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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
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Dear Tax Tribunal Practitioner:

Tribunal Website

The Michigan Tax Tribunal has revamped the General Frequently Asked Questions located on its website at this web address: <https://www.michigan.gov/taxtrib/0,4677,7-187-67491---,00.html>

We have included more questions based on frequent inquiries and have added categories to more easily find questions. We hope you find our General FAQs to provide even more information and is easier to navigate. If you have any suggestions for additional FAQs, please email us at taxtrib@michigan.gov.

Court of Appeals Decisions

Taxable Value Uncapping

TRJ & E Props, LLC v City of Lansing, ___ Mich App ___; ___ NW2d ___ (2018) (Docket No. 338992).

Respondent appealed an order granting summary disposition to Petitioner on the basis that Respondent had erroneously uncapped the taxable value of a property transferred to Petitioner by a commonly controlled entity. The property was transferred in 2015 from TRJ Properties (“TRJ”) to Petitioner. Three brothers, Tony, Ricky, and Jeffrey, each owned 20% of TRJ, with their father Hamid owning the remaining 40%. Tony, Ricky, and Jeffrey each owned 25% of Petitioner, and their brother Eric owned the remaining 25%. Respondent argued that the two entities were not commonly controlled because Revenue Administrative Bulletin (“RAB”) 1989-48 requires that two entities must share 80% of the combined voting power for them to be commonly controlled, and the common owners represented 60% of one entity and 75% of the other. The Court held that the entities were “commonly controlled,” relying in part on the definition of common control contained in MCL 211.9o(7), which applies to personal property taxation exemption. MCL 211.9o(7) provides, in relevant part, that common control is “the possession of the power to direct or cause the direction of the management and policies of a related entity . . . by an ownership interest” The Court reasoned that, although this



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definition does not directly apply to the uncapping provision, “it is a reliable and persuasive indication of the Legislature’s intent and allows consistency throughout the [General Property

Tax Act’s] legislative scheme.” The Court concluded that the Tribunal did not err when it determined that TRJ and Petitioner were commonly controlled because Tony, Ricky, and Jeffrey controlled 60% of TRJ and 75% of Petitioner, and TRJ and Petitioner require 50% voting power and a mere majority, respectively, to act. The Court also rejected Respondent’s argument that the Tribunal was required to follow RAB 1989-48 because that bulletin imposed requirements not present in MCL 211.27a and provided no statutory construction. Because RAB 1989-48 provided no statutory construction, there was nothing for the Tribunal to respectfully consider.

Scott v South Haven, unpublished per curiam opinion of the Court of Appeals, issued April 19, 2018 (Docket No. 339007).

Petitioners appealed an opinion and order denying their motion for summary disposition and granting Respondent’s motion for summary disposition. Petitioners’ mother, Joan, created an LLC and transferred the subject property to it in 2008. Neither Joan nor the LLC ever conducted any trade or business involving the property. The LLC transferred the property back to Joan in 2013. Joan transferred the property to Petitioners in January 2014 and reserved a life estate for herself. She passed away in January 2014, and Respondent uncapped the value of the property for the 2015 tax year. Petitioners argued that the 2013 and 2014 transfers were not “transfers of ownership” under MCL 211.27a(6) asserting that the 2013 transfer was not a “transfer of ownership” under MCL 211.27a(7)(m) (entities under common control). The Court held that Joan was not a “legal entity,” reasoning that a “legal entity” under MCL 211.27a(7)(m) does not include a natural person who does not operate a sole proprietorship. Petitioners also argued that the 2014 transfer was not a “transfer of ownership” under MCL 211.27a(7)(t) (transfer to relative) because Petitioners were Joan’s children. The Court interpreted MCL 211.27a(7)(t) and MCL 211.27a(7)(c) (transfer becomes “transfer of ownership” at expiration of life estate) and concluded that MCL 211.27a(7)(c) controlled because it was a narrower exception. The Court further explained that the addition of MCL 211.27a(7)(d) (not a “transfer of ownership” where life estate expires, and transferee is child) provides an indication that the Legislature did not intend that MCL 211.27a(7)(c) have the same effect. The legislative analysis of MCL 211.27a(7)(d) is persuasive evidence that the Legislature did not intend for MCL 211.27a(7)(t) to address transfers to relatives reserving a life estate, and thus those transfers were encompassed by MCL 211.27a(7)(c). The transfer could not be governed by MCL 211.27a(7)(d) because that



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section only applies to transfers occurring on or after December 31, 2014, and the transfer in question occurred in January 2014.

Valuation

Tatarian v West Bloomfield Twp, unpublished per curiam opinion of the Court of Appeals, issued April 24, 2018 (Docket No. 338021).

Petitioner appealed the Final Opinion and Judgment of the Tribunal determining the true cash value ("TCV") of two parcels. One parcel was vacant, the other one was improved. Petitioner argued with respect to the vacant parcel that the Tribunal erred when it rejected her Wetland Determination Report ("WDR") and testimony that the land was unbuildable. Petitioner also argued that the Tribunal erred when it accepted Respondent's market approach for valuing the vacant land and rejected her taxable-value comparison approach because Respondent's analysis assumed that the vacant parcel was buildable. With respect to the improved parcel, Petitioner argued that the Tribunal erred when it adopted Respondent's cost-less-depreciation approach because the comparable properties submitted by Petitioner showed that there is a market for the improved parcel. Petitioner also argued that Respondent's sales comparison approach was unreliable because the comparables were in a premier area. The Court of Appeals held that the Tribunal properly credited Respondent's cost and market analyses and that its TCV determination was supported by substantial evidence on the record. It reasoned that the WDR was more than ten years old, Petitioner did not provide any evidence of her expertise in wetland property development, and there was a contradiction between the WDR and Respondent's wetland map as to how much of Petitioner's property was wetland. Accordingly, Petitioner had failed to show that the parcel was unbuildable. The Court rejected Petitioner's argument that the demolished improvements on the comparables utilized by Respondent increased their value. It reasoned that the purchasers of those parcels intended to remove the improvements, and the costs to do so would have driven the price down. The Tribunal's assertion that the property had value, based only on its lake access, lacked support in the record. The Court concluded that this was not problematic because it was likely an application of the Tribunal's expertise and it was not the only support for the Tribunal's conclusion. In addition, comparisons to unbuildable properties with lake access were irrelevant because there was no showing that the parcel was unbuildable. With respect to the improved property, the fact that Petitioner outbid others at auction several times and did not make improvements showed that the as-is market was limited for the property, and thus the cost-less-depreciation approach was appropriate. Under the sales comparison approach, Respondent had presented more comparable properties because Petitioner



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had presented an auction sale and a sale of a property that sold again closer to the relevant tax date for a higher price. Petitioner's analysis failed to analyze lake frontage and she failed to support her argument that Respondent's analysis relied upon properties in a premier area.

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