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

Central Michigan University,
Petitioner,

v

MTT Docket No. 360352

Township of Homer,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

FINAL OPINION AND JUDGMENT

On April 1, 2010, Administrative Law Judge Thomas A. Halick issued a Proposed Opinion and Judgment denying an exemption for Parcel No. 040-540-500-050-00 pursuant to MCL 211.7l. The Proposed Opinion and Judgment provided, in pertinent part:

> The parties have 20 days from date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree (i.e., exceptions). After the expiration of the 20-day time period, the Tribunal will review the Proposed Opinion and consider the exceptions, if any, and:
>
> a. Adopt the Proposed Opinion as a Final Decision.
> b. Modify the Proposed Opinion and adopt it as a Final Decision.
> c. Order a rehearing or take such other action as is necessary and appropriate.

On April 15, 2010, Petitioner filed exceptions to the Proposed Opinion, stating:

1. "There is no question that Homer Township received notice of all of the details of the gift from Rapanos to CMU as evidenced by their March 2004 Notice of Assessment for the property and Notice of the Board of Review meeting on March 8th. . . There is no question that Homer Township continued to bill CMU for summer and winter taxes through and including 2009 because the township did not believe that CMU was the state. CMU answered each bill and position statement with the position that the property was exempt."

2. "The first disputed finding of the ALJ is that the Tribunal cannot interpret MCL 2211.7l to determine that its condition are notice requirements rather than absolute choices. The ALJ held that the state must record or send registered mail notice of a transfer in the same year a deed is delivered (even if it is delivered on December 31 when the post office and register of deeds may be closed) OR forever lose the exemption from ad valorem taxes. This would be especially unjust in a case where the grantee, the CMU Trustees,

were not available; CMU in fact was closed with nothing available to the employee of the Music Department who received a deed for any direction or consultation. Such an employee may be able to receive delivery of a deed (testimony of Ms. Jennings), but not a person who could accept a deed or determine if the deed was drafted in conformity to the laws of recording; that the property was not contaminated; that the property described was the property offered; that the deed must be recorded in 2 days or mailed to the supervisor or assessor of Homer Township; all of which required knowledge of the law and location of public offices in another County, etc., etc."

3. "The ALJ states that the Tribunal cannot consider these facts or make an interpretation of a legislative [sic], however, it can be appealed to the Court of Appeals."

4. "The second objection to the Opinion of the ALJ is that he found the deed from Rapanos to CMU dated April 2, 2009, and recorded May 11, 2009 was invalid because Rapanos had no interest in the property to convey. It is suggested that the ALJ had narrowly construed the term 'ownership."

5. "Michigan Real Property Law Principles and Commentary, 3rd ed, John Cameron Jr., in volume 1, The Michigan Recording Acts, discussed the effects of recording in the state of Michigan."

6. "At Effect of Records, Sec. 11.18, p 392, he discussed the modifications to common law of the race-notice Statute of Recording. The statute protects subsequent purchasers, who qualify as bonafide purchasers for value, who record their conveyance prior to a grantee who has not recorded his conveyance, MCL 565.29."

7. "The fact that Rapanos was the record title owner of the property after 2003, made their title superior to that of CMU in all respects where they dealt with people who could acquire the property, for value. CMU did not have marketable title because any deed to CMU from Rapanos was lost before it could be reported."

8. "'The fact that a deed in the chain of title to the vendor is not recorded may warrant the purchaser's refusal of the title.' 77 Am Jur 2d, US Vendor and Purchaser §153. 'A break in the chain of title caused by the absence of a deed justifies the vendees rejection of the title. A title is rendered unmarketable where a deed in the vendor's chain of title is lost and its existence is dependent on parol evidence.' *Id*. §155. Unmarketable title does not [affect] the rights of CMU against its grantor, but is not good for much of anything other than that. *Id*."

9. "CMU could bring a quiet title action in Circuit Court claiming that a lost unrecorded deed from Rapanos to CMU was made in 2003. However, CMU

would have the burden to establish execution, valid delivery and claimed los of the unrecorded deed where the only notice of the events are found in a note from a former employee. *Pavela v Balogh et al*, 309 Mich 368; 15 NW2d 673 (1944)."

10. "In addition to CMU suffering under the threat that the lot could be transferred to a bonafide purchaser for value, CMU was also subject to the threat of a third party occupying the lot in a hostile manner and eventually acquiring rights of either title or easement across the lot."

11. "The Marketable Record Title Act (MCL 565.101 et seq) allows Rapanos, their heirs and assigns, or even third parties, to acquire title if no action is taken within the statutory period of time. It is recognized that 40 years is a long time, however, it is sufficient to show that without record title, there are hazards to CMU and some rights in Rapanos. *Fowler et al v Doan et al v Dondero et al*, 261 Mich App 595; 683 NW2d 682 (2004)."

12. "We have always understood that the ownership of property is like a bundle of sticks. After the conveyance by Rapanos to CMU, any claims between Rapanos and CMU would probably end up with CMU prevailing if they could prove that a deed was, in fact, delivered to one of their employees of Music Department and after that, disappeared. The ALJ holds that by giving a deed in 2003 Rapanos had no further interest in the lot to convey in 2009. This holding ignores the lack of title CMU has under the cited acts."

13. "It is always competent for the grantor or maker of a lost or destroyed deed or other instrument to re-execute it voluntarily if he is living and under no disability, and this method of adjusting the difficulty is to be commended on the grounds both of fair dealing and of convenience. So far as consideration for the re-executed instrument is concerned, it is of no new instrument and is supported by all of the consideration back of the first instrument.' 52 AM Jur 2d, US *Lost and Destroyed Instruments*, §9."

14. "Under the circumstances that were present in April of 2009, after CMU had discovered there was no recorded deed in 2007 and waited for two years for Rapanos either to repurchase the property or replace the lost deed, it was quite obvious that Rapanos owned an interest in the lot they had donated. That is, CMU did not have good title to the lot and could only acquire the good title by a circuit court action or a settlement of their claims."

15. "'One who is injured by the loss or destruction of a written instrument may, where he has complied with all necessary conditions precedent, invoke the aid of the courts to establish his title or rights and to procure the restoration or re-execution of the instrument.'" Id. §10.

16. "Our courts look with great favor upon settlement of issues between parties. Rapanos by executing the April 2, 2009 Deed to CMU removed their remaining rights or interest in the lot. CMU, for the first time, gained all rights to market the lot."

17. "Accordingly, the ALJ's suggesting that Rapanos had no interest in the property to convey to CMU on April 2, 2009 is incorrect. The ALJ's conclusion that the 2009 Deed failed because it was not recorded before 2003 is obvious but illogical within the context of its finding. The recorded Deed of 2009 was sufficient to meet the conditions of MCL 211.7l for the tax year 2009 and subsequent years even if the ALJ believes it does not relate back t the year 2003."

18. "In view of the above, we ask the Michigan Tax Tribunal to find that the property owned by CMU, being Unit 5, Mystic Woods, a site condominium in Homer Township, Midland County, Michigan, is tax exempt because it is owned by CMU, a constitutionally created state entity."

19. "The deed dated December 29, 2003 was delivered to an employee of CMU at her home and has never been found. The deed dated April 2, 2009 was not a new deed, but a replacement deed which was recorded in the year given while relating back to the 2003 deed, fulfilling the requirements of MCL 211.7l. The lot was exempt from taxation for 2004, to date."

20. "If MCL 211.7l is to apply to even impossible situations, the deed dated April 2, 2009 and recorded May 11, 2009 meets the requirements of MCL 211.7l resulting in tax exemption of Unit 5, Mystic Woods from the year 2009 and subsequent years."

Having reviewed the Proposed Opinion and Judgment (POJ), Petitioner's exceptions to the POJ, and the case file, the Tribunal finds:

1. The chart on page 1 of the POJ contained an error as to the subject property's true cash value. The corrected chart is:

Parcel No. 040-540-500-050-00

Year	TCV	AV/SEV	TV
2009	$32,000	$16,300	$16,300
2010*			

* Petitioner did not submit evidence of the 2010 AV or TV.

2. The 2nd finding of fact made in the POJ is in error. The finding states:

Petitioner acquired title to the subject property by a "Deed of Gift" dated December 29, 2003, which Respondent received on that same date. P1; Transcript, page 20 ("TR 20").

The finding should have stated:

Petitioner acquired title to the subject property by a "Deed of Gift" dated December 29, 2003, which *Petitioner* received on that same date. P1; Transcript, page 20 ("TR 20").

3. The Tribunal agrees that Petitioner is an "arm of the state." *Michigan State University v City of Lansing*, unpublished opinion per curiam of the Court of Appeals, decided February 15, 2005 (Docket No. 250813). However, this status does not provide Petitioner special dispensation from complying with Michigan's statutes. Contrary to Petitioner's assertion, the ALJ's statutory interpretation is correct; MCL 211.7l contains a notice requirement that may not be waived. The party claiming the exemption has the choice of one of two methods to satisfy this requirement, but notice must be provided by December 31 of the year the property is acquired. Petitioner provided no evidence that either of these methods were utilized before December 31, 2003. Moreover, testimony from Petitioner's previous general counsel, Ms. Jennings,[1] indicates that the statutory requirements were understood. When discussing the 2009 deed, Ms. Jennings stated: "Well, this time we recorded it, yes, so we did all the things that we were supposed to do under Subsection l [MCL 211.7l]." (Transcript, p48)

Petitioner argues that this statutory interpretation is unjust. The Tribunal disagrees. While the facts are different from the instant case, a similar issue was raised in *Michigan Properties, LLC v Meridian Township*, ___ Mich App ___; ___ NW2d ___ (2011). In that case, ownership of a parcel of property was transferred and the petitioner timely provided the assessing unit with the requisite property transfer affidavit. However, the assessing unit neglected to "uncap" the property's taxable value in the year following the transfer and, instead, uncapped the value in a subsequent tax year. The petitioner appealed, arguing that MCL 211.27(3) provided that a property's taxable value could only be uncapped in the year following the year in which ownership transferred. The Tribunal held for the respondent. On appeal, the Court of Appeals held that the Tribunal committed a legal error.

> Where statutory language is clear and there is no ambiguity, this Court is not permitted to engage in judicial construction. *Gateplex Molded Products, Inc v Collins & Aikman Plastics, Inc*, 260 Mich App 722, 726; 681 NW2d 1 (2004).
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> ***
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> Our conclusion is required by a well-established principle of statutory interpretation; this Court must avoid interpreting a statute in a way that would render statutory language nugatory. *Robinson v City of Lansing*, 486 Mich 1, 21; 782 NW2d 171 (2010).

[1] Ms. Eileen Jennings held that position at the time of the original conveyance.

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> There is no allegation in this case that petitioner failed to follow the proper protocol after the property transfer. Rather, for reasons that are unclear, respondent merely failed to uncap the property in a timely manner. *Id*.

In other words, the Court held that because the petitioner complied with the statutory requirements of MCL 211.27a and the respondent did not, the respondent is forever prohibited from uncapping the subject property's taxable value.

In this case, the statutory language is clear; there is no ambiguity. MCL 211.7l states that an exemption "*shall not apply*" unless notice is provided as set forth in the statute. To hold, as Petitioner appears to advocate, that this language is merely a choice and not a requirement renders this portion of the statute nugatory. Like the respondent in *Michigan Properties, LLC*, because Petitioner did not meet the statutory requirements, it is forever precluded from receiving the tax status by which it would benefit most.

4. Petitioner's other exception involves the second "Deed of Gift" dated April 2, 2009, and the ALJ's holdings as to its relevance in this matter. Specifically, Petitioner objects to the ALJ's holding that "the deed from Rapanos to CMU dated April 2, 2009 and recorded May 11, 2009 was invalid because Rapanos had no interest in the property to convey." (Petitioner's Exceptions, p5) Petitioner argues that the ALJ narrowly construed the term "ownership."

Pursuant to The Institute of Continuing Legal Education, *Michigan Real Property Law, Principles and Commentary*, Third Edition, Volume 1, p342:

> To be valid, a deed must meet certain common-law prerequisites as well as particular statutory requirements. . .To achieve common-law validity, a deed should have a competent grantor and grantee who has capacity to hold title and include a recital of consideration, a description of the property being conveyed, and words of conveyance. It must also be executed by all grantors, delivered, and accepted. To be valid under the Michigan statute of frauds, a deed must be in writing.

In this case, there is no dispute that the 2003 deed met all common-law prerequisites and that the deed was in writing. Petitioner has not asserted that the deed did not meet Michigan's statutory requirements; however, "[t]hese are probably not as necessary for the validity of the deed between the grantor and the grantee as they are for its recordability." *Id*., pp357-358. Thus, the 2003 deed was valid. If Petitioner had been able to locate the original deed, it could have been recorded at any time. For these reasons, the Tribunal agrees with the ALJ. John and Judy Rapanos had already conveyed their interest in the subject property to Petitioner. The 2009 deed, regardless of the date it was executed, does not convey the property for a second time.

Because the property had already been conveyed, the only purpose for the 2009 deed was to provide Petitioner with a deed with an original signature. With that, Petitioner could record the deed and avoid filing a claim in circuit court. If the 2003 deed had been recorded, there would have been no need for the 2009 deed. For this reason, the Tribunal finds that Petitioner acquired the subject property on December 29, 2003. Petitioner did not convey the property and, as such, could not re-acquire it in 2009. While the action of recording perfected title in Petitioner's name, it did not provide another opportunity for Petitioner to meet the notice requirements of MCL 211.7l.

5. Petitioner asserts that because the original deed dated December 29, 2003, was not recorded, John and Judy Rapanos remained the title owner of record and Petitioner did not have marketable title. (Petitioner's Exceptions, p6) However, Petitioner's argument ignores several significant facts. Petitioner filed the deed with Midland County's equalization department. Why this action was taken instead of filing the deed with Midland County's register of deeds is unknown; however, the fact remains that this action resulted in Respondent being notified, albeit not in compliance with the statute, that the property's ownership had transferred. Respondent then updated its assessment roll to reflect Petitioner, not John and Judy Rapanos, as the owner of the property.

   Clearly, the result is not the same as a properly recorded deed. However, by listing Petitioner as the owner on the assessment roll, a bonafide purchaser would most likely be placed on notice as to an issue with the chain of title and be unable to obtain title insurance, as Petitioner knows through its efforts to sell the property. The fact that a copy of the deed is held by a governmental agency provides even more uncertainty for a prospective purchaser.

   According to Petitioner: "After the conveyance by Rapanos to CMU, any claims between Rapanos and CMU would probably end up with CMU prevailing if they could prove that a deed was, in fact, delivered to one of their employees of Music Department and after that, disappeared." (Petitioner's Exceptions, p7) The Tribunal finds that this statement, while not inaccurate, is intended to give the impression that there would be difficulty in proving that the deed was delivered. In making this statement, Petitioner ignores the fact that on January 13, 2004, Petitioner's Vice President of Development & Alumni Relations sent John and Judy Rapanos a letter thanking them for their "wonderful gift" and acknowledging receipt of the deed. (P2)

In conclusion, the Tribunal adopts the April 1, 2010 Proposed Opinion and Judgment, as corrected herein, as the Tribunal's Final Opinion and Judgment in this case pursuant to MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact, as corrected herein, and Conclusions of Law in the Proposed Opinion and Judgment in this Final Opinion and Judgment.

Therefore,

IT IS ORDERED that the Administrative Law Judge's Proposed Opinion and Judgment is AFFIRMED and adopted by the Tribunal as the 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 Proposed Opinion and Judgment, Page 2, within 20 days of entry of this 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 as required by this Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. 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, 2007, at the rate of 5.81% for calendar year 2008, (ii) after December 31, 2008, at the rate of 3.315% for calendar year 2009, (iii) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (iv) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: April 26, 2011 By: Patricia L. Halm

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STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

Central Michigan University,
Petitioner,

v

MICHIGAN TAX TRIBUNAL
Property Tax Appeal
MTT Docket No. 360352

Homer Township,
Respondent.

Administrative Law Judge Presiding
Thomas A. Halick

PROPOSED OPINION AND JUDGMENT

Petitioner, Central Michigan University, appeals ad valorem property tax assessments for the 2009 and 2010 tax years levied by Respondent, Homer Township. On March 17, 2010, this matter came before the Tribunal for default hearing pursuant to Tax Tribunal Rule 247. Attorneys John J. Lynch and Paul A. Blanco appeared on behalf of Petitioner.

Petitioner claims the subject property is exempt from ad valorem taxation under MCL 211.7l. The subject's True Cash Value, State Equalized Value, or Taxable value are not at issue, and appear on the assessment rolls as follows:

Parcel No. 040-540-500-050-00

Year	TCV	AV/SEV	TV
2009	$32,00	$16,300	$16,300
2010*			

* Petitioner did not submit evidence of the 2010 AV or TV.

The Tribunal concludes that the subject is not exempt under MCL 211.7l for each year at issue. The current values on the tax rolls shall be affirmed.

Background

The subject property is a vacant site condominium lot located at East Mystic Circle, in Midland County, Michigan. On March 10, 2009, Petitioner protested the 2009 assessment to Respondent's March Board of Review, and filed this appeal by letter postmarked April 10, 2009. Respondent failed to file an answer to the petition and was placed in default. The default was not timely cured and this proceeding was conducted as a default hearing under TTR 247 in which

Respondent presented no documentary evidence or testimony. Respondent's assessor, Frank F. Gentz, and supervisor, Chad Moody, were present at the hearing, and participated in a prehearing conference where they stipulated to the authenticity and admissibility of Petitioner's exhibits. Petitioner retains the burden of proof to establish by a preponderance of the evidence that the subject property is exempt under MCL 211.7l.

Petitioner's Arguments

Petitioner's Exhibits P1 through P23 were marked and admitted into evidence without objection. Petitioner's legal position is set forth in its "Brief in Support of Petitioner's Motion for Default Hearing." Petitioner claims the subject property is exempt from ad valorem taxation under MCL 211.7l. Petitioner does not claim that the property is exempt under MCL 211.7o [property owned and occupied by a nonprofit charitable organization] or MCL 211.7n [property owned and occupied by a nonprofit educational organization]. Petitioner presented sworn testimony of Tom Trionfi, Director of Contracting, Purchasing and Health Services, Central Michigan University; Mary Cornwell, Midland County Equalization Department; and Eileen K. Jennings, General Counsel Emeritus, Central Michigan University.

Respondent's Arguments

Respondent was precluded from offering any evidence or testimony under TTR 247.
Based upon documentary evidence of record, Respondent's position is that the subject property is not exempt under any provision of the General Property Tax, because the property was not "occupied and used" for an exempt purpose. Respondent claims that this position is supported by the Midland County Equalization Department. Respondent further contends that the subject property is not owned by the "state" and is therefore not exempt under MCL 211.7l.

Tribunal's Findings of Fact

1. The subject property is a vacant lot with the following parcel identification number: 040-540-500-050-00.
2. Petitioner acquired title to the subject property by a "Deed of Gift" dated December 29, 2003, which Respondent received on that same date. P1; Transcript, page 20 ("TR 20").
3. The deed dated December 29, 2003, was hand delivered by the grantors to an employee of Central Michigan University on December 29, 2003, as established by the testimony of Eileen K. Jennings. TR 49, 50, and 51.That employee acted within the scope of her official duties when accepting the deed.
4. Petitioner was aware that the grantors intended to transfer the subject property as a gift to the university as early as November 2003. In anticipation of that gift, Mr. Thomas Trionfi sought approval from the university board of trustees to sell the property.
5. Respondent's property tax records indicate that the subject property transferred from "Rapanos, John A." to Central Michigan University on 12/29/2003 by warranty deed.
6. Exhibit P1 (the deed dated December 29, 2003) includes a time stamp indicating that the Midland County Equalization Department received either the original or a copy of the deed on January 19, 2004.
7. A handwritten notation on the deed dated December 29, 2003, added by an employee of the Midland County Equalization Department, indicates that the deed "will be recorded later," according to the testimony of Mary Cornwell. TR 12.
8. A handwritten notation on the deed dated December 29, 2003, added by an employee of the county equalization department, indicates that a "transfer of ownership" occurred in 2003, and thereafter, the property's taxable value was adjusted under MCL 211.27a for

the 2004 assessment, as a result of the transfer of ownership in 2003.

9. Petitioner did not occupy the subject property at any time.
10. On or about March 3, 2004, Petitioner received a "Notice of Assessment, Taxable Valuation, and Property Classification" from Respondent's assessor, which indicated that there was a transfer of ownership in 2003, and that the tentative assessed and taxable values for the 2004 assessment were each $16,560.
11. Petitioner received a "summer 2004" tax bill for the subject property and paid that bill on or about September 14, 2004. P5.
12. Petitioner's letter to Respondent dated July 14, 2004, objected to the 2004 summer tax bill and asserted that Petitioner is tax exempt and "does not pay property taxes." P6.
13. Respondent continued to send property tax notices and bills to Petitioner in 2005, 2006, 2007, 2008, 2009, and 2010.
14. On August 11, 2006, Respondent's assessor wrote a letter to Petitioner stating that MCL 211.7 "contains almost all the allowed exemptions" and that an exemption is allowed only for property that is "owned and used by an organization that is normally exempt from property taxes." That letter further stated that the subject parcel is a unit in a site condominium and "upon physical inspection the parcel is vacant land" that was not used by the university. P9.
15. In 2007, Petitioner entered into an agreement to sell the subject property, at which time Petitioner discovered that the original deed dated December 31, 2003, had never been recorded with the Midland County Register of Deeds. Petitioner was unable to locate the original deed, although it was in possession of a copy of the deed. TR 23.
16. There is no evidence that Petitioner filed a property transfer affidavit for the subject

property within 45 days of acquisition as required by MCL 211.27a(10).

17. Petitioner's General Counsel during the periods at issue was Eileen K. Jennings. Ms. Jennings testified that Petitioner acquired legal title to the subject property on December 31, 2003, but did not have "marketable title" because it could not locate the original deed and the original deed had never been recorded. TR 52.
18. Petitioner requested that the grantors named in the original deed issue a quitclaim deed to Petitioner in order to provide a document that could be recorded. The grantors, John A. Rapanos and Judith Ann Rapanos, did not issue a quitclaim deed.
19. John A. Rapanos and Judith Ann Rapanos delivered to Petitioner a "Deed of Gift" dated April 2, 2009, stating that the deed "conveys and warrants" the subject property to the Board of Trustees, Central Michigan University. The deed dated April 2, 2009, was recorded with the Midland County Register of Deeds on May 11, 2009, at 11:23 am. P21.
20. Ms. Jennings testified that the purpose of the April 2, 2009, deed was to allow Petitioner to record an original instrument of conveyance so that Petitioner could establish marketable title to the subject property.
21. Petitioner is a public university described in Article 8, Section 4, of the Michigan Constitution of 1963.
22. Petitioner is governed by a board of control as provided by Article 8, Section 6, of the Michigan Constitution of 1963.
23. On March 10, 2009, Petitioner protested the subject property's taxable status to Respondent's March Board of Review, which denied relief.
24. Petitioner filed this appeal in the Tax Tribunal by letter postmarked April 2, 2009.
25. Petitioner did not protest the assessment to any board of review prior to March 2009; and

did not protest to a board of review convening in July or December.

26. Respondent did not file a written answer to the Petition filed in this matter.

27. The Tribunal placed Respondent in default.

Conclusions of Law

Under the Michigan Constitution of 1963, "All political power is inherent in the people. Government is instituted for their equal benefit, security, and protection." Const 1963, art 1, sec 1.

"The legislature shall impose taxes sufficient with other resources to pay the expenses of state government." Const 1963, art 9, sec 1. The Constitution requires the taxation of real and personal property.

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. . . . Const 1963 art 9, sec 3.

Pursuant to the above constitutional mandate, the people of the State of Michigan have enacted[2], through the Legislature and Governor, the General Property Tax Act, 1893 PA 206, MCL 211.1, et seq.

The General Property Tax Act, 1893 PA 206, provides: "That all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. The act further provides:

> (1) For the purpose of taxation, real property includes all of the following:
>
> (a) All land within this state, all buildings and fixtures on the land, and all appurtenances to the land, except as expressly exempted by law. MCL 211.2

At issue in this case is the exemption for "property belonging to the state." MCL 211.7m.

[2] "The style of the laws shall be: The People of the State of Michigan enact." Mich. Const. of 1963, art 4, sec 23. Michigan laws are enacted by the "People" and are called Public Acts.

Petitioner must prove by a preponderance of the evidence that the exemption applies to the subject property.

Michigan appellate case law is clear that property owned by a public university is property "belonging to the state." *Auditor General v Regents of the University of Michigan*, 83 Mich 467; 47 NW 440 (1890). *Lucking v People, et al*, 320 Mich 495; 31 NW2d 707 (1948).

In *Lucking*, *supra*, a resident of Washtenaw County sought an order of the circuit court placing property of the University of Michigan on the property tax rolls and estopping the university from claiming exemption. The Supreme Court noted that university property is "public property, owned by the State of Michigan. Such property belonging to the State is exempt from property tax by statute. 1 Comp Laws 1929, Sec. 3395, as last amended by Act No. 24, Pub Acts 1946, 1st Ex Sess, Stat Ann 1947 Cum Supp Sec. 7.7." *Lucking*.

The basis for the exemption in *Lucking* was statutory, as it was also in the earlier case of *Auditor General v Regents of the University of Michigan*, 83 Mich 467; 47 NW 440 (1890). Neither of these cases support Petitioner's view that taxation of university property is prohibited by the constitution.

The Tribunal has held that property owned by Michigan State University is exempt under MCL 211.7l. *Michigan State University v City of Lansing*, MTT Docket No. 286639. That case was upheld by the Court of Appeals. *Michigan State University v City of Lansing*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2005, Docket No. 250813. The

property was exempt under MCL 211.7l, without regard to whether the university occupied or used the property for an exempt purpose.

In the *Michigan State University* case, the court also discussed the "notice requirement" found in the second sentence of sec. 7l, which provides:

> This exemption shall not apply to lands acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the lands are located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition. MCL 211.7l [part].

The appellate court concluded that the record contained copies of deeds and other conveyance documents, and that Respondent did not present documentary evidence to create an issue of fact "in the face of MSU's assertion that MCL 211.7l was applicable," and that Respondent did not specify how MSU failed to meet the notice requirements of the statute. The *Michigan State University* case does not support the notion that public universities are *constitutionally* exempt from property taxes, or that the notice provisions of MCL 211.7l are constitutionally infirm, or otherwise inapplicable to Petitioner.

The Tribunal decided *Michigan State University* on Petitioner's Motion for Summary Disposition. In its response to the motion, the City of Lansing claimed that the notice provisions of MCL 211.7l had not been met because "only the three oldest deeds were recorded and not all acquisitions of MSU concerning the subject property were recorded as required by law subsequent to 1966." The Tribunal found that "Petitioner's exhibits include various warranty deeds and covenant deed, evidencing title to the subject property in Michigan State University,

who notified Respondent of its ownership." *Michigan State University v City of Lansing*, MTT Docket No. 286639 (Order Granting Petitioner's Motion for Summary Disposition, dated August 19, 2003.) The Tribunal made no specific findings and noted no unresolved factual issues with regard to the manner or timing of the notice or the recordation of the deeds.

In our present case, Petitioner has not alleged or offered proofs that the deed dated December 29, 2003, was recorded or that Petitioner provided notice by registered mail to Respondent's assessor before December 31, 2003. The facts in evidence establish that the deed dated December 29, 2003, was never recorded. Further, Respondent's assessor first received actual notice of the transfer in 2004, and there is no evidence that such notice was provided by registered mail.

Petitioner takes the position that it is exempt from taxation under the state constitution, and that MCL 211.7l merely recognizes this constitutional exemption and does not create the exemption. Petitioner claims that as an autonomous public university it has the same standing as other branches of government, and that the Legislature lacks authority to tax a university in the same manner that the legislature cannot tax the judiciary or the executive branch. Petitioner contends that the Legislature lacks authority to deprive it of this exempt status by virtue of the notice requirements of section 7l. However, there is no specific exemption from property taxation in the Michigan Constitution for property owned by the state or a public university. Petitioner argues that it is an autonomous constitutionally created public university, which places it beyond the legislature's taxing authority by virtue of Const 1963, art 8, sec 4. However, there is nothing in the constitutional provisions cited that prevents the state from imposing a property tax on state

property. Petitioner's theory is contradicted by an Opinion of the Attorney General, which Petitioner cited in its brief.

> The exclusive power to authorize the imposition of taxes and special assessments is vested in the Legislature pursuant to Const 1963, arts 4 and 9. No provision of the constitution precludes the Legislature from subjecting state-owned lands under the supervision of a governing body named in Const 1963, art 8, sec 5, to the imposition of taxes and special assessments. 2001 OAG No. 7075. [Emphasis added.]

The Tax Tribunal does not have jurisdiction over constitutional questions and has no authority to hold statutes invalid. *Meadowbrook Village Assoc v Auburn Hills*, 226 Mich App 594, 596; 574 NW2d 924 (1997); *Wikman v Novi*, 413 Mich 617, 647; 322 NW2d 103 (1982); *WPW Acquisition Co v City of Troy*, 254 Mich App 6, 8; 656 NW2d 881, 883 (2002). However, a petitioner has the right to raise constitutional issues in the Tribunal to preserve them for appeal. *Town & Country Dodge, Inc v Dep't of Treasury*, 420 Mich 226, 228; 362 NW2d 618, 620 (1984).

In this case, the evidence establishes that Petitioner acquired title to the subject property on December 29, 2003, upon delivery of the Deed of Gift of that same date. See, Findings of Fact 2, 3, 5, 8, 10, 17, and 20. Therefore, the "year of acquisition," as that phrase is used in MCL 211.7l, is 2003. The statute unambiguously requires that the deed must be recorded or notice given by registered mail before December 31 of the year of acquisition (2003). It is also a fact that the original Deed of Gift dated December 29, 2003, was effective on that date but never recorded. The original Deed of Gift was lost (although Petitioner retained a photocopy of the deed). There is no evidence whatsoever that a deed or other memorandum of conveyance was recorded before

December 31 of the year of acquisition (2003). Even if the deed dated April 2, 2009, is considered a "deed or other memorandum of conveyance" it was not recorded prior to December 31, 2003, which was the year of acquisition. Recording the April 2, 2009, deed in 2009 does not comply with the requirement that the deed be recorded in the "year of acquisition." Therefore, Petitioner has not proven the occurrence of this express condition[3] to exemption under MCL 211.7l.

In addition to recordation of the deed, the statute provides for the exemption if notice is provided to the local assessing officer by "registered mail of the acquisition on or before December 31 of the year of acquisition." Petitioner does not claim that any such notice was provided before December 31, 2003. No deed was recorded and no notice was provided by registered mail. Therefore, the plain and unambiguous statutory language provides that the exemption in MCL 211.7l for public property "shall not apply" to the subject property.

"Judicial construction is not permitted if a statute's language is clear and unambiguous." *Sun Valley Foods Co v Ward*, 460 Mich 230; 596 NW2d 119 (1999); *Devormer v Devormer*, 240 Mich App 601, 605; 618 NW2d 39 (2000). "Where the statutory language is unambiguous, the plain meaning reflects the legislature's intent and the statute must be applied as written." *Tryc v Michigan Veterans' Facility*, 451 Mich 129; 545 NW2d 642 (1996); *Danse Corporation v Madison Heights*, 466 Mich 175; 644 NW2d 721 (2002).

[3] The statute plainly states that the exemption "shall not apply" unless the recordation or notification occurs before the specified date. The exemption arises only if one of those conditions occurs.

Petitioner argues that the statutory notice provisions do not apply because Respondent had actual notice of the acquisition. The evidence is inconclusive as to the precise date that Respondent first received notice that Petitioner acquired the subject property. However, there is no evidence that the assessing officer had actual notice before December 31, 2003. The 2004 assessment change notice (P4) establishes that Respondent's assessor learned of the transfer prior to the time for sending that notice on or about March 3, 2004, but this does not prove actual notice prior to December 31, 2003. Petitioner produced no documentary evidence and elicited no testimony from anyone from Respondent's assessor's office or any employee or official of Homer Township to prove that Respondent had actual notice prior to December 31, 2003. Even if Respondent had learned of the impending transaction prior to December 31, 2003, this would not satisfy the requirement that notice be provided by *registered mail*. Even if Respondent had actual notice, which has not been proven, Petitioner cites no authority that the Tribunal may disregard the plain statutory requirements.

It is not within the province of an administrative tribunal to disregard the clear directive of the Legislature and permit a different notice requirement. The Legislature clearly conditioned the exemption upon either timely *recordation* of a deed (or memorandum) or by providing actual notice to the assessor by *registered* mail, before a certain date. To excuse these requirements would invade the constitutional powers of the Legislature. There is no reason to believe that the Legislature intended to grant the exemption when the express conditions are not met.

Petitioner next argues that the failure to record the deed was cured when it recorded the second "Deed of Gift" dated April 2, 2009. P21. Petitioner claims that even if the exemption does not

apply for 2009, that it satisfied the notice requirement for 2010 by recording the second Deed of Gift on May 11, 2009. However, the first deed transferred title to Petitioner on December 29, 2003. Therefore, on April 2, 2009, the grantors (John A. Rapanos and Judith Ann Rapanos) had no interest in the property to convey. The new, original deed (P23) was executed to create an original document that could be recorded so that Petitioner would have "marketable title" to the property. Finding of Fact 20. The deed dated April 2, 2009, did not transfer ownership. Neither party claims that the second deed resulted in a "transfer of ownership" under MCL 211.27a(6). Applying the facts to the unambiguous statutory language, it is clear that the April 2, 2009, deed was not (and could not have been) recorded prior to December 31 *of the year of acquisition*. The delivery of the April 2, 2009, deed did not change the fact that the year of acquisition was *2003*.

Petitioner argues that the statute should not be interpreted to permanently disallow the exemption for all years, merely because the recordation or notice requirements were not met before December 31 of the year of acquisition. However, there is only one year of acquisition. The natural consequence of the statutory language is that the exemption under MCL 211.7l does not apply for any year unless the condition is met prior to December 31 of the year of acquisition. There is no indication from the statute that the failure to meet the condition can be cured in a subsequent year. Petitioner's General Counsel stated that in similar circumstances in other jurisdictions where the notice deadline was missed, it has consented to pay property taxes for the year after acquisition, but that property has been treated as exempt in subsequent years after providing notice (or recording the deed). As practical as that approach may be, it is not supported by the statute. Even if the exemption at issue were ambiguous, the Tribunal is precluded from adopting the liberal construction that Petitioner advocates. "Tax exemption statutes are to be

strictly construed in favor of the taxing unit." *Elias Bros Restaurants, Inc v Treasury Dep't*, 452 Mich 144, 150; 549 NW2d 837 (1996).

> Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, Taxation (4th ed.), § 672, p 1403.

The Court of Appeals recently ruled that the Tribunal "erred in imposing its view of what the statute should read instead of simply reading the definitions and provisions that the Legislature included in the act. . . ." *Paris Meadows, LLC v City of Kentwood*, ____ Mich _____; _____ NW2d _____ (2010).

JUDGMENT

IT IS ORDERED that the subject property is not exempt from property taxes under MCL 211.7l and that the assessed and taxable values for the tax years at issue are affirmed.

MICHIGAN TAX TRIBUNAL

Entered: April 1, 2010 By: Thomas A. Halick

> This Proposed Opinion and Judgment ("Proposed Opinion") was prepared by the State Office of Administrative Hearings and Rules. The parties have 20 days from date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree (i.e., exceptions). After the expiration of the 20-day time period, the Tribunal will review the Proposed Opinion and consider the exceptions, if any, and:
>
> a. Adopt the Proposed Opinion as a Final Decision.
> b. Modify the Proposed Opinion and adopt it as a Final Decision.
> c. Order a rehearing or take such other action as is necessary and appropriate.

The exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Opinion. There is no fee for the filing of exceptions. A copy of a party's written exceptions must be sent to the opposing party.