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

Michigan Properties LLC,
Petitioner,

v MTT Docket No. 334137

Township of Meridian,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION FOR RESPONDENT

On March 10, 2008, Petitioner filed a motion requesting the Tribunal to grant judgment for Petitioner in the above-captioned case pursuant to MCR 2.116(C)(9) and (10). In support of its Motion, Petitioner states:

1. "Petitioner acquired ownership of the Subject Property in December 2004. In January 2005 Petitioner timely filed with Respondent a properly prepared Form L-4260 Property Transfer Affidavit."

2. "Notwithstanding Petitioner's timely filing of a property transfer affidavit regarding the 2004 transfer of ownership of the Subject Property, Respondent did not 'uncap' the taxable value of Petitioner's Property for the 2005 tax year pursuant to MCL 211.27a(3)."

3. "Instead, Respondent waited until the 2006 tax year and then illegally 'uncapped' the 2005 taxable value."

4. "As a result, Petitioner filed an appeal in 2006 with the…Tribunal...Thereafter on February 1, 2007, a Consent Judgment was entered by the Tribunal reducing the 2005 taxable value for the Subject Property back to its original 'capped' value."

5. "Shortly after the February 1, 2007 Consent Judgment was entered, Respondent again, illegally 'uncapped' the taxable value of the Subject Property, this time just for the 2007 tax year. As a result of Respondent's illegal uncapping of the Subject Property's taxable value for the 2007 tax year, Petitioner filed this second appeal."

6. "Petitioner is entitled to summary disposition because, as a matter of law, Respondent's 'uncapping' of the taxable value of the Subject Property, which occurred three years after the date of the transfer and the timely filing of the transfer affidavit relating thereto, was illegal and violated Article IX, § 3 of the Michigan Constitution and MCL 211.27a."

7. "Under Proposal A. once a property is transferred, the taxable value can only be 'uncapped' for the year following the year of the transfer. This 'uncapped' taxable value

is based upon the state equalized value of the property as of the year immediately after the transfer of said property…Here, it is undisputed that the transfer of the Subject Property occurred in December 2004, and Petitioner timely filed the Transfer Affidavit. Therefore, under Proposal A, in 2005 Respondent could have 'uncapped' the Subject Property's taxable value for tax year 2005 (the year following the transfer), and only for 2005. Respondent, however, failed to do so, and this Respondent failure was previously litigated and resolved by the parties and the Tribunal in the 2006 Appeal. Pursuant to the Consent Judgment entered by the Tribunal, a corrected 2005 taxable value was then established. As a result, for every year thereafter, beginning with tax year 2006, under Proposal A (absent any losses or additions) Respondent is only permitted to increase annually the taxable value of the Subject Property by either the rate of inflation or 5%, whichever is less, until the year after ownership of the Subject Property is transferred again. Since 2004 the Subject Property has not been transferred; nor have there been any additions."

8. "Respondent has informed Petitioner that it relied on a State Tax Commission…2005 Supplement to STC Bulletin No. 12 0f 1997…to support its claim that Respondent may 'uncap' the Subject Property in 2007 because there had been a prior transfer three years ago in December 2004…Respondent's position is wrong as a matter of law, and should be rejected…[U]nder Proposal A the Subject Property if forever 'capped' (based on inflation increase at most) for future tax years until there is another transfer…Since there was no transfer of the Subject Property in 2006, there is no constitutional or statutory basis for Respondent to 'uncap' the taxable value of the Subject Property for 2007…The Tribunal is required to apply Proposal A's clear and unambiguous statutory language as it is written….The rules of interpretation do not permit the Tribunal to adopt a strained construction adverse to the Legislature's intent…Here, to allow Respondent to reassess/'uncap' the 2007 taxable value three years after the transfer, and after the entry of the Consent Judgment in the 2006 Appeal, would not just be a strained construction of Proposal A, it would be a direct contradiction."

9. "[T]he Tribunal should not rely on and/or adopt the STC Bulletin because it does not have the force of law, is not a properly promulgated administrative rule, and directly contradicts Michigan statutory law and the Michigan Constitution."

10. "[E]ven assuming, arguendo, that there were some sort of legal basis for 'uncapping' the 2007 taxable value based upon the 2004 transfer – which there clearly is not – Respondent's effort to relitigate this issue of uncapping the taxable value of the Subject Property is still barred by the doctrines of res judicata and/or collateral estoppel. In particular, the doctrine of res judicata prevents parties from relitigating the same causes of action, over and over…Similarly, collateral estoppel 'precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceedings culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding…Here, in the 2006 Appeal Petitioner and

> Respondent litigated before this Tribunal the issue of 'uncapping' the taxable value of the Subject Property as a result of the 2004 transfer. The 2006 Appeal culminated in a valid final judgment (i.e., the Consent Judgment), which specifically addressed and provided a taxable value for the Subject Property for 2005, pursuant to Proposal A. Respondent's claim is not only wrong for the legal reasons discussed but also, as a matter of law, Respondent is now collaterally estopped and/or barred by the doctrine of res judicata from rearguing to this Tribunal that the Subject Property's post-2004 taxable values should still be uncapped based upon this 2004 transfer."

Respondent filed a response to the Motion on March 19, 2008. In support of its response, Respondent states:

1. "When it discovered the mistake, on October 26, 2006, the Township sent a letter to Petitioner, indicating that it was planning on asking the December 2006 Board of Review to uncap the taxable value of the property retroactively for 2005."

2. "Rather than expend fees to contest the matter, the parties entered into a Stipulation for a Consent Judgment reversing the uncapping for 2005. The Stipulation specifically indicated that 'Respondent reserves its right to petition the March 2007 (or any year thereafter) Board of review for uncapping relief regarding such property.' Thereafter, the Tribunal entered a Consent Judgment pursuant to the stipulation."

3. "In accordance with State Tax Commission Bulletin No. 9 of 2005, the Township issued its 2007 assessment based on the capped value of the property. Subsequently, the Township filed an appeal with the March Board of Review, indicating its plan to uncap the taxable value for 2007. The Board of Review uncapped the taxable value as requested by the Township and as directed by the State Tax Commission Bulletin."

4. "Because it is clear that the property transferred in the present case, Mich Const 1963 art 9, § [3] is not violated. The only issue is whether the general property tax statutes…have been."

5. "Nothing in [MCL 211.27a] prohibits the action that the Township took in this case. It is uncontroverted that a transfer took place in 2004. Hence, if the Township assessor had not mistakenly failed to notice the property transfer, the property would have been uncapped in 2005, and the new assessment in 2007 would not be an issue. The paragraph does not prohibit an uncapping in a later year; it simply does not deal with the situation at hand."

6. "Petitioner has already received a windfall for the years due to the Township's mistake; its incorrect reading of the Constitution and the statutes would allow it to continue to receive a windfall until it transferred the property again. This is certainly not the intent of the public in enacting Mich Const 1963 art 9, §[3]."

7. "The Township did not unilaterally uncap the assessment. Instead, pursuant to the State Tax Commission Bulletin, it filed an appeal with the March Board of Review. And the uncapping occurred there, pursuant to the powers of the Board of Review…MCLA 211.30(4). Hence the uncapping occurred under the powers given to the Board of Review by the legislature."

8. "The prior case involved the 2005 assessment, while the existing case involves the 2007 assessment. Thus, they do not involve the same matter. Moreover, the stipulation for the consent judgment was entered into in December of 2006, prior to the 2007 assessment being sent out and several months before Meridian's appeal to the March Board of Review. Consequently, the validity of this latter action could not have been litigated in the prior case. More importantly, the parties specifically agreed that the Township could do what it did in the present case – the Township reserved its rights to petition the March Board of Review to uncap the assessment. Petitioner's arguments based on res judicata have no legal basis."

9. "In analyzing whether an issue was 'actually litigated' in the prior proceeding, the Court must consider whether the party against whom collateral estoppel is asserted has had a full and fair opportunity to litigate the issue…An issue is necessarily determined only if it is 'essential' to the judgment…Based on this test, collateral estoppel, if it applies at all, should be applied so as to grant summary disposition in favor of the Township."

10. "Petitioner's prior action claimed that State Tax Commission Bulletin No. 9 of 2005 governed the uncapping issue, and that the Township's actions were invalid as a result…While an administrative ruling is not binding, it is given deference and should be adopted if reasonable…A judgment was entered as a result of Petitioner's Complaint. As a result, Petitioner is now estopped from challenging the legal authority of the Bulletin. As the parties acted in reliance on, and in accordance with, the Bulletin in the prior case, Petitioner cannot at this late date claim that the Bulletin is an improper reading of Michigan law."

The Tribunal, having given due consideration to the Motion, the response, and the case file, finds:

1. There was a transfer of the subject property's ownership during the 2004 calendar year. As a result of the transfer, Petitioner timely filed the required property transfer affidavit. Although Petitioner filed a property transfer affidavit, Respondent failed to uncap the property's taxable value for the 2005 tax year, as required by MCL 211.27a.

2. Given its failure to uncap the property's taxable value for the 2005 tax year, Respondent sent a letter to Petitioner dated October 25, 2006, that provides, in pertinent part:

"During an audit of transferred properties it was brought to our attention that you purchased the subject properties December 8, 2004. The taxable values should have been uncapped for 2005 assessment roll…I have enclosed your copy of Michigan Department of Treasury form L-4054 signed by the Assessor to uncap the subject [properties'] taxable values for 2005. In addition the 2006 taxable value must be adjusted as well. This adjustment will be made by our December Board of Review."

3. Contrary to the letter, Respondent's 2006 December Board of Review took no action to adjust the property's taxable value for the 2006 tax year.

4. Petitioner timely appealed Respondent's notice of uncapping relative to the property's taxable value for the 2005 tax year (i.e., MTT Docket No. 329540). To resolve the case, the parties entered into a Stipulation for Consent Judgment. The Stipulation provides, in pertinent part:

   "This Stipulation constitutes the entire agreement between the parties, written or otherwise, as to the property's taxable value(s) ***for tax years 2005 and 2006***.

   In 2005, Respondent set taxable value(s) for the subject property (the 'Original TVs'). In 2006, Respondent increased the 2005 taxable values (the 'Current TVs'). ***This case involves an appeal of the Current TVs***. ***The parties agree that Respondent's action was not authorized and that a Consent Judgment should be entered to reverse Respondent's action and restore the Original TVs***. The parties have also agreed that the subject property's taxable value for 2006 should remain unchanged from that currently on the tax roll for 2006. ***Respondent reserves it right to petition the March 2007 (or any year thereafter) Board of Review for uncapping relief regarding the subject property***. If this case involves an appeal of the assessed value, then that claim is withdrawn." (Emphasis added.)

5. Although the Tribunal entered a Consent Judgment in MTT Docket No. 329540 adopting the Stipulation as written, the Tribunal had no authority over the property's 2006 taxable value as Respondent had not uncapped or, more appropriately, had not adjusted that value. Nevertheless, Respondent's 2006 December Board of Review would not have had any authority to adjust that value. More specifically, MCL 211.53b defines "qualified error" to mean "1 or more of the following:

   (a) A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessment of taxes.
   (b) A mutual mistake of fact.
   (c) An adjustment under section 211.27a(4) or an exemption under section 7hh(3)(b).
   (d) For board of review determinations in 2006 through 2009, 1 or more of the following:

> (i) An error of measurement or calculation of the physical dimensions or components of the real property being assessed.
> (ii) An error of omission or inclusion of a part of the real property being assessed.
> (iii) An error regarding the taxable status of the real property being assessed.
> (iv) An error made by the taxpayer in preparing the statement of assessable personal property under section 19."

11. The failure to uncap because an assessor failed to properly process a filed property transfer affidavit is a "ministerial mistake" and not a clerical error. See *International Place Apartments – IV v Ypsilanti Township*, 216 Mich App 104, 109; 548 NW2d 668 (1996). The failure to properly process a filed property transfer affidavit is also not a mutual mistake of fact (i.e., "a shared belief relied upon by the parties"). See *Ford Motor Company v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247, 256 (2006).

12. "An adjustment under section 27a(4)" relates to a recapping of taxable value.

13. "[A]n exemption under section 7hh(3)(b)" relates to a qualified business start-up exemption.

14. "An error of measurement or calculation of the physical dimensions or components of the real property being assessed" or "[a]n error of omission or inclusion of a part of the real property being assessed" relates to the valuation of property.

15. "An error regarding the taxable status of the real property being assessed" relates whether or not a property is exempt from ad valorem taxation.

16. "An error made by the taxpayer in preparing the statement of assessable personal property under section 19" relates to the valuation of incorrectly reported personal property.

17. The authority to uncap is reserved to the assessor under MCL 211.27b if a property transfer affidavit is not filed and the March Board of Review under MCL 211.29 and MCL 211.30 if a property transfer affidavit is, in fact, filed and the property's taxable value was not properly uncapped in the year following the transfer. In the instant case, a property transfer affidavit was filed and the 2006 March Board of Review had no authority over the property's taxable value for the 2005 tax year; as such, the assessor had no authority to uncap the property's taxable value for the 2005 tax year. In that regard, the Stipulation submitted in MTT Docket No. 329540 correctly asserts that "Respondent's action [in uncapping the property's taxable value for the 2005 tax year] was not authorized."

18. With respect to the authority of the March Board of Review to uncap or, more appropriately, adjust a property's taxable value for a failed uncapping, MCL 211.29 provides, in pertinent part:

> "During that day, and the day following, if necessary, the board, ***of its own motion***, or on sufficient cause being shown by a person, shall add to the roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in the township, omitted from the assessment roll. The board ***shall correct errors…in the assessment and valuation of property***. ***The board shall do whatever else is necessary to make the roll comply with this act.***" (Emphasis added.)
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> MCL 211.30 also provides, in pertinent part:
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> "At the request of a person whose property is assessed on the assessment roll or of his or her agent, and if sufficient cause is shown, the board of review shall ***correct the assessed value or tentative taxable value of the property in a manner that will make the valuation of the property relatively just and proper under this act***…The board of review, ***on its own motion***, may change assessed values or tentative taxable values." (Emphasis added.)
>
> In addition to the above, Petitioner's contention that a property's taxable value cannot be uncapped or, more appropriately, adjusted in a subsequent tax year if it is not uncapped in the year following the property's transfer ignores the dictates of MCL 211.27b and the underlying intent of MCL 211.27a (i.e., a property's taxable value becomes uncapped when there is a transfer of ownership). More specifically, Respondent's failure to properly uncap the property's taxable value is, in fact, correctable, as indicated above.

19. Petitioner's contentions regarding the application of *res judicata* and *collateral estoppel* are, under the circumstances of this case, untenable. In that regard, the Stipulation relates solely to the uncapping of the property's taxable value for the 2005 tax year and Respondent's authority, or lack thereof, to uncap that value. Further, the Stipulation does not indicate that the property's taxable value cannot be adjusted in subsequent tax years because Respondent failed to properly uncap the taxable value for the 2005 tax year. Rather, the parties apparently discussed the application of STC Bulletin No. 9 of 2005 and the parties specifically reserved to Respondent the right to request its March Board of Review in 2007 or in subsequent tax years to adjust the property's taxable value for Respondent's failure to uncap in 2005.

20. Given the above, Respondent is entitled to judgment as a matter of law and not Petitioner. See MCR 2.116(I)(2). In that regard, the property's taxable values for the 2005 and 2006 tax years are final and not subject to revision. See *Leahy v Orion Twp*, 269 Mich App 527; 711 NW2d 438 (2006). The property's taxable value for the 2007 tax year is, however, upheld as assessed given Respondent's protest to the 2007 March Board of Review and its correction to that value to make it "just and proper" under the General

Property Tax Act. As such, the property's final taxable value for the tax year at issue is as follows:

Parcel Number: 33-02-02-10-452-008

Year	TV
2007	$2,808,400

Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Summary Disposition is GRANTED in Respondent's favor.

IT IS FURTHER ORDERED that the property's taxable value for the tax year at issue is as set forth in this Order.

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 taxable value as finally shown in this Order within 20 days of the entry of the Order. See MCL 205.755.

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 90 days of the entry of the 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. 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, 2006, at the rate of 5.42% for calendar year 2007, and (ii) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

Entered: October 8, 2008

By: Kimbal R. Smith III, Tribunal Member

phg/pmk