STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

MARLON I. BROWN, DPA
DIRECTOR

Edna R Lammert Revocable Living Trust,
Petitioner,

v

Deerfield Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MTT Docket No. 22-003321

Presiding Judge
Patricia L. Halm

ORDER CORRECTING DOCKET

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On April 17, 2024, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor. Specifically, Respondent argues that the taxable value (TV) of property owned by the Edna R. Lammert Revocable Living Trust (the subject property) was properly uncapped pursuant to MCL 211.27a(6)(e) after Edna R. Lammert, the Trust's Settlor and Initial Trustee, died on October 23, 2009. Respondent was not aware of Ms. Lammert's passing until 2022, at which point it uncapped the subject property's TV. According to Respondent, "[t]he sole issue before the Tribunal is whether property that was owned by a trust automatically becomes uncapped when the settler of the trust passes away, even if the trust has not distributed the property to the beneficiaries and remains the owner of record."[1]

On May 8, 2024, Petitioner filed a response to Respondent's motion. Also relying on MCL 211.27a(6), Petitioner argues that the subject property's TV should not have been uncapped as Patricia Mroz and her siblings had a "present beneficial interest" in the property.

On April 22, 2024, Petitioner filed a motion requesting that the Tribunal enter summary judgment in their favor. Specifically, Petitioner contends that ownership of the subject property was not transferred after Ms. Lammert's death because the Trust's property was not distributed, and the property continues to be occupied by a "beneficial owner."

[1] Respondent's Brief in Support of Motion for Summary Disposition at 1.

On April 29, 2024, Respondent filed a response in opposition to Petitioner's motion.

Having reviewed the motions, the responses, and the evidence submitted, the Tribunal finds that granting Respondent's Motion for Summary Disposition is warranted; however, Petitioner's Motion for Summary Disposition shall be denied.

RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

Respondent contends that there are no genuine issues as to any material facts and as such, it is entitled to judgment as a matter of law pursuant to MCR 2.116(C)(10).

The subject property is located at 7072 Bennett Lake Road, Deerfield Township, Michigan, and is owned by the Edna R. Lammert Revocable Living Trust (Trust), dated February 16, 1998. Ms. Lammert was the Settlor and Initial Trustee of the Trust. Ms. Lammert died on October 23, 2009. Respondent was not made aware of Ms. Lammert's death until 2022, at which point it was determined that there had been a transfer of ownership. As a result, the subject property's TV was uncapped for the 2010 tax year[2] and the subsequent years' TVs were adjusted accordingly.

Respondent contends that its decision to uncap the subject property's TV was proper under MCL 211.27a(6), which defines "transfer of ownership" as "the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest." Respondent argues that there was a transfer of ownership under MCL 211.27a(6)(e), under which a transfer of ownership includes "[a] change in the sole present beneficiary or beneficiaries of a trust . . . ." Thus, when there has been a change in present beneficiaries, a transfer of ownership occurs even if a trust has not distributed the trust's property and the trust remains the owner of record. In support of its position, Respondent cites *Fifarek House Trust v Township of Long Lake*, unpublished per curiam opinion of the Court of Appeals, issued March 7, 2017 (Docket No. 330489).

Respondent submitted the following in support of its motion:

Exhibit A: *Fifarek House Trust v Township of Long Lake*, unpublished per curiam opinion of the Court of Appeals, issued March 7, 2017 (Docket No. 330489).

Affidavit of Tamara Mattioli, Deerfield Township assessor.

PETITIONER'S RESPONSE

In their response, Petitioner argues that the Trust granted each of Ms. Lammert's children an option to purchase the subject property should Ms. Lammert decide to sell it.

[2] MCL 211.27a(3).

Because the children held this option, they had a present beneficial interest in the property prior to Ms. Lammert's death.[3]

Petitioner argues that Respondent's reliance on the Court's decisions in *Fifarek* and is misplaced, and that *Lamonte Durbrow III Trust v Township of Leelanau*[4] actually supports their position. In those cases, as in the instant case, upon the death of their parent, the children inherited a house through a trust. In *Fifarek*, the trust beneficiary, Robert Fifarek, died on August 14, 2014. However, distribution of the trust property was delayed by at least four months because the beneficiary's death had to be advertised to creditors. Thereafter, the assessor determined that there had been a change in primary beneficiaries upon the death of the trust beneficiary as the beneficial use of the property transferred to the succeeding beneficiaries. Given this, the assessor uncapped the property's 2015 TV.

After the beneficiary's death but before the trust distributed the property, the statute was amended to provide that beginning December 31, 2014, a transfer of ownership did not include a change in the sole present beneficiary or beneficiaries of a trust:

> [I]f the settlor or the settlor's spouse, or both, conveys the residential real property to the trust and the sole present beneficiary or beneficiaries are the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance.[5]

On appeal, the petitioner argued that because the trust property was not distributed until after December 31, 2014, there had not been a change in ownership under MCL 211.27a(6). The Tribunal disagreed, holding that:

> Petitioner's contention that a change in beneficiaries requires an officially executed amendment is without merit. Nothing in the plain language of MCL 211.27a(6)(e) suggests that the Legislature intended any such requirement. Instead, the language, particularly the opening phrase, acknowledges that there is not one singular method for effecting a change in beneficiaries, and indicates that any event triggering such a change is sufficient to constitute a transfer of ownership.[6]

The petitioner appealed the Tribunal's decision and on appeal presented several arguments. Pertinent to this case is the argument that because the property had not been distributed, there was not a change in the beneficiaries of the trust. Therefore,

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[3] In support of this argument, Petitioner cites *Key Furniture Co v Rovin*, 312 Mich 290, 295; 20 NW2d 194 (1945).
[4] *Lamonte Durbrow III Trust v Township of Leelanau,* unpublished per curiam opinion of the Court of Appeals, issued November 21, 2013 (Docket No. 312818).
[5] MCL 211.27a(6)(c)(ii).
[6] *Fifarek* *2.

there was not been a transfer of ownership. The Court of Appeals disagreed and held that:

> It is manifestly evident that upon Robert's death, the children became the beneficiaries of the trust, given that Dorothy [Robert's wife] and Robert were no longer alive. As such, a "change" in beneficiaries did indeed occur. As noted, MCL 211.27a(6) states that a transfer of ownership includes the conveyance of "the beneficial use of the property . . . ." The children obtained this "beneficial use" after the death of Robert.[7]

In *Lamonte Durbrow III Trust*, property owned by the decedent was transferred into a trust upon his death. The decedent's widow argued that under MCL 211.27a(6)(c), the property's TV should not have been uncapped because she was the "sole" beneficiary of the trust. As summarized by Petitioner, the Tribunal disagreed, noting that:

> [T]he trustee had the discretion to make payments to the adult children out of the corpus of the family trust, which included the residential property, and thus, the surviving spouse was not the "sole present beneficiary" of the trust. In other words, the beneficiaries had a present interest in the home, even though such interest was never exercised in their favor.[8]

"[B]ecause the surviving widow's children were potential recipients of funds under the family trust that inherited the family home, she was not the 'sole' present beneficiary of the property."[9] According to Petitioner, "[t]he Tribunal determined that the mere possibility the offspring could receive monies from the trust prior to their mother's death, negated any argument that their mother was the 'sole' present beneficiary of the trust and made them concurrent beneficiaries."[10]

PETITIONER'S MOTION FOR SUMMARY DISPOSITION

Petitioner agrees with Respondent that there are no genuine issues of material facts in this case. However, Petitioner argues that it, not Respondent, is entitled to judgment under MCR 2.116(C)(10).[11]

In their motion, Petitioner states that the subject property is known as Parcel No. 4703-01-100-003, and that the property has been titled in the Trust since approximately 1998. As of the date of the appeal, the Trust had five co-equal beneficiaries, including Patricia Mroz, Leslie Cataldo, Paula Semple, Ellen Stacks and Mark Lammert ("Beneficiaries"). For several years prior to Ms. Lammert's death on October 23, 2009, she occupied the subject property with her daughter, Leslie Cataldo, and Ms. Cataldo's

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[7] *Id*. *4.
[8] Petitioner's Brief in Support of Response to Respondent's Motion for Summary Disposition at 3.
[9] *Id*. at 2.
[10] *Id*. at 4.
[11] Petitioner's motion discussed the Court's decision in *Fifarek*. This discussion will not be repeated as it is included in Petitioner's response to Respondent's motion.

minor child. After Ms. Lammert's death, Ms. Cataldo and her child continued to occupy the subject property.

In 2022, the Trustee contacted Respondent's assessor regarding plans to partition and distribute the subject property. It was then that the assessor was informed of Ms. Lammert's death. Relying on MCL 211.27a(6)(e), Respondent determined that Ms. Lammert's death caused a *de facto* transfer of ownership. On December 9, 2022, Respondent issued a set of revised tax bills that uncapped the subject property's TV for the 2010 tax year and adjusted the TV in each subsequent tax year. According to Petitioner, this action was taken even though "the Trust has not distributed the Property to the Beneficiaries; nor has there been any order of the Livingston County Probate Court (the Court of appropriate jurisdiction over administration of the Trust) requiring such a distribution."[12]

Petitioner argues that Respondent misinterpreted MCL 211.27a(6)(e) by determining that Ms. Lammert was the "sole" present beneficiary of the Trust. Petitioner further argues that the statute does not define "present" beneficiary and that under the statute there could be more than one present beneficiary.

According to Petitioner, "[t]he purpose behind the limitation on taxable increase to residential real property is to protect residents of the property, like Leslie Cataldo, from suffering a substantial tax increase while continuing to occupy the same homestead."[13] Citing a line of cases, Petitioner argues "[i]t is a long-standing rule in this state that tax laws must be construed liberally in favor of taxpayers" and that "[t]ax laws generally will not be extended in scope by implication or forced construction, and when there is doubt, tax laws are to be construed against the government."[14] Petitioner also cites MCL 208.1103,[15] arguing that "[w]hen interpreting the Michigan tax code, the courts are directed to apply relevant provisions from the US Tax Code unless the Michigan Tax Code demands a different result."[16]

To that end, Petitioner argues that under federal law, Ms. Lammert's children were present beneficiaries of the Trust. According to Petitioner, the relevant US Tax Code provision is 26 CFR § 1.4141(c)-4 Rules for determining ownership, which states:

> **(a)** ***In general***. In determining the ownership of an interest in an organization for purposes of § 1.414(c)-2 and § 1.414(c)-3, the constructive ownership rules of paragraph (b) of this section shall apply, subject to the operating rules contained in paragraph (c). For purposes of this section the term "interest" means: in the case of a corporation, stock; *in the case of a trust or estate, an actuarial interest*; in the case

[12] Petitioner's Brief in Support of Motion for Summary Disposition at 3.
[13] Petitioner's Motion for Summary Disposition at 3.
[14] Petitioner's Brief in Support of Motion for Summary Disposition at 5.
[15] MCL 208.1103 is a section in the Michigan Business Tax Act, being MCL 208.1101 *et seq*.
[16] Petitioner's Brief in Support of Motion for Summary Disposition at 5.

> of a partnership, an interest in the profits or capital; and in the case of a sole proprietorship, the proprietorship.
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> **(b)** ***Constructive ownership***-(1) *Options. If a person has an option to acquire any outstanding interest in an organization, such interest shall be considered as owned by such person*. For this purpose, an option to acquire an option, and each one of a series of such options shall be considered as an option to acquire such interest.
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> ***
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> (3) ***Attribution from estates and trusts*** (i) *In general*. An interest in an organization (hereinafter called an "organization interest") owned, directly or indirectly, by or for an estate or trust *shall be considered as owned by any beneficiary of such estate or trust who has an actuarial interest of 5 percent or more in such organization interest*, to the extent of such actuarial interest. (Emphasis added by Petitioner).[17]

Thus, "[p]ursuant to the United States tax code, any beneficiaries of the Trust holding at least a 5% actuarial interest in the property held by the Trust, is treated as a beneficial owner of such property."[18] According to Petitioner:

> Actuarial interest is determined by a comparative analysis of the ages of the various beneficiaries to determine the likelihood that any one of them would outlive Edna Lammert. It does not take into account health factors, it is applied simply with reference to ages. Since all of Edna's children were younger than her at the time of her death, the likelihood that anyone of them would have survived her was well over the 5% threshold.[19]

Finally, Petitioner argues that even if the Tribunal agrees that there was a transfer of ownership and that the subject property's TV should have been uncapped, Respondent was only permitted to adjust the subject property's TV for the 2019 through 2022 tax years under MCL 211.27(4), resulting in a partial refund being owed to Petitioner.[20] Pursuant to MCL 211.27(4): "Notwithstanding the limitation provided in section 53b(1) on the number of years for which a correction may be made, the July or December board of review may adjust the taxable value of property under this subsection for the current year and for the 3 immediately preceding calendar years."

Petitioner submitted the following in support of their motion:

Exhibit A: Affidavit of Leslie Cataldo.
Exhibit B: Edna R. Lammert Revocable Living Trust.

[17] *Id*. at 6.
[18] Petitioner's Motion for Summary Disposition ¶ 9.a.
[19] Petitioner's Brief in Support of Motion for Summary Disposition at 6, FN 1.
[20] Petitioner's Motion for Summary Disposition at 3.

Exhibit C: Assessor Affidavit Regarding "Uncapping" of Taxable Value for the 2010 through 2022 tax years.

RESPONDENT'S RESPONSE

In its response to Petitioner's motion, Respondent argues that the United States Tax Code is not relevant in this matter and that this case must be decided based on the provisions of MCL 211.27a. Respondent further argues that MCL 211.27a(4) does not limit the uncapping of a property's TV to four years. Moreover, MCL 211.27a(10) required Petitioner to file a Property Transfer Affidavit within 45 days of the transfer of ownership. Because Petitioner failed to file an affidavit, there was a delayed uncapping as described in the Michigan State Tax Commission's Transfer of Ownership Guidelines.

Respondent relies on the Court's decisions in *Fifarek* and *Lamonte Durbrow III Trust,* discussed above. According to Respondent, "[t]he application of MCL 211.27a in those cases upheld the uncapping under facts similar if not identical to the facts in this matter."[21] Importantly, Petitioner has not cited any cases in support of their position.

Respondent submitted the following in support of their response:

Exhibit A: *Fifarek House Trust v Township of Long Lake*, unpublished per curiam opinion of the Court of Appeals, issued March 7, 2017 (Docket No. 330489).
Exhibit B: *Lamonte Durbrow III Trust v Township of Leelanau,* unpublished per curiam opinion of the Court of Appeals, issued November 21, 2013 (Docket No. 312818).
Exhibit C: *Fifarek House Trust v Township of Long Lake*, 501 Mich 909; 902 NW2d 626 (2017).

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[22] In this case, both parties move for summary disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10)

MCR 2.116(C)(10) provides for summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial

[21] Respondent's Brief in Support of Response to Petitioner's Motion for Summary Disposition at 2.
[22] See TTR 201.

judgment as a matter of law."[23] The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,[24] provided the following explanation of MCR 2.116(C)(10):

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
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> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.
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> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
>
> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[25]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[26] In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary judgment."[27] "Instead, the court's task is to review the record evidence, and

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[23] *Id*.
[24] *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996) (citations omitted).
[25] *Id*. at 361-363. (Citations omitted.)
[26] *West v General Motors Corp*, 469 Mich 177; 665 NW2d 468 (2003).
[27] *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299), citing *Skinner v Square D Co*, 445 Mich 153; 516 NW2d 475 (1994).

all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial."[28]

CONCLUSIONS OF LAW

The issue in this case is whether the subject property's TV was properly uncapped pursuant to MCL 211.27a(6)(e). To that end, Petitioner first argues that "[i]t is a long-standing rule in this state that tax laws must be construed liberally in favor of taxpayers . . . Tax laws generally will not be extended in scope by implication or forced construction, and when there is doubt, tax laws are to be construed against the government."[29] However, in *Tomra of North America Inc v Department of Treasury*,[30] the Court provided the following clarification of the interpretive standards applicable to statutory tax exemptions.

> In every case requiring statutory interpretation, we seek to discern the ordinary meaning of the language in the context of the statute as a whole . . . We take this opportunity to clarify that because the canon requiring strict construction of tax exemptions does not help reveal the semantic content of a statute, it is a canon of last resort. That is, courts should employ it only "when an act's language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity." In the present case, the canon is inapplicable because, as we explain below, the statutes are unambiguous: their ordinary meaning is discernible by reading the text in its immediate context and with the aid of appropriate canons of interpretation.[31]

Having reviewed MCL 211.27a(6)(e), the Tribunal finds that language is unambiguous. Therefore, the following longstanding principles of statutory interpretation are applicable:

> The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language. The first step in that determination is to review the language of the statute itself. Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. We may consult dictionary definitions to give words their common and ordinary meaning. When given their common and ordinary meaning, "[t]he words of a statute provide 'the most reliable evidence of its intent . . . .' "[32]

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[28] *Id.*
[29] Petitioner's Brief in Support of Motion for Summary Disposition at 5. (Citations omitted.)
[30] *Tomra of North America Inc v Department of Treasury,* 505 Mich 333; 952 NW2d 384 (2020).
[31] *Id*. at 329-344. (citations omitted.)
[32] *Spectrum Health Hospitals v Farm Bureau Mutual Insurance Company of Michigan,* 402 Mich 503, 515; 821 NW2d 117 (2023), citing *Krohn v Home-Owners Ins Co v Deyoung*, 490 Mich 869; 802 NW2d 281 (2011).

In *WPW Acquisition Co v City of Troy*,[33] the Michigan Supreme Court addressed "Proposal A" and Const 1963, art. 9, § 3, which was added to Michigan's Constitution after ratification of Proposal A.

> As is plain, this language operates to generally limit increases in property taxes on a parcel of property, as long as it remains owned by the same party, by capping the amount that the "taxable value" of the property may increase each year, even if the "true cash value," that is, the actual market value, of the property rises at a greater rate.[34]

To implement this Constitutional amendment, several statutory changes were required. One such change is found in MCL 211.27a(2) which determines, among other things, how a property's TV is calculated. Specifically:

> Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
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> (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
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> (b) The property's current state equalized valuation.

Pursuant to MCL 211.27a(3), "[u]pon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer."[35] In other words, a property's TV is "uncapped" the year following a transfer of ownership. In this case, the issue is whether Ms. Lammert's death in 2009 resulted in the subject property's ownership being transfer. If there was a transfer of ownership, the subject property's TV must be uncapped for the 2010 tax year.

"Transfer of ownership" is defined as the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest."[36] Transfer of ownership includes, but is but not limited to, "[a] change in the sole *present* beneficiary or beneficiaries of a trust . . . ."[37]

As described by Michigan's Supreme Court, MCL 211.27a(6):

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[33] *WPW Acquisition Co v City of Troy*, 466 Mich 117; 643 NW2d 564 (2002).
[34] *Id*. at 121-122.
[35] MCL 211.27a(3).
[36] MCL 211.27a(6).
[37] MCL 211.27a(6)(e). (Emphasis added.)

> [P]rovides a nonexhaustive list of examples of transfers of ownership, including conveyances by deed or by land contract and conveyances to or distributions from trusts . . . Therefore, the plain text of MCL 211.27a indicates that the Legislature did not intend that conveyances must be effected by means of a written instrument for purposes of the GPTA.[38]

"Conveyances to a trust, distributions from a trust, and conveyances by intestate succession do not require any written instrument at the time of the transfer, yet all are transfers of ownership that will uncap property."[39]

To determine whether there has been a "change in the sole present beneficiary or beneficiaries of a trust" pursuant to MCL 211.27a(6)(e), it must first be determined whether there may be more than one present beneficiary. In *Lamonte Durbrow Trust III*, the Court addressed a similar issue and while this case involved the interpretation of MCL 211.27a(6)(c), not MCL 211.27a(6)(e), both statutory provisions contain the term "sole present beneficiary." Therefore, *Lamonte Durbrow Trust III* provides guidance in this regard.[40]

In *Lamonte Durbrow Trust III,* property was transferred to a trust after the death of the settlor. The petitioner, the settlor's spouse, argued that she was the sole present beneficiary of the trust and as such, the property's TV should not have been uncapped. However, the trust provided that the trustee could pay "any part or all of the net income of the Family Trust to or for the benefit of any one or more of a group composed of Grantor's spouse, Grantor's children and the issue of any child of Grantor, in such proportions and amounts and at such times as shall be determined, in the Trustee's discretion."[41] The Court held that this language meant that there were multiple present beneficiaries, not just the settlor's spouse. The petitioner also argued that the Grantor's children and their issue were only contingent beneficiaries because it was up to the trustee to determine whether they would receive distributions from the trust. Again, the Court disagreed, holding that because "the settlor's children and their issue could receive distributions at any time, they are *present* beneficiaries, and the settlor's spouse is not the sole present beneficiary under the Trust."[42] Consistent with the above analysis, the Tribunal finds that there may be more than one present beneficiary persuasive. Thus, the question is, who were the *present* beneficiaries of the Trust.

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[38] *Klooster v City of Charlevoix*, 488 Mich 289, 297; 795 NW2d 578 (2011).
[39] *Id*. at 306.
[40] While "unpublished opinions of [the Court of Appeals] are not binding precedent . . . they may, however, be considered instructive or persuasive authority." *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010).
[41] *Lamonte Durbrow Trust III* at *2.
[42] *Id*. (Emphasis added.)

In this case, Ms. Lammert is the Settlor[43] and Initial Trustee of the Trust.[44] According to the Estates and Protected Individuals Code (EPIC),[45] "settlor" is defined as "a person, including a testator or a trustee, who creates a trust."[46] While the Trust contains several references to beneficiaries and speaks to "named beneficiaries,"[47] the only "named" beneficiary was the Settlor's spouse.[48] Therefore, to determine whether there are other beneficiaries, it is appropriate to consult EPIC. EPIC defines "beneficiary" as, among other things, "a person that is a trust beneficiary as defined in section 7103."[49] Section 7103 defines "trust beneficiary" as:

> [A] person to whom 1 or both of the following apply:
> (i) The person has a present or future beneficial interest in a trust, vested or contingent.
> (ii) The person holds a power of appointment over trust property in a capacity other than that of trustee or trust director.[50]

Black's Law Dictionary defines "beneficial interest" as:

> A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. • For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property.[51]

A review of the Trust supports a finding that Ms. Lammert held both a present and future beneficial interest in the Trust and as such, was a beneficiary of the Trust. For example, Section 1.7 <u>Distribution of Income and Principal to Settlor</u>[52] states that the Trustee may pay annual income and principal to the Settlor and those dependent upon the Settlor.[53] Subsection (B) of Section 2.6 <u>Family Trust</u> provides that the Settlor may reside at the subject property and if conveyed during her lifetime, the Settlor would retain a life estate in the subject property. These Trust provisions, at a minimum, indicate that Ms. Lammert was a *present* beneficiary of the Trust as contemplated by MCL 211.27a(6)(e).

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[43] Hereinafter, "Settlor" and Ms. Lammert will be used interchangeably.
[44] Hans J. Lammert, Ms. Lammert's husband, was designated as Successor Trustee. However, Mr. Lammert predeceased Ms. Lammert. Ellen Stacks was designated as the Alternate Successor Trustee. Pursuant to Section 1.3 of the Trust (Petitioner's Exhibit B), the Successor Trustee is effective "[u]pon the Settlor's death, incapacity or resignation from the office of Trustee."
[45] MCL 700.1101 *et seq*.
[46] MCL 700.7103(i).
[47] Petitioner's Exhibit B, Section 2.6(C)2. Hereinafter, all references to "Section" shall be construed to mean sections of the Trust unless specified otherwise.
[48] *Id*., Section 2.6(4).
[49] MCL 700.1103(f)(i).
[50] MCL 700.7103(l).
[51] *Black's Law Dictionary* (12th ed. 2024).
[52] Petitioner's Exhibit B.
[53] It is noted that while Ms. Cataldo and her child resided at the subject property when Ms. Lammert was alive, Petitioner does not argue that one or both of them were dependent upon Ms. Lammert.

However, the Trust is a *revocable* trust, meaning that it can be revoked "by the Settlor without the consent of the trustee or a person holding an adverse interest."[54] Therefore, even though Ms. Lammert was the Settlor and her interests were at stake, she was free to make changes to the Trust as she desired. As a result, her interests in the Trust were not vested. "Vested" is defined as:

> Having become a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute <a vested interest in the estate>.
>
> > "[U]nfortunately, the word 'vested' is used in two senses. Firstly, an interest may be vested *in possession*, when there is a right to present enjoyment, e.g. when I own and occupy Blackacre. But an interest may be vested, even where it does not carry a right to immediate possession, if it does confer a fixed right of taking possession in the future."
> >
> > "A future interest is *vested* if it meets two requirements: first, that there be no *condition precedent* to the interest's becoming a present estate other than the *natural expiration* of those estates that are prior to it in possession; and second, that it be *theoretically* possible to identify who would get the right to possession if the interest should become a present estate *at any time.*"[55]

"Vested interest" is defined as "[a]n interest for which the right to its enjoyment, either present or future, is not subject to the happening of a condition precedent,"[56] while "contingent interest" is defined as "[a]n interest that the holder may enjoy only upon the occurrence of a condition precedent."[57]

In this case, interests in the Trust are predicated upon the following conditions: (1) the Trust is not amended to alter the specific interest; and (2) the Trust is not revoked.[58] Interests in the Trust become vested when the Trust becomes irrevocable, which occurs when: (1) the Settler is incapacitated;[59] or (2) the Settlor dies. With this, it must be determined whether Ms. Lammert's children are also beneficiaries of the Trust and, if so, whether they are *present* beneficiaries.

Section 2.2 <u>Distribution of Assets</u> provides that upon Ms. Lammert's death, the Trust's assets shall be distributed "to the distributees described in this Trust . . . ."

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[54] MCL 700.7103(h). Assuming, arguendo, that even if Petitioner is correct that the option to purchase means that the children are present beneficiaries with an interest in the subject property, Ms. Lammert was authorized to amend or revoke the Trust without their consent.
[55] *Id.* (Citations omitted.)
[56] *Id*.
[57] *Id*.
[58] Petitioner's Exhibit B, Section 1.5 provides that the Settlor has the right to "amend, modify or revoke this Trust, in whole or in part, . . ."
[59] *Id.,* Section 1.3(D).

However, the Trust does not "describe" the distributees. Again, turning to EPIC, "distributee" is defined in pertinent part as "a person that receives a decedent's property from the decedent's personal representative or trust property from the trustee other than as a creditor or purchaser."[60] In this case, Section 2.3 Distribution of Tangible Personal Property provides that if the Settlor's spouse does not survive the Settlor, all personal property shall be distributed to Settlor's children. Thus, the Settlor's children, listed in Section 2.1 of the Trust, are distributees. Because the children will receive property upon the Settlor's death, they have a beneficial interest in the Trust and are Trust beneficiaries. However, these interests are *future* interests as they are contingent upon (1) the Trust being unchanged, and (2) the Settlor's death or incapacitation.

Trust Section I Trust for Settlor, and in particular Section 1.7 Distribution of Income and Principal to Settlor, specifies how Trust property will be distributed during the Settlor's lifetime. There are no provisions in Section I for distribution of property to anyone but the Settlor. Trust Section II Distribution and Administration of Trust Following Death of Settlor, specifies how the property will be distributed following the Settlor's death.[61]

In support of its position that the Settlor's children are *present* beneficiaries Petitioner relies upon Section 2.6 Family Trust, Distribution of the Homestead, and in particular subsection (B)(4), which states:

> In the event that the Trustee determines to sell, convey or transfer any interest in or portion of the homestead, or the whole, as provided for in subsections 1 and 2, above, the Settlor's children shall have an equal right of first refusal to purchase the interest or portion to be sold.

Petitioner argues that this provision grants them a present interest in the Trust because (1) each held an actuarial interest greater than 5%, and (2) "they held an active and non-forfeitable option to purchase the Property, which even Edna Lammert could not have erased."[62]

As to Petitioner's first argument, the Tribunal finds Petitioner's reliance on MCL 208.1103 to be without merit. MCL 208.1103 is a provision in the Michigan Business Tax Act, which is a tax imposed by the State of Michigan on business income and gross receipts. The tax at issue in this case is a property tax assessed by a local unit of government against real and personal property.[63] Other than the fact that they are both taxes, there are no similarities between the two acts. Petitioner provided no authority

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[60] MCL 700.1103(p).

[61] Petitioner's Exhibit B, Section 2.4(A) of the Trust provides that if the Settlor's spouse survives the Settlor, Trust assets shall be distributed to two other trusts, specifically The Marital Trust (Section 2.5) and the Family Trust (Section 2.6). However, if the Settlor's spouse does not survive the Settlor, all assets shall be distributed to the Family Trust (Section 2.4(D)). Thus, because the Settlor's spouse did not survive the Settlor, this language suggests that the Family Trust is at issue. However, Section 2.6, titled "Family Trust," suggests that this is not a separate trust and that it is a trust within the Trust.

[62] Petitioner's Brief in Support of Motion for Summary Disposition at 8.

[63] MCL 211.1 *et seq*.

for its argument that it is appropriate to pluck a provision from one tax statute and apply it to a completely separate and distinct tax, nor did it provide any case law in which this is acceptable. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to either sustain or reject this position.' "[64] For these reasons, the Tribunal gives this argument no further consideration.

Petitioner's second argument, that the option to purchase the subject property made Ms. Lammert's children "present" beneficiaries, fails for two reasons. First, by arguing that Ms. Lammert "could not have erased" the children's option to purchase the property, Petitioner is attempting to turn Ms. Lammert's revocable trust into an irrevocable trust,[65] contrary to Section 1.5. Petitioner provided no evidence that the Trust was changed to an irrevocable trust or that Ms. Lammert became incapacitated prior to her death. Therefore, the Trust remained revocable throughout Ms. Lammert's lifetime and the children's interest in the subject property remained contingent. Because the children did not have a vested right to exercise the option to purchase, they were not "present" beneficiaries, making Ms. Lammert the sole "present" beneficiary of the Trust.

Finally, an option to purchase, is otherwise known as a "right of first refusal." "A right of first refusal, or preemptive right, is a conditional option to purchase dependent on the landowner's desire to sell."[66] A right of first refusal is not an "option contract."

> A right of first refusal gives the promisee fewer rights than an option contract. The promisee in an option contract holds the power to purchase the property at will for the specified price during the specified period. But the option contract does not create an interest in land. Conversely, the promisee in a right of first refusal agreement cannot exercise any right to purchase property unless the seller decides to sell to a different buyer. Because the right of first refusal gives the holder fewer rights than an option, we conclude that if the latter does not create an interest in land, neither does the former. Indeed, Michigan courts have generally treated similar agreements containing first-refusal rights as contracts, not property interests, and have relied on the contractual nature of the first-refusal agreement in determining that it is not limited by the common-law rule against perpetuities.[67]

In this case, the right of first refusal is triggered when "the Trustee determines to sell, convey or transfer any interest in or portion of the homestead, or the whole, ..."[68]

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[64] *Innovation Ventures v Liquid Manufacturing*, 449 Mich 491, 518-519; 885 NW2d 861 (2016).
[65] *Black's Law Dictionary* defines "irrevocable trust" as "[a] trust that cannot be terminated by the settlor once it is created."
[66] *Randolph v Reisig*, 272 Mich App 331, 336; 727 NW2d 388 (2006).
[67] *Id*. at 338-339. (Citations omitted.)
[68] Petitioner's Exhibit B, Section 2.6(B)(4).

Therefore, the children's option to purchase/right of first refusal did not vest them with property rights to the subject property. Frankly, the option to purchase/right of first refusal was not worth the paper it was written on until such time that the children's interest vested.

For these reasons, the Tribunal finds that neither Patricia Mroz nor her siblings were "present" beneficiaries at the same time Ms. Lammert was a present beneficiary. Ms. Lammert was the sole present beneficiary during her lifetime, with the children becoming "present" beneficiaries upon her death. As a result, the subject property's TV was properly uncapped in 2010 due to a change in present beneficiaries.

In terms of the case law cited by the parties, the Tribunal agrees with Respondent that *Fifarek* is on point. In *Fifarek*, the trust contained provisions similar to those in this case. After the death of Robert Fifarek's wife, Robert became the sole remaining initial beneficiary. After examining the terms of the trust, the Court held that:

> It is manifestly evident that upon Robert's death, the children became the beneficiaries of the trust, given that Dorothy and Robert were no longer alive. As such, a "change" in beneficiaries did indeed occur. As noted, MCL 211.27a(6) states that a transfer of ownership includes the conveyance of "the beneficial use of the property . . . ." The children obtained this "beneficial use" after the death of Robert.[69]

Petitioner's final argument is that even if Ms. Lammert's death resulted in a *de facto* uncapping of the subject property's TV, Respondent overstepped its authority by uncapping the property's TV in 2010 and adjusting the TV in subsequent tax years. Petitioner contends that under MCL 211.27a(4), any uncapping should have been limited to four years. In other words, at most the subject property's TV could have been uncapped in 2019, resulting in adjustments to the 2020-2022 TVs.

Pursuant to MCL 211.27a(4):

> If the taxable value of property is adjusted under subsection (3), a subsequent increase in the property's taxable value is subject to the limitation set forth in subsection (2) until a subsequent transfer of ownership occurs. If the taxable value of property *is adjusted* under subsection (3) and the assessor determines that there *had not been a transfer of ownership*, the taxable value of the property shall be adjusted at the July or December board of review. Notwithstanding the limitation provided in section 53b(1) on the number of years for which a correction may be made, the July or December board of review may adjust the taxable value of property under this subsection for the current year and for the 3 immediately preceding calendar years. (Emphasis added.)

[69] *Fifarek* at *4.

Thus, the limitation referenced by Petitioner applies only if the assessor uncapped a property's TV and subsequently learned that there had not been a transfer of ownership. That was not what occurred in this case. Moreover, MCL 211.27(3) clearly states that when there has been a transfer of ownership, "the property's taxable value *for the calendar year following the year of the transfer* is the property's state equalized valuation for the calendar year following the transfer." (Emphasis added.) The fact that an assessor may not have been aware that a transfer of ownership occurred does not limit an assessor's ability to correct the TV in the calendar year following the transfer of ownership nor does it set in stone a clearly unlawful TV. If that were the case, property owners would have no reason to provide the notification required under MCL 211.27a(10) and would instead be incentivized to hide the fact that a transfer occurred in hopes that the transfer would never be discovered. In fact, there are several statutory provisions relating to the obligation to inform an assessor that there has been a transfer of ownership. MCL 211.27a(10) states in pertinent part:

> Unless notification is provided under subsection (6), the buyer, grantee, or other transferee of the property shall notify the appropriate assessing office in the local unit of government in which the property is located of the transfer of ownership of the property *within 45 days of the transfer of ownership*, on a form prescribed by the state tax commission that states the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description. (Emphasis added.)

In addition, MCL 211.27b(1) provides in part that:

> If the buyer, grantee, or other transferee in the immediately preceding transfer of ownership of property *does not notify* the appropriate assessing office as required by section 27a(10), the property's taxable value *must be adjusted under section 27a(3)* and, subject to subsection (9), all of the following *must be* levied:
>
> (a) *Any additional taxes* that would have been levied if the transfer of ownership had been recorded as required under this act from the date of transfer.
> (b) *Interest and penalty* from the date the tax would have been originally levied.
>
> …
>
> (d) For real property other than real property classified under section 34c as industrial real property or commercial real property, a *penalty* of $5.00 per day for each separate failure beginning after the 45 days have elapsed, up to a maximum of 1 of the following, as applicable:
> (i) For property owned and occupied as a principal residence, $200.00. As used in this subparagraph, "principal residence" means that term as defined in section 7dd.

(ii) For all other property, $4,000.00. (Emphasis added.)

Thus, not only was the assessor required to adjust the subject property's TV in 2010 and to carry that adjustment forward, but the transferee was subject to penalties as set forth in MCL 211.27b.

Finally, Ms. Mroz filed the petition in this matter as the Petitioner, stating that she is "acting" as the Trustee of the Trust and as such, she is entitled to "a refund of the additional taxes paid, with interest."[70] If Petitioner were, in fact, Trustee of the Trust, she would be a real party in interest under MCR 2.201(B)(1) and therefore have standing to appeal Respondent's decision. However, as Hans J. Lammert is deceased, the Trust provides that Ellen Stacks is the Alternate Successor Trustee.[71] Petitioner provided no evidence that she replaced Ms. Stacks in this position. Further, upon the death of the Settlor, the Trust became irrevocable and ownership of all assets, including the subject property, passed from the Settlor to the Trust. As Petitioner explained, the subject property has been continuously titled in the name of the Trust, meaning that the Trustee has not distributed the property. Therefore, while Petitioner has an interest in the Trust's assets, she had no ownership rights to the subject property as of the date the petition was filed. Given this, the docket shall be corrected to reflect the Trust as the correct petitioner in this case.

JUDGMENT

IT IS ORDERED that the docket shall be CORRECTED to reflect Edna R. Lammert Revocable Living Trust as the proper Petitioner in this case.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

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

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 values as finally provided in this Final Opinion and Judgment within 20 days of entry of the Final Opinion and Judgment, subject to the processes of equalization.[72] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall

[70] Petitioner's Motion for Summary Disposition 4.
[71] Petitioner's Exhibit B, Section 1.3(B).
[72] MCL 205.755.

include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018, through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019, through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xiv) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xv) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (xvi) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (xvii) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (xviii) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, (xix) after June 30, 2024, through December 31, 2024, at the rate of 9.50%, (xx) after December 31, 2024, through June 30, 2025, at the rate of 9.47%, and (xxi) after June 30, 2025, through December 31, 2025, at the rate of 8.66%.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty or disabled veterans exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By Patricia L. Halm

Entered: July 18, 2025
plh

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provided by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk