's children were the intended beneficiaries of the trust. A prudent trustee, relying upon this document would likely have deeded the interest in the subject shortly after June Handy's passing in 1998, resulting in a transfer of ownership in 1999. The Tribunal holds that deeding the property in 1998 was a probable event.[33]

Even as argued by Respondent, if the existence of an executed deed dated February 13, 1998 has not been established, the property nonetheless should have been uncapped in 1999, pursuant to MCL 211.27(6)(e); a change in the sole present beneficiary or beneficiaries of the

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[31] P-6, the admission of which was stipulated to by Respondent.
[32] Probate Court Docket No. 99-0774-TI
[33] Recording the deed would also have been prudent, but apparently, was not done.

trust. As the settlor died in 1998, she could no longer be the present beneficiary. The new beneficiaries would be June Handy's children, as evidenced by the Probate Court's orders. Accordingly, uncapping for 1999 would have been required under the law even without a deed.

Finally, even if the Tribunal were to accept Respondent's argument that the trust should not be considered, because the document is unavailable 17 years later, the property should have uncapped in 1999 pursuant to MCL 211.27a(6)(f), a conveyance by distribution under a will or by intestate succession, and by the general terms found under MCL 211.27a(6). When June Lighthall Handy died in 1998, she no longer had a present interest in the property. Her interest had to go somewhere. Under the laws of intestate succession, her children would be the recipients of her present interest in the property. Exhibit P-15, the January 17, 2001 letter from Duane Renken, along with the affidavits of Renken, the testimony of Cone Lighthall, and the affidavit of George Handy all support the proposition that George Handy, and his sister Diane Holaday received the beneficial use of 50% of the subject and a present interest in 50% of the subject in 1998. Accordingly, the property should been uncapped 50% for tax year 1999, rather than 2006, since the present interest in the property in 2006 was in fact the same as in 1999.

The Tribunal, relying upon the schedule of state equalized and taxable values going back to 1998, attached to each party's Prehearing Statements, has determined that 50% of the subject should have uncapped for tax year 1999. That figure was carried forward by applying the Consumer Price Index factor to each year, until 2008, when an additional 25% uncapped, and that new taxable value was carried forward by applying the applicable Consumer Price Index factor. A summary of these calculations, along with Petitioner's contentions is provided below.

Year	SEV	R's revised TV	% uncapped	CPI	MTT's TV
1998	$258,800	$258,800			
1999	$264,000	$262,940	50%	1.016	$263,470
2000	$268,400	$267,935		1.019	$268,475
2001	$301,700	$276,508		1.032	$277,066
2002	$315,900	$285,356		1.032	$285,932
2003	$342,900	$289,636		1.015	$290,220
2004	$447,300	$296,297		1.023	$296,895

2005	$544,200	$303,111		1.023	$303,723
2006	$568,400	$440,756		1.033	$313,745
2007	$627,500	$457,063		1.037	$325,353
2008	$663,100	$516,456	25%	1.023	$415,402
2009	$666,800	$539,180		1.044	$433,679
2010	$652,000	$537,962		0.997	$432,377
2011	$630,200	$546,700		1.017	$439,727
2012	$633,400	$561,460		1.027	$451,599
2013	$660,600	$574,935		1.024	$462,437
2014	$674,100	$584,133		1.016	$469,835

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property's TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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 within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the $50.00 filing fee, within 21 days from the date of entry of this final decision.[34] A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion for reconsideration was served on the opposing party.[35] However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.[36]

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.[37] If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the $100.00 fee for the certification of the record on appeal.[38]

By_____David B. Marmon_____

Entered: January 22, 2016

[34] See TTR 257 and TTR 217.
[35] See TTR 225.
[36] See TTR 257.
[37] See MCR 7.204.
[38] See TTR 213 and TTR 217.