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

Miller-Bradford & Risberg, Inc.
(Michael J. Soley, Sr.),
Petitioner,

MTT Docket No. 0357742

v

Tribunal Judge Presiding
Paul V. McCord

Negaunee Township and
Marquette County,
Respondents.

_____/

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

Jeffrey Hyman (P33490), for Petitioner.
Kevin Wm. Koch (P29640) and Cheryl L. Hill (P43370), for Respondents.

I. Introduction

This retroactive uncapping case is before the Tribunal on cross-motions for summary disposition. Here, we are once again obliged to delve into the uncapping provisions of Proposal A, the underlying purpose of which was to limit increases in property taxes as long as the property remains owned by the same party. *Klooster v City of Charlevoix*, 488 Mich 289, 296-297; 795 NW2d 578 (2011). There are, however, limited exceptions to this directive. Section 27b provides for a so-called "delayed uncapping." That is, if a property transfer affidavit has not been filed as required by MCL 211.27a(10) the assessor must retroactively adjust the taxable value to the property's state equalized value as that value existed on the date of transfer and levy

all additional taxes due for the affected tax years. This process can reach back years long after evidence may have been corrupted or disappeared, memories fade, witnesses move away or die, and companies dispose of records. Over the course of time this case has "become so complicated, that . . . no two . . . lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause: innumerable young people have married into it;" and, sadly, the original parties "have died out of it." Those words were not written about this case, see C. Dickens, Bleak House, in 1 Works of Charles Dickens 4–5 (1891), but they could have been.

On October 11, 2011, Petitioner moved pursuant to MCR 2.116(C)(10) arguing that Respondent erred in retroactively uncapping its property 11 years post as: (1) that the taxable transfer of ownership of the Subject occurred in 1989; (2) Respondent had actual notice of the 1989 transfer; and (3) in the alternative, if Respondent's delayed uncapping was proper, then Respondent made an arithmetic error in calculating Petitioner's resulting tax liability. Respondents filed their motion and brief on October 12, 2011, arguing that: (1) the taxable transfer of ownership occurred in 1996; (2) they were not properly notified of the 1996 transfer as required by MCL 211.27b(10) until 2008; and (3) they properly uncapped the Subject's taxable value retroactively to 1997.[1] Following oral argument held on the motions on October

[1] In addition to moving pursuant to MCR 2.116(C)(10), Respondents also moved, under MCR 2.116(C)(4), claiming that the Tribunal lacks jurisdiction because Petitioner did not timely protest the 1997 through 2008 assessments before Respondent's March Board of Review. As this matter arises as a result of Respondent's delayed uncapping of the Subject, Petitioner was required to file a direct appeal with the Tax Tribunal. See MCL 211.27b(6) and MCL 205.735a(6). Respondents' motion pursuant to MCR 2.116(C)(4) is without merit. Respondents also move under MCR. 2.116(C)(8) asserting that Petitioner has failed to state a claim for which relief may be granted. A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). In rendering our decision, we may only consider the pleadings. *Id.* "The motion should be granted if no factual development could possibly justify recovery." *Id.* at 130. All factual allegations in the pleadings must be accepted as true. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997). After a review of the pleadings filed in this matter, Petitioner clearly stated a

26, 2011, we decide the following questions: (1) whether the taxable transfer of the Subject occurred in 1996; We hold that it did; (2) whether Respondents were property notified of this transfer, we hold that they were not, and (3) whether Respondents committed an arithmetic error in calculating Petitioner's tax liability; they did not.

II. Background[2]

The focus of this case is a single parcel of improved commercial real property in Negaunee Township, Marquette County, Michigan and identified on Respondent's assessment roll by parcel No. 52-10-128-022-10 (the "Subject"). Petitioner, Miller Bradford & Risberg, Inc., is a Wisconsin corporation whose principal place of business was located in Sussex, Wisconsin, when the petition was filed. Petitioner is a heavy equipment and machinery dealer, with a branch office in Negaunee, Michigan. Petitioner's President, Michael J. Soley, Sr., is a Wisconsin resident.

Mr. Soley sought to purchase the Subject for Petitioner's branch office operation, a heavy equipment sales and services operation, in Negaunee Township, Michigan. [P Ex F] The Subject had been found to be a site of environmental contamination. Groundwater contamination was discovered, which may have emanated from contaminated soils associated with on-site underground storage tanks, a pump house, and a seepage pond. Lake Shore, Inc., the former owner, was obligated to remediate the environmental problems located at the Subject.

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claim that Respondent's delayed uncapping may have been in error. Accordingly, Respondent's Motion for Summary Disposition under MCR 2.116(C)(8) is denied.

[2] The following statement of the background of this case is based on the parties' motions and attached affidavits, exhibits, transcript, and the pleadings. The "facts" presented herein are stated solely for purposes of deciding the motions and are not findings of fact for this case. See MCL 205.751; MCL 24.285; *Jackhill Oil Co v Powell Production, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995) (stating that a court may not make findings of fact when deciding a summary disposition motion).

Mr. Soley was advised by his legal counsel not to enter the Subject's chain of title due to the potential liability as an owner of contaminated property. [P Ex F]

On May 16, 1989, Mr. Soley entered into a Lease/Purchase and Sale Agreement ("Agreement") with Lake Shore, Inc. to purchase the Subject property for $320,000. [P's Brief, at 3, P Ex E.] While Mr. Soley took sole possession, use, and occupancy of the property, he did not take immediate legal title to the property. Instead, the delivery of legal title was conditioned on a number of occurrences, including the payment of the purchase price by Mr. Soley and the environmental remediation of the Subject Lake Shore.

Under the Agreement, Mr. Soley paid Lake Shore $5,000 a month denominated as "rent." [P's Brief, at 4] In substance, however, $2,000 of the $5,000 monthly rent were installment payments of principal and interest applied to the $320,000 purchase price. [P's Brief, at 4.] In 1992, Lake Shore and Mr. Soley amended their Agreement to retroactive provide for an amortization schedule of the purchase price more favorable to Mr. Soley.[3] Mr. Soley bore all of the benefits and burdens of ownership during the term of this Agreement; while enjoying possession, use, and occupancy of the Subject, he bore the liabilities and costs of the Subject, including property taxes, utilities, insurance, maintenance, and repair costs. The only costs he *did not* incur were those associated with the pre-existing environmental liabilities; those remained the responsibility of Lake Shore. (P's Brief, at 5.)

Sometime before March 6, 1995, Respondent issued its notice of assessment pursuant to MCL 211.24c for the 1995 tax year to Lake Shore. [P Ex H.] In its 1995 Notice of Assessment, Respondent stated that the assessed and state equalized values of the Subject were increased to

[3] Specifically, the portion of monthly "rent" to be treated as installment payments equaled $5,000, less an amount equal to the product of the prime rate of interest plus 1.5% multiplied by the remaining balance of the purchase price. (P's Brief, at 4.)

$500,624 (equating to a market value of $1,001,250) and assigned a taxable value of $479,142. [P Ex H.] In early July, Petitioner received Respondent's bill for its summer 1995 taxes issued to Lake Shore and reflecting the same assessed and taxable values as those specified in its Notice of Assessment.

By early August 1995, the environmental remediation of the Subject was complete with the final concurrence from the Michigan Department of Environmental Quality following on November 13, 1995. [Tr 9:5-21] Mr. Soley sent Thomas E. Martin, Petitioner's local manager of its Negaunee office, a memorandum dated August 21, 1995, instructing Mr. Martin to meet with the Township assessor and negotiate a reduction in the property tax values levied against the Subject. Mr. Soley advised Mr. Martin that the purchase price for the Subject was $320,000 based on his 1989 Agreement with Lake Shore. In Mr. Soley's experience, he informed Mr. Martin that the purchase price paid for property "has historically established the value for real estate tax purposes." [P Ex H.] Mr. Soley enclosed a copy of the 1989 Agreement with his memorandum to Mr. Martin and specifically directed Mr. Martin to present the Township's assessor with a copy of the Agreement to aid in negotiations. [P's Brief, at 6, Ex H, F.] On November 30, 1995, Petitioner received Respondent's winter tax bill issued to Lake Shore based on the assessed and taxable values specified in Respondent's Notice of Assessment. [P Ex H.] On November 30, 1993, Mr. Martin sent correspondence to Respondent's clerk on Petitioner's letterhead, informing the township's clerk that: (1) while Petitioner was in receipt of Respondent's 1995 tax billings, these statements did not reflect certain "adjustments," (2) Petitioner had been previously instructed by Respondent not to pay these tax statements until the December Board of Review meets and corrected bills can be issued, and (3) along with the "reduction," to "change the address to" Petitioner's name and address. [P Ex H.]

At the December 1995 meeting of the Negaunee Township Board of Review, the Subject's 1995 assessed value was reduced from $500,624 to $300,000 and the taxable value was reduced from $479,142 to $278,518. [P Ex H.] Revised summer and winter 1995 tax bills where then issued (both in the name of Lake Shore as the "owner") reflecting the adjustments made at the December Board of Review. [P Ex H.] The Affidavit from the December 1995 Board of Review indicates "Lake Shore (Miller Bradford)" as the "owner" and states that the reason for the change was "to reflect real value change since 1993." This Affidavit is signed and verified by Respondent's former assessor, Mr. Larson. Mr. Larson has since died, along with two of the members of the December 1995 Board of Review. [Tr 32:18-19.] The third remaining member of that board of review, Mr. William Michelin, has no recollection of the events that happened at that meeting. [Tr 32:21-24.] And Petitioner's local office manager, Mr. Martin, is no longer in Petitioner's employ and his whereabouts are unknown. [P Ex F.]

On or about January 3, 1996, Oldenburg Group Inc., as successor by merger to Lake Shore, conveyed the Subject via Warranty Deed (the "Original Deed") to Michael J. Soley, Sr. and Nancy K. Soley. [P's Brief, Ex B.] This deed was misplaced and it was never recorded [P's Brief, at 1], nor was a Property Transfer Affidavit filed in 1996. Respondent issued summer and winter tax bills for each of tax years 1996 and 1997 listing Petitioner as the Subject's "owner." Respondent's tax bills for each of 1996 and 1997 show the assessed value of the Subject was returned to its pre-December 1995 level – $500,624. The taxable value on these statements, however, reflects the adjustment made by the December 1995 Board of Review, increased by the statutory formula. Respondent's property record card from the time period 1995 through 1997 also lists Petitioner as the "owner" of the Subject. [P Ex I.]

On March 19, 2008, both a replacement Warranty Deed ("Replacement Deed") and a property transfer affidavit were filed with the Marquette County Registrar of Deeds, indicating that it was a replacement deed for a warranty deed dated January 3, 1996. A copy of the Original Deed from 1996 was attached to the Replacement Deed. [P Ex B.] The Replacement Deed and the copy of the Original Deed list "Michael J. Soley, Sr. and Nancy K. Soley" as grantees.

The Marquette County Register of Deeds advised the township of this recording. Respondent's assessor determined that there had been a transfer of ownership of the property in 1996 based on the information contained on the Replacement Deed and property transfer affidavit. Such a transfer allows the township to base the taxable value of the property on the property's state equalized value for the following year without regard to the limitations imposed by Proposal A (Const 1963, art 9, § 3) and the enabling statute MCL 211.27a. Proposal A caps the amount that a property's taxable value can increase each year, even if the property's true cash value or actual market value rose at a greater rate. The taxable value is "uncapped" upon a transfer of ownership: MCL 211.27a(3) states that "the property's taxable value for the calendar year following the year of the transfer is the property's state equalized value for the calendar year following the transfer." Without a transfer of ownership, the taxable value of the property cannot be increased from one tax year to the next by more than the lesser amount of 5 percent of the assessed value of the property for the previous year or the increase in the rate of inflation from the previous year. MCL 211.27a(2).

Pursuant to MCL 211.27b, Respondent retroactively uncapped the Subject property dating back 11 years from 2008 to 1997 as follows:

Parcel Number	Year	SEV	AV	TV

52-10-128-022-10	1997	$500,624	$500,624	$500,624
52-10-128-022-10	1998	$550,624	$550,624	$514,140
52-10-128-022-10	1999	$600,000	$600,000	$522,366
52-10-128-022-10	2000	$600,000	$600,000	$532,290
52-10-128-022-10	2001	$500,000	$500,000	$500,000
52-10-128-022-10	2002	$515,000	$515,000	$515,000
52-10-128-022-10	2003	$530,000	$530,000	$522,725
52-10-128-022-10	2004	$546,400	$546,400	$534,747
52-10-128-022-10	2005	$510,000	$510,000	$510,000
52-10-128-022-10	2006	$543,000	$543,000	$526,830
52-10-128-022-10	2007	$591,900	$591,900	$546,322
52-10-128-022-10	2008	$603,400	$603,400	$558,887

On July 3, 2008, Marquette County sent Petitioner Miller-Bradford & Risberg, Inc. (Michael J. Soley, Sr.'s company) a bill for tax, interest, and penalties resulting from a delayed uncapping of the property in 2008. The total amount of the bill was $113,407.09. (P's Brief, at 2.) Petitioner then timely petitioned this Tribunal for a redetermination of Respondent's delayed uncapping decision.

III. Discussion

1. Summary Disposition Standard

Summary disposition is intended to expedite litigation and avoid unnecessary and expensive hearings of phantom factual issues. A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim. The Tribunal must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists requiring hearing. *Spiek v Dep't of Transportation*, 456 Mich 331; 572 NW2d 201 (1998). When determining whether there is a genuine issue of material fact, the admissible evidence must be viewed in the light most favorable to the non-moving party, in this instance, Respondent. *Heckman v Detroit Chief of Police*, 267 Mich App 480; 705 NW2d 689 (2005). We will render a decision on a motion for

summary disposition if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. MCR 2.116(C)(10); *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). Because summary disposition decides an issue against a party before hearing, we grant such a remedy cautiously and sparingly, and only after carefully ascertaining that the moving party has met all requirements for summary disposition. Furthermore, the Tribunal will not resolve disagreements over material factual issues through summary disposition.

2. Background "Transfers of Ownership"

Before the passage of Proposal A (Const 1963, art 9, § 3) in 1994, there was no concept of taxable value. Properties were taxed based on their state equalized value, which was half of the individual property's true cash value. Proposal A caps the amount that a property's taxable value can increase each year, even if the property's true cash value or actual market value rose at a greater rate. The limitation of Const 1963, art 9, § 3, is effectuated through MCL 211.27a.

Section 27a(1) requires that all property be assessed at 50% of its true cash value. See Const 1963, art 9, sec 3. MCL 211.27a(2), however, places a cap on or limitation on the base value used for calculating a property's annual tax burden between transfers of ownership. Specifically, MCL 211.27(a)(2) defines that tax base as the "property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the rate of inflation, plus all additions." But, Subsection (2) defers in its application to Subsection (3), which states that "upon a transfer of ownership. . . the property's taxable value *is* the property's state equalized value . . ." in the succeeding tax year. (Emphasis added.) There is no

qualification or prerequisite in the statutory language that makes it dependent on some further action, be it that of the assessor or the property owner filing a property transfer affidavit. Subsection (3) simply proclaims that the taxable value in the year following a statutory transfer of ownership is the state equalized value. In other words, starting in 1995, until there is a statutory transfer of ownership, increases in the taxable value of property will be capped at the lesser of the rate of inflation or 5%. See MCL 211.27a(2). When a transfer of ownership occurs, the cap on taxable value is removed ("uncapping") and the taxable value of the property in the year following the transfer will equal the uncapped SEV. See MCL 211.27a(3). The assessment cap will be placed back on the property for subsequent years until another statutory transfer occurs. See MCL 211.27a(4).

MCL 211.27a(6) defines "transfer of ownership" as a "conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest." MCL 211.27a(6) provides a non-exhaustive list of examples of transfers of ownership, including conveyances by deed or by land contract and conveyances by certain lease arrangements. See MCL 211.27a(6)(a), (b) and (g). From the definition of "transfer of ownership," however, MCL 211.27a(7) excludes 17 specific transfers and conveyances.

Here, there was a statutory transfer of ownership in January 1996 by operation of MCL 211.27a(6)(a), subsection (3) controls over subsection (2), and the taxable value uncaps. The operation of MCL 211.27a(3) is mandatory once a statutory transfer of ownership occurs. And a statutory transfer occurs whether or not the local assessing official is made aware of the transfer. MCL 211.27b allows for the collection of back taxes, interest, and penalties where the transferee fails to file a property transfer affidavit. MCL 211.27b(1) spells out what happens when an

uncapping occurs when the assessor's failure to adjust the taxable value is the transferee's fault. In that instance all taxes, interest, and penalties are due on discovery. *Id*.

3. Section 27a(3) "Transfer of Ownership" Occurred in 1996

a. The 1989 Lease/Purchase Agreement was in Substance, a Land Contract

Petitioner first argues that Mr. Soley acquired the Subject in May 1989 pursuant to the 1989 Agreement. We agree. For tax purposes, a transaction's substance rather than its form controls. See *General Funding Corporation v Novi*, 7 MTT 835 (1994); *Johnson Controls, Inc v Detroit*, 5 MTT 412 (1988). Though denominated as a "Lease/Purchase Agreement," the two parties clearly negotiated the sale of the Subject by a land contract. We find that the 1989 Agreement, as amended in 1992, contains all the essential terms for a land contract, such that it could be enforced by the circuit court. See *Zurcher v Herveat*, 238 Mich App 267, 291; 605 NW2d 329 (1999) ("the amount and time of installment payments and the rate of interest ... [are] essential elements of a land contract").[4] As a result, Mr. Soley acquired a legally protected ownership interest in the Subject in 1989 even though legal title did not pass until January 1996.

b. The 1989 Acquisition was not a Statutory "Transfer of Ownership"

Petitioner next argues that since Mr. Soley acquired the Subject by land contract in 1989, the later transfer of legal title in 1996 is sheltered from uncapping under MCL 211.27a(6)(b). We disagree. While MCL 211.27a(6)(b) provides that the taxable value of property conveyed by land contract "uncaps" for the calendar year following the year in which the contract is entered into and not when legal title is later recorded, the Legislature limited this treatment to land

[4] A contract for the sale of land and a "land contract" are two different legal documents. A contract for the sale of land is, simply, a purchase agreement. A land contract is an executory contract in which legal title remains in the seller/vendor until the buyer/vendee performs all the obligations of the contract while equitable title passes to the buyer/vendee upon execution of the contract. *Zurcher v Herveat*, 238 Mich App 267, 291; 605 NW2d 329 (1999).

contracts entered into after December 31, 1994. As a result, section (6)(b) does not apply by its own terms to the 1989 Lease/Purchase Agreement at issue here. Moreover, subsection (6)(b) implies that as to land contract transaction enter into before Proposal A's implementing legislation, the taxable value of property subject to these arrangements uncaps in the year succeeding when legal tile eventually passed and not the year following when the contract was entered into. In particular, it has been long understood that the expression of specific exceptions to the application of a law, as here, implies that there are no other exceptions. See *Miller v Allstate Ins Co*, 481 Mich 601, 611; 751 NW2d 463 (2008) (stating the interpretative rule *expressio unius est exclusio alterius,* i.e., "the expression of one thing is the exclusion of another"). In this case, the January 1996 conveyance of the property from Lake Shore to Mr. Soley by deed, and not the earlier 1989 Lease/Purchase Agreement, was a statutory transfer of ownership under MCL 211.27a(3) as defined in subsection (6)(a).[5]

4. Respondent was Not Properly Notified of the 1996 Transfer

Article 9, Section 3 authorized the Legislature to define when property is transferred. See Const 1963, art 9, § 3. The Legislature provided a non-exhaustive list of 10 examples of property transfers in Section 27a(6). Given the variety and diverse means by which property may be transferred, the Legislature established certain notice requirements. Section 27a(10) provides that, unless notification is provided under subsection (6), the buyer shall notify the

[5] Petitioner also argues the transaction qualifies as a conveyance by lease. According to Petitioner, because Mr. Soley had acquired the Subject under this form of conveyance before 1996 when legal titled eventually passed, no statutory transfer of ownership occurred at that time permitting Respondent to uncap the property's taxable value. We disagree. Subsection (6)(g) recognizes a transfer of ownership can occur under certain lease arrangements, specifically, a long-term lease where the total duration of the lease (including the initial term and all renewal terms) is more than 35 years or contains a bargain purchase option. Here, we do not interpret the 1989 Lease Agreement as meeting statutory requirements of MCL 211.27a(6)(g) as it was a month-to-month lease and contained no bargain purchase option. And, even if the 1989 Lease Agreement did meet these requirements, subsection (6)(g) is limited to lease conveyances entered into after December 31, 1994.

appropriate assessing office within 45 days of the transfer of ownership, on a form prescribed by the state tax commission. The form referenced in section 27a(10) is a property transfer affidavit. Section 27b(1) provides that if a property transfer affidavit has not been filed as required under MCL 211.27a(10) the assessor must retroactively adjust the taxable value to the property's state equalized value as that value existed on the date of transfer and levy all additional taxes due for the affected tax years.

Here, there is no dispute that Petitioner did not timely file the property transfer affidavit. The affidavit, submitted by Petitioner with its Motion for Summary Disposition, was filed on March 19, 2008, along with a Replacement Warranty Deed and the unrecorded Warranty Deed that indicates that legal title transferred on January 3, 1996.[6] Petitioner argues even if the 1996 conveyance from Lake Shore to Mr. Soley was a statutory transfer of ownership, Respondent is precluded from retroactively uncapping its property back to 1997 as Respondent had actual contemporaneous notice of the transfer in 1995. Petitioner cites *Morehouse v Twp of Mackinaw*, unpublished opinion per curiam of the Court of Appeals, issued March 17, 2009, (Docket No. 281483), aff'g 16 MTT 255 (2007), in support of its position.

In *Morehouse*, the Michigan Court of Appeals addressed a situation where the taxpayers purchased property on land contract, and recorded a memorandum of land contract along with a property transfer affidavit with the county register of deeds. *Morehouse, supra,* slip op at 4. The register of deeds, however, did not notify the local assessing officer that a land contract memorandum had been recorded. Further complicating matters, the property transfer affidavit

[6] By this admission, and the discussion in the accompanying text, we note that Respondent met its burden of proof under MCL 211.27(b) to establish that it was not notified of the transfer of ownership as required under Section 27a(10). See *Morehouse v Twp of Mackinaw*, 16 MTT 255, 259 (2007), overruled in part on other grounds by *Truss Development, LLC v Novi*, 19 MTT 277 (2011).

furnished by the taxpayers contained an incorrect parcel number. *Id*. Several years later, once the assessing unit became aware that a memorandum of land contract had been recorded, it retroactively uncapped the property's taxable value under MCL 211.27b(1)(a). The Court of Appeals ruled, under the facts of that case, that the taxpayers' filing of a memorandum of land contract satisfied the statutory notice requirement and the local taxing unit was prevented from retroactively uncapping the taxpayers' property. The *Morehouse* Court reasoned that since the memorandum of land contract was recorded with the register of deeds, notice should have been provided through the register of deeds, even if the property transfer affidavit did not trigger the usual internal procedures for notifying the assessor. *Id,* slip op at 4.

Petitioner also points to the Tribunal's recent decision in *Truss Development, LLC v Novi,* 19 MTT 277 (2011) (designated as precedent pursuant to MCL 205.765), for the proposition that actual contemporaneous notice on the local assessing office precludes the delayed uncapping in this case. In *Truss*, the Tribunal disagreed and declined to follow that part of the *Morehouse* decision to the extent it reasoned that recording a deed or a memorandum of land contract with the county register of deeds releases a buyer, grantee, or other transferee from its requirement to provide notice to the appropriate assessing office under MCL 211.27a(10). *Truss, supra* at 283. Petitioner argues both *Morehouse* and *Truss* involve the type of notice required to be provided to the local assessing official regarding a transfer of ownership.
In *Morehouse,* the Tribunal stated that "the testimony and evidence presented does not clearly establish that respondent did not receive sufficient notice of petitioners' purchase of property." 16 MTT at 259. Petitioner argues that the Tribunal in *Truss* was concerned with the sufficiency of the notice furnished to the local assessing officer. While Petitioner recognizes that in *Truss* the Tribunal held that the buyer must directly notify the assessor of the transfer of ownership in

the form of a property transfer affidavit, Petitioner argues that it is clear that the Tribunal's concern in Truss was that the assessor receive actual notice of the information required by MCL 211.27a(10) (e.g., the parties to the transfer, the date of the transfer, the actual consideration in exchange and the property's parcel identification number or legal description). In sum, Petitioner argues that it provided the appropriate assessing officer actual notice of the underlying transfer at issue contemporaneous at that time in the form of the 1995 meeting between Mr. Martin and the township's former assessor, Mr. Larson. The fact that the December 1995 Board of Review adjusted the assessed and taxable values of the Subject, along with the other exhibits attached to its motion evidence, corroborate that these conversations took place and Respondent acted on them. We further note that the 1996 and 1997 assessment records reflect Petitioner as the Subject's owner, whereas the assessing records from 1995 show Lake Shore as the owner of the property. Thus, according to Petitioner, actual notice was given to Respondent's assessing office before the 1996 transfer of ownership thereby satisfying the notice requirements of section 27a(10).

While we agree that the circumstantial evidence indicates that Respondent's former assessing officer had actual notice of the transfer, we do not read this Tribunal's holding in *Truss* as broadly as Petitioner. After an analysis of MCL 211.27a(10), the Tribunal in *Truss* established a bright-line rule regarding the form of statutory notice required. Specifically, the Tribunal found "that a buyer, grantee, or other transferee is *always* required to file a property transfer affidavit as provided in MCL 211.27a(10)," (*Truss, supra* at 283) with the local assessing official in order to close the delayed uncapping provision of MCL211.27b(1). Pursuant to MCL 205.765, the Chair of this Tribunal designated the Tribunal's decision in *Truss* as precedent. See *Truss, supra* at 278; see also MCL 205.765. As a result, the undersigned is

bound to follow *Truss* in this case. As Petitioner did not furnish Respondent with a property transfer affidavit in January 1996 when the deed passed, as it was required to do under MCL 211.27a(10), Respondent was required under MCL 211.27b(1)(a) to retroactively uncap the Subject's taxable value back to 1997 upon discovery in 2008. If to Petitioner this result seems harsh, it was entirely self-inflicted, as the ability to file a property transfer affidavit with the local assessing official was always within Petitioner's control.

5. *No Arithmetic Error in the Computation of Petitioner's Liability*

Finally Petitioner argues that Respondent made an arithmetical error in calculating the retroactive tax, interest, and penalty assessed to Petitioner. [P's Brief, at 6.] Specifically, Petitioner alleges that the increase in the assessed value of the Subject from that set by the December 1995 Board of Review to 1996-1997 was as a result of an arithmetical error that should be corrected under MCL 211.27b(6). [*Id*.] We disagree.

MCL 211.27b(6) provides that: [a]n 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.) There is no dispute that the 1997 SEV assigned to the Subject was $500,624. Nor is there any dispute that in computing Petitioner's retroactive tax liability, Respondent adjusted the 1997 taxable value to the Subject's then existing 1997 SEV and based its computations for the subsequent tax years on this figure. Petitioner contends that it "is not debating with the Township the actual value of the Subject property (although Petitioner believes the Township substantially and unlawfully over valued the property)" [P's Brief, at 17], but that only a "mathematical error" can explain the 66% increase in the Subject's 1996 and 1997 assessed

value from that set by the December 1995 Board of Review. Petitioner asserts that the Marquette County equalization studies showed that there was absolutely no increase, or a miniscule increase, in the value of commercial and industrial properties in1996 and 1997. [P's Brief, at 8-9.] Couched in terms of a "mathematical error," in substance, Petitioner's argument here is a value claim. The assessed value assigned to a parcel of property is the product of the property's valuation. See MCL 211.27a(1). Here, the 1997 assessed value of the Subject as determined by Respondent was $500,624 and the equalization factor applied was 1.0 resulting in a 1997 state equalized value of $500,624. Petitioner has demonstrated no arithmetical error in this computation. Instead, Petitioner's challenge to the 1997 SEV assigned to the Subject and used to compute its delayed uncapping liability is a value dispute not cognizable under MCL 211.27b.

Conclusion

Having considered the parties' cross motions for Summary Disposition under the criteria for MCR 2.116(C)(10), and based on the pleadings and other documentary evidence, the Tribunal finds that while there is no genuine issue as to any material fact, Petitioner is not entitled to judgment as a matter of law. For these reasons, Respondents' Motion for Summary Disposition is granted and Petitioner's Motion for Summary Disposition is denied.

JUDGMENT

IT IS ORDERED that Respondents' Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED.

IT IS ORDERED that Respondents' Motion for Summary Disposition under MCR 2.116(C)(4) is DENIED.

IT IS ORDERED that Respondents' Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED.

IT IS FINALLY ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

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

MICHIGAN TAX TRIBUNAL

Entered: March 28, 2012 By: Paul V. McCord