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

James E Scott, et al,
Petitioner,

v

MTT Docket No. 15-003121

City of South Haven,
Respondent.

Tribunal Judge Presiding
Steven H Lasher

ORDER DENYING PETITIONERS' MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on April 26, 2017. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

On May 16, 2017, Petitioners filed exceptions to the POJ. In the exceptions, Petitioners state that the POJ ignores the undisputed purpose and mandate of Proposal A, i.e., to limit tax increases on property as long as it remains owned by the same party, and legislation cannot be interpreted in a manner that is inconsistent with or ignores this constitutional mandate. The Court of Appeals has held that a transfer of ownership occurs when property is transferred from one owner to a wholly new owner, and when that mandate is properly considered, it clearly supports Petitioners' argument with respect to the 2013 conveyance. The POJ also erroneously dismissed thirteen years of State Tax Commission guidance indicating that a conveyance that did not qualify as a common control transaction under RAB 1989-48 could qualify where ownership is identical on both sides of the transaction, i.e., the mirror-image rule. This does not contradict the STC's direction that RAB 1989-48 be used, and is consistent with the Court of Appeals' opinion in *Sebastian J Mancuso Family Trust v City of Charlevoix*,[1] and the Tribunal's opinion in *Universal Wholesale/Anita LLC v Royal Oak Twp*, MTT Docket 352130 (August 5, 2011).[2] The POJ incorrectly asserts that the Court of Appeals provided notice that application of RAB 1989-48 was "reasonable and likely what the Legislature had intended." Even ignoring the fact that both of the cited cases are unpublished and not precedential, the Court of Appeals did not reject the STC's mirror-image alternate in either case, and affirming one avenue is not the same as rejecting another.[3] The POJ's summary of the Tribunal's decision in *RGW RE LLC v*

[1] *Sebastian J Mancuso Family Trust v City of Charlevoix*, 300 Mich App 1; 831 NW2d 907 (2013).
[2] *Universal Wholesale/Anita LLC v Royal Oak Twp*, MTT Docket 352130 (August 5, 2011).
[3] See *Thompson's Bear Lake Limited Partnership v Pleasanton Twp*, unpublished opinion per curiam of the Court of Appeals, issued October 22, 2002 (Docket No. 233544) and *C&J Investments of Grayling, LLC v City of Grayling,*

Hastings Charter Twp[4] is incorrect. The plain language of that opinion demonstrates that the Tribunal saw the *Mancuso* decision as questioning the validity of the business activity requirement and limiting the analysis under MCL 211.27a(7)(m) to the following: 1) are the legal entities 2) commonly controlled? The POJ wrongly rejects application of *In re D'Amico Estate* [5] to the STC guidelines and failed to make a finding as to whether an individual can be a legal entity under MCL 211.27a(7)(m). The conclusion that the 2014 conveyance was an uncapping event ignores the enacting section of MCL 211.27a(7)(d) and is erroneously premised on Mrs. Scott being unable to rely on the STC guidelines that were in effect at the time of that conveyance. The retroactivity clause of the enacting section of the statute must be interpreted such that property that otherwise would have had its taxable value uncapped in tax year 2015 cannot be uncapped, and the POJ expressly recognizes that its proffered interpretation is contrary to the express language of the same. The POJ also rejected Petitioner's argument that the 2014 conveyance was protected from uncapping based on application of former section (7)(s), and in doing so, relied on legislative history, even though he recognized that such analysis is "entitled to little judicial consideration."

On May 30, 2017, Respondent filed a response to Petitioners' exceptions. In the response, Respondent states that the fact that Proposal A was intended to limit tax increases on property as long as it remains owned by the same party, does not require that the 2013 transfer be deemed exempt from uncapping as Petitioner contends. The STC, Tribunal, and Court of Appeals all require business activity in connection with common control. The existence of business activity and whether that was a component of common control was not litigated in *Universal Wholesale* and the Tribunal had no reason to consider the validity of the STC's guidance. Petitioners' attempts to distinguish *Thompson's Bear Lake* and *C&J Investments* are similarly unavailing. In both instances, the Court of Appeals confirmed that RAB 1989-48's interpretation of commonly controlled was appropriate for MCL 211.27a(7)(m). Petitioners invent, without support, a mirror-image rule and conflate beneficial ownership with title ownership of a property. The Legislature has provided no such rule, but rather has provided for a commonly controlled rule using a term that has special meaning that was well-established long before the 1994 enactment of MCL 211.27a(7). The POJ correctly distinguished *D'Amico*, which involved formal, promulgated rules issued by the defendant in that case. The plaintiff sought enforcement of those rules against the Department in lieu of the application of a revised rule that the *D'Amico* Court held to be implausible and inconsistent with the statute. Here, Petitioners seek application of non-binding, informal guidance that was never promulgated as a rule. That guidance was contrary to MCL 211.27a(7) and the STC is not a party to this matter. The Tribunal committed no error in failing to hold that Joan Scott and the J. Scott Family LLC were both other legal entities, as it correctly found that the absence of business activity foreclosed application of MCL 211.27a(7)(m). The enacting section to PA 243 of 2015 can be construed in a manner that is consistent with the amendments to MCL 211.27a(7)(m) and the Tribunal committed no error in concluding that a life estate expiration transfer occurring before December 31, 2014 resulted in

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unpublished opinion per curiam of the Court of Appeals, issued November 13, 2007 (Docket No. 270989).
[4] *RGW RE, LLC v Hasting Charter Twp*, MTT Docket No. 438291 (July 11, 2013).
[5] *In re D'Amico Estate,* 435 Mich 551; 460 NW2d 198 (1990).

uncapping. Respondent concedes that MCL 211.27a(7)(d) must be effective for taxes levied after December 31, 2014, but some of those taxes will be levied for a life estate transfer occurring before December 31, 2014. In those instances, the effect of 7(d) is not to exempt the transfer. Conversely, some of the taxes will be levied for such a transfer occurring on or after December 31, 2014, which will result in an exemption from uncapping. This reading gives meaning to both the enacting section and the "beginning December 31, 2014" clause. The Tribunal is correct that reading the enacting section to PA 243 of 2015 as Petitioners' advocate would render the new "beginning December 31, 2014" language nugatory. The Tribunal committed no error in determining that life estate expirations were not exempt under former MCL 211.27a(7)(s). If the combination of former subsections (s) and (c) already exempted life estate expirations resulting in transfers to sons and daughters as Petitioners claim, there would have been no need for the Legislature to amend MCL 211.27a(d).

The Tribunal has considered the exceptions, response, and the case file and finds that the Administrative Law Judge ("ALJ") properly considered the testimony and evidence provided in the rendering of the POJ. There is no "mirror-image" rule that looks to ultimate or beneficial ownership as contended by Petitioners, except that created by the State Tax Commission in its transfer of ownership and uncapping guidelines, and the ALJ correctly noted that said guidelines do not have the force of law. Further, while "agency interpretations are granted 'respectful consideration,' and if persuasive, should not be overruled without 'cogent reasons,'"[6] the Tribunal finds no basis for the Commission's interpretation in the statute or applicable case law. A "transfer of ownership" is defined by MCL 211.27a(6) 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."[7] Pursuant to the plain language of the statute, beneficial use is not sufficient to constitute ownership, and outside of such a framework, Mrs. Scott and the J. Scott Family LLC were not one in the same. Moreover, the Commission's former opinion is unpersuasive given that it was, as noted by the ALJ, based on an unarticulated and unexplained policy, and subsequently abandoned when the guidelines were amended to reflect a "business purpose" requirement in situations in which entities did not qualify as commonly controlled under RAB 1989-48 in December 2014. The business-activity requirement of RAB 1989-48 has been upheld by the Michigan Court of Appeals, and the ALJ did not err in finding its unpublished opinions on that issue persuasive, particularly in the absence of any contradictory authority, binding or otherwise. In that regard, Respondent aptly notes that *Universal Wholesale* is not on point, and the Tribunal finds no merit in Petitioners' argument that the ALJ's summary of *RGW* is incorrect, or that the Tribunal's decision in that case limited the commonly-controlled analysis in any way. The ALJ correctly recognized that the Tribunal erred in failing to articulate that both the Trust and LLC involved in *RGW* were engaged in business or trade activities, and that there was no dispute in that regard. The only issue, as reflected in the township's statement that the "makeup of LLC and trust are/were unknown," was whether the

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[6] *CMS Energy Corp v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued October 15, 2013 (Docket No. 309172) at 4. See also *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 117-118; 754 NW2d 259 (2008).

[7] *Id.*

entities were under common control. Further, *D'Amico* is properly distinguished from the instant appeal for the reasons identified by Respondent, namely that the plaintiff in that case sought enforcement of rules formally promulgated by the Department of Treasury against the Department itself, while Petitioners here seek enforcement of informal guidance issued by the State Tax Commission in a matter to which it is not a party. Regardless of whether the Commission's interpretation represents a "plausible and defensible construction," the Tribunal is not bound by the same. The ALJ did not err in failing to resolve the issue of whether a natural person can qualify as a "legal entity" within the meaning of the statute because such a determination was rendered moot by Petitioners' admission that neither Mrs. Scott nor the LLC were engaged in business or trade activities in conjunction with the ALJ's proper determination that such activities were required under the statute. As for the 2014 conveyance, the ALJ properly concluded that MCL 211.27a(7)(d) was not in effect at the time Mrs. Scott's life estate terminated on January 15, 2014, and Petitioners' contention that the enacting section of 2015 PA 243 somehow alters this determination is without merit. The Legislature specified within the language of the statute itself, in clear and unambiguous terms, an effective date of December 31, 2014, and there can be no doubt that it is intended to apply to transfers occurring after that date. As noted by the Michigan Supreme Court,

> The rules of statutory construction are well established. The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature. This task begins by examining the language of the statute itself. The words of a statute provide 'the most reliable evidence of its intent . . . .' If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent.
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> In interpreting the statute at issue, we consider both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.' As far as possible, effect should be given to every phrase, clause, and word in the statute. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended.[8]

Grammatically speaking, an introductory phrase describes where, how, when, why, or who. Consequently, the introductory phrase of subsection (7)(d), "Beginning December 31, 2014," describes when "a transfer of that portion of residential real property that had been subject to a life estate or life lease . . . ." is not a transfer of ownership for purposes of MCL 211.27a(3). The Tribunal finds no conflict with the language of this section and the enacting section, which states that "Section 27a(7)(d) of the general property tax act, 1893 PA 206, MCL 211.27a, as added by this amendatory act, is retroactive and is effective for taxes levied after December 31, 2014." Though seemingly duplicative, the enacting section language is entirely consistent with the

[8] *Sun Valley Foods Co v Ward*, 460 Mich 230, 236–37, 596 NW2d 119, 123 (1999) (citations omitted).

phrase "beginning December 31, 2014" found in the referenced subsection, and is intended to do nothing more than exactly what it states: make the amendment retroactive and applicable to the entire 2015 tax year, notwithstanding that it was not approved by the Governor and filed with the Secretary of State until December 22, 2015. For this same reason, neither MCL 211.27a(7)(t), which for uncapping purposes excludes "a transfer of residential real property if the transferee is related to the transferor by blood or affinity to the first degree" or MCL 211.27a(7)(u), which excludes "a transfer of residential real property if the transferee is the transferor's . . . mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter," can be concluded to apply to the facts of this case. The ALJ also correctly noted that the Legislature specifically addressed conveyances by termination of a life estate in MCL 211.27a(7)(d), and provided for exclusion of certain conveyances between family members effective in that section. Reading the statute as a whole, it cannot be concluded that the exclusions set forth in MCL 211.27a(7)(t) and (u) were intended to apply to such conveyances; these exclusions were drafted using different terms and placed in different sections of the statute because they were intended to apply to different types of conveyances. Moreover, it is clear from a reading of the POJ that the ALJ's determination was based on statutory construction and analysis, and not the legislative analysis as Petitioner contends. The legislative analysis was looked to only for support of the same.

Given the above, Petitioners have failed to show good cause to justify the modifying of the POJ or the granting of a rehearing.[9] As such, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[10] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

The property's TV, as established by the Board of Review for the tax year(s) at issue, is as follows:

Parcel Number: 80-53-831-027-00

Year	TV
2015	$501,800

The property's final TV, for the tax year(s) at issue, is as follows:

Parcel Number: 80-53-831-027-00

Year	TV
2015	$501,800

IT IS SO ORDERED.

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

[9] See MCL 205.762.
[10] See MCL 205.726.

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) 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 the entry of the Final Opinion and Judgment, subject to the processes of equalization.[11] 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 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%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%.

This Final Opinion and Judgment resolves the last pending claim and closes this 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 required filing fee within 21 days from the date of entry of the final decision.[12] 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 exemption and, if so,

[11] See MCL 205.755.
[12] See TTR 261 and 257.

there is no filing fee.[13] A copy of the motion must be served 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.[14] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[15]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[16] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[17] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[18]

By Steven H. Lasher

Entered: June 12, 2017
ejg

[13] See TTR 217 and 267.
[14] See TTR 261 and 225.
[15] See TTR 261 and 257.
[16] See MCL 205.753 and MCR 7.204.
[17] See TTR 213.
[18] See TTR 217 and 267.

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

James E. Scott, et al,
Petitioners,

v

MTT Docket No. 15-003121

City of South Haven,
Respondent.

Administrative Law Judge Presiding
Peter M. Kopke

PROPOSED ORDER DENYING PETITIONERS' MOTION FOR SUMMARY DISPOSITION

PROPOSED ORDER GRANTING
RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

PROPOSED OPINION AND JUDGMENT

On March 17, 2017, Petitioners filed a Motion in the above-captioned case requesting that the Tribunal enter summary judgment in their favor "pursuant to MCR 2.116(C)(10)." In support of their Motion, Petitioners contend:

1. "Petitioners are the children of the deceased, Mrs. Joan Scott. The Subject Property is a home that has been in the family for eighty years. The significance of the Subject Property – named 'Rosy Glow' by the family – in Petitioners' life history cannot be overstated. Indeed, it is not an exaggeration to assert that when Michigan's Legislature amended the General Property Tax Act ('GPTA') to remove transfers of property between family members from the GPTA's taxable value uncapping provisions, it did so with families like the Templeton/Scott Family in mind – families that have maintained property for generations and for which an uncapping event could mean the difference between being able to afford or having to sell the property."

2. "Two conveyances are at issue in this appeal: (1) a 2013 conveyance out of an LLC wholly owned by Mrs. Scott to herself individually and (2) the termination of Mrs. Scott's life estate at her death and the corresponding vesting of title in her children. Under the express language of the statutes that were in effect at the time of these conveyances, neither was an uncapping event. Moreover, the State Tax Commission ('STC') Guidelines in effect at the time of these conveyances – which, pursuant to binding Michigan Supreme Court precedent, Mrs. Scott was entitled to rely on – made clear that the conveyances were not transfers that would trigger an uncapping."[1]

[1] See the *Transfer of Ownership Guidelines* issued by the Michigan State Tax Commission ("STC") in "June 2013" and "December 2013." Although there is a question as to whether the property's taxable value should have been uncapped as a result of the 2013 conveyance, the petition was filed as a result of the uncapping based on the termination of Mrs. Scott's life estate. Further, the affirming of that uncapping would negate Respondent's failure to

3. "On September 11, 2008, Mrs. Scott formed the J. Scott Family LLC, for which she was and remained at all relevant times the sole member/owner. See Joint Partial Stipulation of Facts, ¶ 9, Exhibit A. On September 22, 2008, she conveyed the Subject Property to her LLC. *Id.* at ¶ 10. **Respondent was notified of the conveyance through the Property Transfer Affidavit received by Respondent's Assessor's Office on or about September 24, 2008**. *Id.*" [Emphasis added.]

4. "On January 16, 2013, the J. Scott Family, LLC conveyed the Subject Property back to Joan Scott as an individual. *Id.* at ¶ 11. **Respondent was notified of the conveyance through the Property Transfer Affidavit received by Respondent's Assessor's Office on or about January 23, 2013**. *Id.* Both before and after the January 16, 2013 conveyance, neither the J. Scott Family, LLC nor Mrs. Scott was involved in a trade or business relative to the Subject Property, and the January 16, 2013 conveyance was for gift, estate, income, and property tax purposes. *Id.* at ¶ 12." [Emphasis added.]

5. "On January 10, 2014, Mrs. Scott conveyed the Subject Property to Petitioners, while also reserving for herself a life estate 'with unrestricted power to convey' the Subject Property. *Id.* at ¶ 13. **Respondent was notified of the conveyance through the Property Transfer Affidavit that was received by Respondent's Assessor's Office on or about January 15, 2014**. *Id.*"[2] [Emphasis added.]

6. "Mrs. Scott died on January 15, 2014. *Id.* at ¶ 14. As a result of Mrs. Scott's death, title to Rosy Glow was vested in Petitioners. *Id.* at ¶ 15; see also Affidavit of Mary Barbara Scott, ¶ 21, Exhibit A. Respondent was notified of the conveyance through the Property Transfer Affidavit received by Respondent's Assessor's Office on or about February 14, 2014. See Joint Stipulation of Facts, ¶ 14, Exhibit B. The use of the Subject Property did not change following the January 2014 conveyance, and it has not been used for any commercial purpose since that time. *Id.* at ¶ 16."

7. "Respondent uncapped the taxable value of the Subject Property in the 2015 tax year. *Id.* at ¶ 2. **Accordingly, Respondent assigned tax year 2015 taxable value state equalized values as stated on Respondent's tax roll of $501,800 to the Property**. *Id.* at ¶ 3. Respondent did not uncap the taxable value of the Subject Property for any

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uncap the property's taxable value based on the 2013 conveyance given the transfer notices to Respondent, as the potential remedy, if any, is the recalculation of the property's taxable value on a prospective basis for the 2015 tax year. See MCL 211.27b(1). See also *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518, 545-6; 817 NW2d 548 (2012).

[2] In further explanation, Petitioners also state:

> "On January 10, 2014, Mrs. Scott conveyed the Subject Property to her children while maintaining a life estate on the Property. Pursuant to MCL 211.27a(7)(c), this conveyance was not a transfer of ownership, and that fact is not in dispute. However, on January 15, 2014, when Mrs. Scott died, her life estate terminated and the Subject Property transferred to Petitioners, her children. **Respondent acknowledges that Petitioners are Mrs. Scott's children and are related to her by blood or affinity to the first degree** . . . ." [Emphasis added.]

other/additional tax year between tax years 2008 and 2015. *Id.* at ¶ 2 . . . ." [Emphasis added.]

8. "Michigan law excludes conveyances between entities under common control from the definition of 'transfer of ownership . . . .[3] The [Michigan] Court of Appeals has addressed MCL 211.27a(7)(m) in the published decision of *Sebastian J. Mancuso Family Trust* v *City of Charlevoix*, 300 Mich App 1; 831 NW2d 907 (2013). In its only published decision addressing this statutory provision, the Court of Appeals delineated only two requirements for a conveyance to qualify for the 'exception' in MCL 211.27a(7)(m):

   The exception in MCL 211.27a(7)(l) applies if (1) the transaction is between legal entities and (2) the legal entities involved are commonly controlled."[4]

9. "In 2012, the Michigan Legislature enacted a change to MCL 211.27a that enlarged the scope of conveyances of property that do not constitute a transfer to a 'wholly new owner' under the GPTA when it added conveyances between first degree relatives to MCL 211.27a(7)."[5]

10. "Nonetheless, Respondent claims that the termination of Mrs. Scott's life estate triggered an uncapping because of . . . MCL 211.27a(7)(c) . . . . However, nothing in MCL 211.27a(7) forbids the 'stacking' of provisions under MCL 211.27a(7), and Respondent's interpretation ignores the key question: to whom did the property transfer upon the termination of the life estate" That is, if the conveyance is one that would be covered by another section of MCL 211.27a(7) – as with transfers to relatives under former Section (7)(s) – then the termination of the life estate should not automatically result in an uncapping. But that is exactly what Respondent did."

11. "The flaw in Respondent's position is evident not only from a reading of the plain language of the statute, but also from the STC Guidelines that were in effect at the time of the conveyance in January 2014. In June of 2013, the STC issued a Transfer of Ownership Guidelines that provided practitioners with guidance as to how the STC would be interpreting . . . PA 497 of 2012. The STC provided the following example:

    > In 2011 Jane Doe conveys her residential property to her son, John Doe, retaining a life estate on the entire parcel. In 2014, Jane Doe dies, does the death of Jane Doe result in a transfer of ownership?

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[3] See MCL 211.27a(7)(m).

[4] See *Mancuso*, *supra* at pp 6-7. Further, MCL 211.27a(7) was amended by 2012 PA 497 resulting in the renumbering of MCL 211.27a(7)(l) to 211.27a(m) with no change to the language in that subsection. Petitioners also contend that the Tribunal, in reliance on *Mancuso*, has also recognized that "the only requirements that Petitioner must establish, by a preponderance of the evidence, is that it and the Trust are legal entities and are commonly controlled." See *RGW RE, LLC v Hasting Charter Township*, MTT Docket No. 438291 (July 11, 2013).

[5] Although Petitioners cite MCL 211.27a(7)(s), Petitioners also recognize that the subsections in MCL 211.27a(7) were renumbered by amendment and, as such, the correct cite is MCL 211.27a(7)(t).

> No. A transfer of ownership does not occur because the transfer is after December 31, 2013 and is a transfer of residential real property between Jane Doe and John Doe who are related by blood in the first degree and the use of the residential real property has not changed following the transfer. See MCL 211.27a(7)(s) . . . .

That same example remained in the revised Transfer of Ownership Guidelines released by the STC in December 2013 and was in effect at the time of Mrs. Joan Scott's death. See STC Transfer of Ownership Guidelines, December 2013, p. 15, Exhibit H."

12. "Again, under the Michigan Supreme Court decision *In re D'Amico Estate*, the STC's interpretation of the operative statute at that time is dispositive. See *In re D'Amico Estate*, 435 Mich at 564. Mrs. Scott is entitled to rely upon the guidance set forth in the June 2013 Guidelines, and the subsequent removal of that example from the Guidelines cannot in any way alter the propriety of her reliance on them at the time of the conveyance."[6]

13. "Even if the Tribunal were to ignore the impact of *D'Amico* on this issue, subsequent actions of the Michigan Legislature make clear that the uncapping of the Subject Property's taxable value in Tax Year 2015 was improper. On December 22, 2015, Governor Snyder signed into law 2015 PA 243, which amended MCL 211.27a by adding the following language to section (7)

> (d) **Beginning December 31, 2014**, a transfer of that portion of residential real property that had been subject to a life estate or life lease retained by the transferor resulting from expiration or termination of that life estate or life lease, if the transferee is the transferor's or transferor'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 transfer . . . . [Emphasis added.]

The act was ordered to have immediate effect, and it also was to have retroactive application beginning with Tax Year 2015."

14. ". . . 2015 PA 243 contains an enacting section, which states:[7]

> Section 27(a)(d) of the general property tax act, 1893 PA 206, MCL 211.27a, as added by this amendatory act, is retroactive for taxes levied after December 31, 2014 . . . ."

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[6] See *In re D'Amico Estate*, 435 Mich 551, 554; 460 NW2d 198 (1990). The Michigan Court of Appeals did, however, state in its unpublished decision issued in *Ohio Savings Bank v Dep't of Treasury* on October 13, 2009 (Docket No. 284656), that explanatory guidelines, although "entitled to respectful consideration," "do not have the force of law and are not legally binding."

[7] Petitioners cite *General Motors Corp v Dep't of Treasury*, 290 Mich App 355; 803 NW2d 698 (2010) in support of the proposition that enacting sections that require retroactive application of a statute have the full force of law.

15. "Giving effect to the enacting section here makes abundantly clear that Respondent's uncapping of the Subject Property's taxable value in Tax Year 2015 was erroneous. On this point, the specific language chosen by the Legislature is critical. Tax Year 2015 taxes are indisputably 'taxes levied after December 31, 2014' and, therefore, Section (7(d) applies to those taxes. Importantly, the Legislature could have said that the amendment was retroactive for 'conveyances' or 'transfers' that took place after December 31, 2014. But it did not. Rather, **it made the deliberate decision to apply the amendment to any uncapping starting with Tax Year 2015.**

    In other words, **the only way to give effect to the enacting section's retroactivity clause is to find that a property that otherwise would have had its taxable value uncapped in Tax Year 2015 based on a conveyance that took place in calendar year 2014 cannot be uncapped if it meets the requirements of new Section (7)(d).** In light of the foregoing, the 2015 uncapping of the taxable value of the Subject Property was clearly invalid." [Emphasis added.]

On April 7, 2017, Respondent filed a response to Petitioner's Motion for Summary Disposition. In the Response, Respondent contends that:

1. ". . . this matter concerns the interpretation and application of two exemptions to uncapping in § 27a of the General Property Tax Act ('GPTA'). The Tribunal – a creature of statute – has no authority to consider the equities in this matter, but is constrained to applying the law as its exists. The Tribunal further has no equitable powers – it cannot, e.g., estop the Respondent from collecting a validly levied tax due to prior statements by the Respondent or the State Tax Commission. The Tribunal's determination of whether a tax liability exists depends on application of the tax statutes to the facts alone. Further, exemptions to taxation are to be narrowly construed in favor of the taxing authority."

2. "Petitioner has submitted a multitude of additional documents going beyond the Stipulation of Facts submitted by the parties, though these materials are not germane to the legal questions presented. These documents include, among other things, an affidavit regarding the Petitioners' family history and their connection to the Subject Property, as well as assertions that the decedent property owner – Joan Scott – allegedly received legal advice from her private attorneys prior to her death that the 2014 Transfer would not result in an uncapping. An affidavit from one of the Petitioners asserts that there is a 'possibility' the family will need to rent or even sell the Subject Property if the City's uncapping is affirmed. These factual allegations were not part of the Stipulation of the Parties nor were they discussed with the City prior to filing. While uncapping typically works a hardship on taxpayers, that fact – and whether or not taxpayers received prior legal advice one way or another – is irrelevant here as the equities are not at issue."

3. ". . . the principle of *ejusdem generis* applies when seeking to find the definition of catchall terms like 'other legal entities' here[8] . . . . A corporation, LLC, and partnership are all like each other in that they are formed under state law and act exclusively through

[8] Respondent cites *Neal v Wilkes*, 470 Mich 661, 669; 685 NW2d 648 (2004) in support of this proposition.

agents; natural persons do not fit within this series . . . . As Respondent has noted in its own Brief, when the Legislature intends to include natural persons in a list with corporations and LLCs, it typically uses the term 'person' . . . . Petitioners illustrate this point when they attempt to rely on guidance in RAB 1989-48 regarding 'common control,' wherein the bulletin included references to individuals being under common control . . . . But RAB 1989-48 was directed at the Single Business Tax Act ('SBTA'), which used the word 'person' – and defined it broadly to expressly include individuals as well [as] corporations and LLCs. See former MCL 208.6(1). Section 27a(7)(m) of the GPTA does not use the word 'persons.' The Legislature plainly knows how to include natural persons in a list – that it did not do so here should be seen as evidence of intent to exclude them for uncapping exemption purposes. This reading being reasonable, it governs under the rule of narrow construction for exemptions in favor of taxing authorities.[9]"

4. "'Common control' is not defined in § 27a(7)(m). Petitioners seek to define it by again splitting the term into two parts – 'common' and 'control' as was done in *Mancuso*. But this again subverts the purpose of the Legislature in using phrases and terms of art in tax statutes. Pursuant to MCL 8.3a, 'technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning'[10] . . . . The words 'common control' have a specific meaning in the tax context which has been recognized in Michigan for at least 30 years by RAB 1989-48 as requiring some element of concomitant business activity. The STC has recognized such a requirement since Bulletin 16 of 1995, and the Court of Appeals has approved such a requirement albeit in unpublished authority.[11]"

5. ". . . though conceding that STC guidance 'cannot supersede the plain language of a statute' . . . Petitioners then argue that the fact that the 'Guidelines in effect at the time of the [2013 Transfer] specifically contemplated a conveyance between individuals and an LLC . . . is dispositive' . . . . Petitioners cite *In re D'Amico Estate*[12] . . . asserting that there the Supreme Court held that 'the public is entitled to rely on an agency's

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[9] Respondent cites *Mancuso, supra* at p 6 in support of this proposition.
[10] Respondent cites *People v Law*, 459 Mich 419, 425 n 8; 591 NW2d 20 (1999) in support of this proposition.
[11] Respondent cites the unpublished opinion *per curiam* issued by the Court of Appeals in *C&J Investments of Grayling, LLC v City of Grayling* on November 13, 2007 (Docket No. 270989) in support of this proposition. Respondent also contends, in reliance on cites Bittker & Eustice, *Federal Income Taxation of Corporations and Shareholders*, § 1.05(2)(c) (7th Edition) (citing *Gregory v Helvering*, 293 US 465 (1935)), that:

> "The notion of 'commonly controlled' entities having some requisite business activity ties back as well to the classes of entities covered by § 27a(7)(m) being corporate bodies formed with business purposes under state law. Exempting transfers between corporate bodies for business purposes helps to facilitate and grow economic development and assure legitimate use of corporate forms – but where such entities are formed for estate planning purposes and transfers occur merely to shield assets, the Legislature's interest in shielding such transfers from uncapping is diminished. Indeed, the 'Business Purpose Doctrine' – i.e., 'that a transaction is not given effect for tax purposes unless it serves some purpose other than tax avoidance' – has been a central tenant to US tax law for nearly a century."

[12] See *In re D'Amico Estate, supra.*

interpretation of a statute that is in effect at the time a transaction takes place' such that the uncapping here could not occur . . . . But that is not an accurate characterization of *D'Amico's* holding, nor is it consistent with longstanding black letter law as concerns the application of tax statutes and the collection of tax liabilities . . . . [Rather,] [b]oth the Michigan Supreme Court and the United States Supreme Court have repeatedly confirmed that government officials cannot be estopped retroactive tax liabilities based on even the officials' own prior formal misstatements of the law. See *Auto Club of Michigan v Commissioner*, 353 US 180, 183-184; 77 St Ct 707; 1 L Ed 2d 746 (1957) (finding no estoppel where the IRS Commissioner revoked prior rulings, issued in error, and retroactively assessed taxes); *Langford v Auditor General,* 325 Mich 585, 591; 39 NW2d 82 (1949)."[13]

6. "These authorities (most of which post-date *D'Amico*) square with *D'Amico* because *D'Amico* rested not on estoppel, but instead on the Court's finding that the Department of Treasury's original interpretation was 'an entirely plausible and defensible construction.' 435 Mich at 564. (The Court found that an inheritance tax is in fact a tax under the Lottery Act's provision that no state tax 'of any kind whatsoever' was to be imposed on the proceeds of a state lottery prize.) The discussion of the Department of Treasury being 'bound' to its original, contemporaneous interpretation can thus be seen as extraneous discussion – not the holding of *D'Amico*."

7. ". . . the Tribunal alone is the 'final agency for the administration of property tax laws.' MCL 205.753. At the time of the 2013 Transfer, the Tribunal had issued readily apparent guidance that would have placed property owners on notice that transfers out of LLCs for non-business purposes to their natural person members were uncapping events under § 27a(7)(m). It also provided guidance that 'legal entities' as used in that section did not include natural persons."[14]

8. "Petitioners seek to rely on § 27a(7)(c) when 'stacked' with former § 27a(7)(s), which then provided for an exemption for transfers to enumerated relatives of first degree affinity . . . . Petitioners go so far as to argue that 'nothing in MCL 211.27a(7) forbids the 'stacking' of provisions under MCL 211.27a(7)' . . . . But 'stacking' of this nature is plainly prohibited by longstanding state law. Where two exemption exist and one is more specific to the particular circumstances at issue – as is the case here with § 27a(7)(c) for

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[13] Respondent also contends that "[c]hanges to agency interpretation of tax statutes have not – as Petitioner claims – been limited to only prospective tax periods" and cites *Rayovac Corp*, 264 Mich App 441; 691 NW2d 57 (2004), *Marie De Lamielleure Trust v Dep't of Treasury*, 305 Mich App 282, 287-8; 853 NW2d 708 (2014), and the unpublished opinion issued by the Court of Appeal in *Speicher v Columbia Twp* on January 21, 2003 (Docket No. 231446) in support of that proposition.

[14] Respondent cites *Lakewood Cottages, LLC v Sanilac Twp* issued by the Tribunal on January 6, 2005 (Docket No. 302715). *Lakewood Cottages* was, however, pending in the Tribunal's Small Claims Division and Small Claims decisions are not precedential unless declared precedential and the decision was not declared precedential. See MCL 205.765.

life estates – that provision governs over more general exemptions (like that is former § 27a(7)(s)."[15]

9. "Petitioners highlight the enacting section to Public Act 243, which provides that the expanded exemption language is to be 'retroactive' and 'effective for taxes levied after December 31, 2014.' Petitioners correctly note that retroactive statutes are permissible where clearly articulated[16] . . . . That clear articulation requirement, however, implies that courts must closely adhere to the retroactivity actually imposed. The effect of the enacting section on the scope of the exemption is also subject to the narrow construction rule – i.e., the meaning of the enacting section must be read narrowly in favor of the Respondent . . . . [More specifically,] [t]he language added by PA 243 states that the exemption commences on December 31, 2014 (not after). Thus there are, as a practical matter, a set of life estate expiration transfers – i.e., those occurring on the December 31, 2014 date – that would have otherwise been subject to the higher 2015 tax levies due to uncapping had the Legislature not imposed the retroactivity specified by the enacting section. The enacting section thus has independent meaning and effect when applied as advanced by Respondent."

10. "As with § 27a(7)(m), Petitioners seek to argue that the Respondent should be estopped from uncapping taxable value due to the 2014 Transfer because of previous STC Guidance supportive of an exemption . . . . For the same reasons set forth above – including that the Tribunal lacks equitable authority and that estoppel cannot prevent the collection of tax – Petitioners' arguments related to the 2014 Transfer should also be rejected."

On March 17, 2017, Respondent filed a Motion requesting that the Tribunal enter summary judgment in its favor "pursuant to . . . MCR 2.116(C)(10)." In support of its Motion, Respondent contends:

1. "This matter does not concern questions of equalization or valuation, but merely whether the relevant property transfers were non-exempt, uncapping 'transfers' under § 27 of GPTA.[17] The facts concerning the two relevant transfers are fairly simple and straightforward. While more fully set forth in the attached stipulation, briefly, the facts are as follows:

   The Subject Property – parcel no. 80-53-831-027-00 – is residential real property located in South Haven. On January 16, 2013, the J. Scott Family, LLC conveyed its 100%

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[15] Respondent cites *Speaker-Hines & Thomas, Inc v Dep't of Treasury*, 207 Mich App 84, 89; 523 NW2d 826 (1994), and *Evanston YMCA Camp v State Tax Commission*, 369 Mich 1; 118 NW2d 818 (1962) in support of this proposition.

[16] Respondent cites *General Motors Corp v Dep't of Treasury*, 290 Mich App 355; 803 NW2d 698 (2010) in support of this proposition.

[17] Contrary to Respondent's contentions the resolution of "either issue in favor of the Respondent" will not, as indicated above, support "the uncapping as currently reflect in the 2015 and 2016 tax rolls," as the resolution of the 2013 Transfer issue only in favor of Respondent would require a recalculation of the property's taxable value beginning with the 2014 tax year to establish the property's taxable value for the tax year at issue, as indicated above.

interest in the Subject Property to Joan Scott (hereinafter, the '2013 Transfer'). At the time of the 2013 Transfer and at all other times relevant to this appeal, Joan Scott was the sole member of the J. Scott Family, LLC. The 2013 Transfer was for non-business purposes.

On January 10, 2014, Joan Scott conveyed the Subject Property to her seven natural children – the Petitioners – while reserving a life estate. Five days later, on January 15, 2014, Joan Scott died and her life estate expired (hereinafter, the '2014 Transfer').

Respondent reflected that the January 15, 2014 expiration of the life estate was an uncapping event when it prepared its tax rolls for the 2015 tax year. Respondent subsequently identified that the January 16, 2013 conveyance was also an uncapping event, but did not disrupt the taxable value already on the rolls for 2014."

2. "The transfers here . . . were undoubtedly 'transfers' of the Subject Property within the meaning set forth in § 27a(6). In each instance, the title or present interest in the transferor was conveyed to the transferee via deed. The deed for the 2013 Transfer quit claims the LLC's interest to Joan Scott without reservation. (See Ex A, Stipulation, at Exhibit 4). The deed filed for the 2014 Transfer provided that upon Joan Scott's January 15, 2014 death, the property was conveyed to Petitioners 'each as to an undivided one-seventh interest as tenants in common.' (See *id.*, at Exhibit 6.) . . . [As a result,] Petitioners must show an exception to uncapping elsewhere in GPTA.

3. "At the time of the 2014 Transfer, GPTA's life-estate specific exemption provision plainly provided for uncapping on the expiration of a life estate. That is, on January 15, 2014, when Joan Scott died, former § 27a(7)(c) governed expirations of life estates and provided that a 'transfer of ownership' did not include '[a] transfer of that portion of property subject to a life estate or life lease retained by the transferor' but only '**until expiration or termination of the life estate or life lease.**' See former MCL 211.27a (c). (emphasis added [in the original]) . . . . There . . . also existed another section which, if read in isolation, would have arguably conferred an exemption on the 2014 Transfer. Former § 27a(7)(s) then provided for an exception for 'transfers of real property' to relatives of first degree affinity . . . . See former MCL 211.27a(7)(s) . . . . In 2014, the State Tax Commission ('STC') took the position that, in evaluating whether a particular transfer constituted an uncapping event for the purposes of § 27a(6), the life estate exclusion in former § 27a(7)(c) controlled over the first-degree affinity exception in former § 27a(7)(s) since the former is the more specific provision . . . . [and this] guidance was consistent with long-standing Michigan law concerning the interpretation of tax exemptions . . . . [as the] former § 27a(7)(c) is more specific and contains an internal limitation."[18]

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[18] Respondent cites *Mancuso, supra* at p 6 and *Speaker-Hines & Thomas, Inc v Dep't of Treasury*, 207 Mich App 84, 89; 523 NW2d 826 (1994) in support of this proposition.

4. "Section 27a(3) of GPTA provides (now as it did then) that the uncapping of the taxable value occurs immediately 'upon a transfer,' even though it is not reflected on the tax rolls until the year following the transfer."

5. "An amendment to the life estate exemption came nearly two years after Joan Scott's death and fourteen months after PA 310 – in December of 2015. It was then that the Legislature enacted Public Act 243 of 2015 ('PA 243') . . . .[19] Like the amendments in PA 310 – which contained the same 'beginning in December 31, 2014' language – the PA 243 amendment of § 27a(7)(d) is plain and unambiguous in its scope. Even if it were not, the Tribunal's obligation is to adopt the narrowest reasonable reading of the statute . . . . As amended, the exception only applies to transfers occurring on or after December 31, 2014. The 2014 Transfer does not satisfy this exception."

6. ". . . interpreting the enacting section as extending the date of the exemption to transfers occurring before December 31, 2014 would result in a conflict between the plain language of § 27a(7)(d) and the enacting section itself – the former in practical terms under such a reading providing for an exemption for all transfers occurring on or after January 1, 2014, and the latter expressly stating an exemption only for transfers occurring on or after December 31, 2014."[20]

7. "The enacting section was further necessary to bring the effect of PA 243 in line with the effect for other first-degree affinity transfer exemptions previously added by PA 310 – each of which also commenced for transfers occurring on or after December 31, 2014. The enacting section to PA 243 thus harmonized PA 243's effect with that of PA 310."[21]

8. ". . . to adopt an approach whereby the retroactive effect of PA 243 reaches all life estate transfers occurring at any time in 2014 would mean that the Legislature provided greater relief for life exemption transfers than it provided for the transferees of trusts, intestate succession or wills when it earlier amended [§ 27a(7) by] PA 310. In an opinion issued by the Court of Appeals earlier this month - *Fifarek House Trust v Township of Long Lake*, unpublished opinion *per curiam* . . . issued March 7, 2017 (Docket No. 330489) . . . the Court affirmed the Tribunal's conclusion that a change in the trust beneficiary due to an August 14, 2014 death resulted in an uncapping transfer and higher tax burden in

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[19] "PA 301" refers to Public Act 310 of 2014.

[20] Respondent cites *Minor Child v State Health Comm'r*, 16 Mich App 128, 137; 167 NW2d 880 (1969) for the proposition that "statutes will be construed whenever possible so as to avoid contradiction" and *Lee v Smith*, 31 Mich App 507, 509; 871 NW2d 873 (2015) for the proposition that "courts are to avoid readings that render any part of a statue nugatory or surplusage." Respondent also states, in pertinent part:

> ". . . the language added by PA 243 states that the exemption **commences** on December 31, 2014 (not **after**), and thus there are, as a practical matter, a set of life estate expiration transfers – i.e., those occurring on the December 31, 2014 date – that would have otherwise been subject to higher 2015 tax levies due to uncapping absent the retroactivity specified in the enacting section."

[21] Respondent cites *In re MKK*, 286 Mich App 546, 556-7; 781 NW2d 132 (2009) for the proposition that "the general rule of statutory construction [requires] that a statute must be read as a whole and in conjunction with other relevant statures to ensure that legislative intent is correctly ascertained."

2015. It did so despite the Legislature's October 2014 enactment of PA 310 and the addition of language exempting such transfers from uncapping 'beginning December 31, 2014.' So must it be with the 'beginning December 31, 2014' language added by PA 243 for life estate expirations."

9. "Had the Legislature intended to exempt all transfers due to life estate expirations occurring in 2014, it could have easily done so by setting the start date of the exemption on January 1, 2014. It did not do so . . . . Because there is no dispute concerning the date of Ms. Scott's death or the effect of her death under the January 10, 2014 Ladybird Deed, disposition is required in favor of Respondent."

10. The MCL 211.27a(m) "exemption does not apply [to the 2013 Transfer] for two reasons . . . . first, the 2013 Transfer did not involve a transfer between entities under 'common control' because there was no business activity involved in the transfer; second, Joan Scott was not a 'legal entity' within the meaning of § 27a(7)(m) and the transfer must be 'among' legal entities to be exempt."

On April 7, 2017, Petitioners filed a response to Respondent's Motion for Summary Disposition. In the Response, Petitioners contend that:

1. "Toward the end of her life, Joan Scott effectuated two conveyances of the Subject Property in an effort to prevent the uncapping of its taxable value, because she knew what an extreme burden an uncapping event would be on her children. Both of the conveyances were undertaken in specific reliance on the State Tax Commission ('STC') Transfer of Ownership Guidelines that were in effect at the time, and both complied with the requirements of the Guidelines. Both of the conveyances also fell squarely within the scope of MCL 211.27a's definitions of transactions that are not 'transfers for purposes of uncapping."

2. "Respondent's arguments in support of its uncapping of the Subject Property's taxable value completely miss the mark. As an initial matter, Respondent relies on versions of the STC Guidelines that post-date the conveyances at issue, and are therefore irrelevant to the Tribunal's analysis. While the STC is free to change its interpretation of MCL 211.27a, 'its new interpretation applies only prospectively'[22] . . . . Applying the Guidelines that were in place at the relevant times – and on which Mrs. Scott was indisputably entitled to rely – leads to the inescapable conclusion that neither conveyance was an uncapping event."

3. ". . . with respect to the 2014 conveyance that occurred upon the termination of Mrs. Scott's life estate, the pertinent language of MCL 211.27a, which was entirely consistent with the STC Guidelines then in effect, provided for an exception to uncapping. **Nothing in the statutory scheme or rules of statutory construction leads to a different result.** But lest there be any doubt, the Legislature subsequently amended MCL 211.27a to specifically include a conveyance like the one at issue. That amendment, which was

[22] Petitioner cites *In re D'Amico, supra* in support of this proposition.

made retroactive for all taxes levied beginning with tax year 2015, is directly applicable here, and Respondent's argument to the contrary is an impermissible attempt to read out of the statute the retroactive language contained in the enacting section." [Emphasis added.]

4. ". . . while Respondent is attempting to impermissibly read language out of MCL 211.27a(7)(d)'s enacting section with respect to the 2014 transfer, it is attempting to impermissibly read language in to MCL 211.27a(7)(m) with respect to the 2013 transfer. That is, Respondent advocates for a 'business activity' requirement for conveyances between commonly controlled entities, but such a 'requirement' is contained nowhere in that statutory section (and, as noted above, such a requirement would be contrary to the Guidelines in effect in January 2013). The plain language of MCL 211.27a(7)(m) has two – and only two – requirements, both of which are met here."

5. ". . . the recognized purpose of . . . [the Proposal A] constitutional limitation is to protect property owners from being unable to afford, and subsequently losing, their property because of an increase in property taxes, in situations in which there is in effect no real change of ownership . . . . . [Nevertheless], Respondent, [throughout its Brief,] clings to the oft-cited rule of law that tax exemptions statutes are to be narrowly construed. What Respondent ignores, however, is the fact that the statutes at issue are not tax exemption statutes. To the contrary, they are constitutional limitations on increases in taxable value. In other words, the statutes at issue do not simply reflect the Legislature's intent to reduce (or eliminate) a property owner's tax burden, they reflect a constitutional limitation on increases in taxation. Respondent cites to no authority for the proposition that such a constitutional limitation should be narrowly construed in the same manner as a typical tax exemption statute."[23]

6. ". . . then-MCL 211.27a(7)(s) provided that it was not a 'transfer of ownership' when residential real property was conveyed to a first degree relative and the use of the property did not change. Respondent does not dispute this – in fact, it concedes that this section 'arguably conferred an exemption on the 2014 Transfer' – but instead claims that this provision conflicted with MCL 211.27a(7)(c) regarding the termination of life

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[23] Although the case cited by Petitioner in support of its proposition (i.e., *Klooster v City of Charlevoix*, 488 Mich 289, 296-7; 795 NW2d 578 (2011)) does state that "[t]he purpose of Proposal A was to limit tax increases on property as long as it remains owned by the same party, even though the actual market value of the property may have risen at a greater rate," the *Klooster* Court also recognized that Proposal A authorized the Legislature to enact enabling legislation and the enabling legislation provides "exceptions" to uncapping under Proposal A. In that regard, the parties did, contrary to Petitioners' contentions, both cite a case that would appear to support Respondent's contention. See *Mancuso, supra* at p 6. In that regard, there are other cases that would also appear to suggest that the provisions should be narrowly construed. See *Moshier v Whitewater Twp*, 277 Mich App 403, 409; 745 NW2d 523, 526-7 (2007) and the unpublished opinion *per curiam* issued by the Court of Appeals in *Thompson's Bear Lake Limited Partnership v Pleasanton Twp* on October 22, 2002 (Docket No. 233544). Nevertheless, that issue has not been directly addressed by either the Court of Appeals or the Michigan Supreme Court. Fortunately, the resolution of that issue is not necessary for the rendering of a determination on the Motions, as indicated herein. See also *Menard Inc v Treasury*, 302 Mich App 467, 474; 838 NW2d 736 (2013) (i.e., "[i]n practice, the rules of construction governing exemptions may be applied to the rules addressing deductions" citing *Detroit Edison Co v Dep't of Revenue,* 320 Mich 506, 514-5; 31 NW2d 809 (1948)).

estates, and that the 'more specific' provision should control . . . . Respondent's argument falls apart, however, when it is recognized that there is no conflict between those two sections. To the contrary, nothing in . . . MCL 211.27a(7) forbids the 'stacking' of provisions under MCL 211.27a(7), and the two can be read in perfect harmony. That is, MCL 211.27a(7)(c) applied to the initial conveyance of the Subject Property from Mrs. Scott to her children with the retention of a life estate, and rendered that not an uncapping event, **and MCL 211.27a(7)(s) applied to the subsequent conveyance to Mrs. Scott's children upon her passing**, and rendered that not an uncapping event. To be sure, if the property had been initially transferred to a non-relative with a life estate reserved by Mrs. Scott, MCL 211.27a(7)(s) could not have prevented an uncapping upon her passing. But the fact that all of the requirements of that provision were met renders that section applicable to prevent the uncapping." [Emphasis added.]

7. "Perhaps recognizing the STC's varying interpretations of MCL 211.27a regarding life estates over the few years prior, the Legislature amended the statute in late 2015 to deal with this issue, adding an express provision, MCL 211.27a(7)(d), regarding conveyances to first degree relatives via the expiration of life estates. What is important for purposes of the present motion is that the enacting section of 2015 PA 243 specifically states that the change 'is retroactive for taxes levied after December 31, 2014' . . . . Tax year 2015 taxes are indisputably 'taxes levied after December 31, 2014' and, therefore, Section (7)(d) applies to those taxes. Importantly, the Legislature could have said that the amendment was retroactive for 'conveyances' or 'transfers' that took place after December 31, 2014. But it did not. Rather, it made the deliberate decision to apply the amendment to any uncapping starting with tax year 2015, Thus, **the only way to give effect to the enacting section's retroactivity clause is to find that a property that otherwise would have had its taxable value uncapping in tax year 2015 based on a conveyance that took place in calendar year 2014 cannot be uncapped if its meets the requirement of new Section (7)(d).**" [Emphasis added.]

8. "Respondent also argues that the 'uncapping' of a property's taxable value somehow takes place immediately at the time of the conveyance, and not for the tax year following the calendar year in which the conveyance occurred . . . . Because of this, so the argument goes, the phrase 'beginning December 31, 2014' means that Section 7(d) only applies to conveyances that physically occur on or after December 31, 2014. Not only is there no support for this 'immediate uncapping' theory in any of the statutes cited by Respondent, but this argument also ignores the significance of December 31 in relation to Michigan's property tax scheme."

9. "Because . . . an enacting section is missing from PA 310, *Fifarek* (in addition to . . . [being] unpublished and therefore not binding) is inapplicable to the present case."

10. "The Court of Appeals – in a published decision – has recognized that the STC's Bulletin 16 of 1995 'is not a properly promulgated administrative rule,' represents only 'the

> STC's interpretation of the law' and 'does not have the force of law'[24] . . . . Similarly, in *Catalina*,[25] the Department of Treasury, of which the STC is a part, conceded that it 'may not, through the issuance of an [RAB], create law or adopt rules conflicting with applicable statutes and binding court decisions."

The Tribunal has reviewed the Motions, the Responses, and the case file and finds that there is no specific Tribunal rule governing motions for summary disposition and, as such, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[26] In the instant case, Respondent indicates that its Motion is being filed under MCR 2.116(C)(10), which tests the factual support for Petitioner's claim based upon the Tribunal's consideration of all pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties "in the light most favorable to the party opposing the motion."[27] Further, the Tribunal may only grant such motions if the parties' submissions show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.[28] If it is, however, determined that an asserted claim can be supported by evidence at trial, the motion under (C)(10) must be denied.[29] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[30] Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.[31] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[32]

Here, the Tribunal has considered the parties' pleadings and documentary evidence in a light most favorable to the non-moving parties and finds that there is no genuine issue of material fact and that the granting of the Motion in favor of Respondent under MCL 2.116(C)(10) is warranted. More specifically, both the 2013 Transfer and the 2014 Transfer were transfers of ownership under MCL 211.27a(6) requiring a determination as to whether either or both fell under one of the exceptions provided in MCL 211.27a(7) that would preclude the uncapping of the property's taxable value "for the calendar year for the year following the year of the transfer."[33] In that regard, Petitioners state that the 2013 transfer was not an uncapping event under MCL 211.27a(m), as the transfer was between legal entities under common control even though neither the LLC nor Ms. Scott were admittedly engaged in business or trade activities. Petitioners' contention that "the Court of Appeals delineated only two requirements" for such

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[24] Petitioner cites *Moshier, supra* at p 408, n2 in support of this proposition. *Moshier* also suggests, as indicated above, that the underlying statutory provisions (i.e., exceptions) should be narrowly construed.
[25] See *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 21; 678 NW2d 619 (2004).
[26] See TTR 215.
[27] See *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 187 (1999) and *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).
[28] See *Smith v Globe Life Insurance Co*, 460 Mich 446, 454-5; 597 NW2d 28 (1999) and *Quinto, supra* at 362.
[29] See *Arbelius v Poletti*, 188 Mich App 14, 18; 469 NW2d 436 (1991).
[30] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[31] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[32] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).
[33] See MCL 211.27a(3).

transfers is, however, misleading.[34] Similarly, Petitioners' contention that the Tribunal upheld that delineation is also misleading. More specifically, the Court of Appeals stated in *Mancuso*:

> Petitioner argues that the trusts in this case are commonly controlled because they have the same trustees and that the tribunal erred by concluding that the trusts are not commonly controlled **because RAB 1989–48 states that entities must be engaged in business activity in order to be commonly controlled.** Even assuming, **without deciding**, that the tribunal erred by imposing a business-activity requirement, petitioner still cannot prevail because the Alice Trust and petitioner are not "commonly controlled" within the meaning of MCL 211.27a(7)(*l*).[35]

As such, the "business-activity requirement" is a component of the "commonly-controlled" requirement and that component was not, as indicated above, addressed in *Mancuso*. The Court of Appeals did, however, address that "component" in another case when it stated:[36]

> Initially, we reject petitioner's argument that it was improper for the hearing referee to look to Revenue Administrative Bulletin (RAB) 1989-48 for a definition of "commonly controlled," because RAB 1989-48 was written to apply to the single business tax. State Tax Commission (STC) Bulletin No. 16, "Transfers of Ownership," September 20, 1995, states that the STC has specifically adopted RAB 1989-48 to define "commonly controlled" entities for purposes of MCL 211.27a(7)(l).
>
> RAB 1989-48 defines three categories of groups that can qualify as entities under common control: (1) parent-subsidiary entities under common control; (2) brother-sister entities under common control; and (3) a combination of entities under common control . . . .
>
> RAB 1989-48 provides that for the first two categories of groups, the entities involved **must be engaged in some form of business or trade activities.** For the third category of combined groups, RAB 1989-48 does **not** specifically require that the entities involved must be engaged in business or trade activities. However, the third category consists of a combination of the first two categories. Therefore, any groups that qualify under the third category **must also satisfy the first two categories and, therefore, be engaged in business or trade activities.**
>
> Accordingly, applying RAB 1989-48, the hearing referee correctly concluded that the transfer of property to petitioner was **not** exempt under MCL 211.27a(7)(l) and that respondent could therefore reassess the taxable value of the property.

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[34] The Court of Appeals stated in *Mancuso*, *supra* at pp 6-7 that "[t]he **exception** in MCL 211.27a(7)([m]) applies if (1) the transaction is between legal entities and (2) the legal entities involved are commonly controlled." [Emphasis added.]

[35] See *Mancuso*, *supra* at 7.

[36] See *C&J Investments*, *supra*.

> RAB 1989-48 represents an authoritative interpretation of the phrase "commonly controlled" by the agency responsible for administering and enforcing the statute. A court will defer to the interpretation of statutes administered and enforced by the Tax Tribunal. *Signature Villas, supra* at 699.[37] Although tax statutes may not be extended by forced construction or implication, *id.* at 702, **we conclude that RAB 1989-48 is not inconsistent with the plain meaning of "commonly controlled" in MCL 211.27a(7)(l).** [Emphasis added.]

Although the statement was made in an unpublished opinion that is not precedential, the statement is persuasive.[38] Further, no precedential authority has been issued that would impact or otherwise contradict the Court of Appeals' "conclusion" in that case.[39] As a result, the Tribunal erred in the entry of *RGW RE, LLC*. Said error was, however, *de minimis* in nature, as the Petitioner in that case alleged in its Motion for Summary Disposition:

> The facts at hand clearly meet the "commonly controlled" criteria set forth in [Revenue Bulletin Administrative Bulletin ("RAB") 1989-48] and recognized by the Court of Appeals in *C&J* [*Investments*] . . . .

The Tribunal's error was, however, limited to its failure to recognize or otherwise articulate that the Trust and LLC in that case were also engaged in business or trade activities.

With respect to Ms. Scott's status as a legal entity, the term or, more appropriately, phrase "legal entity" is not defined and, as such, the Tribunal "may look to a dictionary for interpretative assistance."[40] Nevertheless, the phrase is used in a complicated statute (i.e., the GPTA) relating to an exception from full taxation, which justifies the "use [of a] legal dictionary as opposed to a

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[37] See *Signature Villas, LLC v City of Ann Arbor*, 269 Mich App 694, 699; 714 NW2d 392 (2006).

[38] See MCR 7.215(C)(1).

[39] See *C&J Investments, supra*. The Court of Appeals also stated in the unpublished opinion *per curiam* issued in *Thompson's Bear Lake Ltd P'ship v Pleasanton Twp*, on October 22, 2002 (Docket No. 233544):

> Annual increases in the taxable value of real property are capped at five percent or the inflation rate, whichever is less, unless there is a transfer of ownership. 1963 Const, art 9, § 3; MCL 211.27a(2), (3). Transfers between common controlled entities are not considered transfers of ownership. MCL 211.27a(7)(1). The statute does not define commonly controlled entities. However, a state tax commission bulletin instructs that when determining whether a transfer of ownership occurred, "[a]n entity under common control is as defined in the Michigan Revenue Administrative Bulletin 1989-48." State Tax Commission Bulletin No. 16, "Transfers of Ownership," September 20, 1995.
>
> This Court should give weight to administrative interpretations. *Ludington Service Corp v Acting Comm'r of Ins,* 444 Mich 481, 491; 511 NW2d 661, mod 444 Mich 1240 (1994). Although administrative interpretations are not binding and cannot defeat a statute's plain meaning, *Western Michigan University Bd of Control v State,* 455 Mich 531, 544; 565 NW2d 828 (1997), **in the present case the interpretation is reasonable and likely what the Legislature intended.** [Emphasis added.]

[40] See *Spartan Stores, supra* at pp 574-5. The phrase "commonly controlled" is also not defined and, as such, subject to interpretation, as indicated herein. Said "phrase" has, however, been addressed by the Court of Appeals, as also indicated herein, and, as a result, no further interpretation is necessary.

lay dictionary" to determine the phrase's "unique legal meaning."[41] In that regard, Black's Law Dictionary (10th ed 2014) defines the phrase as meaning "[a] body, **other than a natural person**, that can function legally, sue or be sued, and make decisions through agents." [Emphasis added.] The exclusion of "a natural person" is, however, inconsistent with the fact that a natural person or individual can engage in business or trade activities (i.e., a sole proprietorship) and the STC's adoption of RAB 1989-48 for purposes of interpreting MCL 211.27a(7)(m), as the RAB provides, in pertinent part, "[e]ntities under common control shall include any person as defined in MCL 208.6(1) including '**an individual**, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, receiver, estate, trust, or any other group or combination acting as a unit.'" [Emphasis added.] Nevertheless, the resolution of that issue is unnecessary, as the requested "exception" is inapplicable given Petitioners' admission that neither the LLC nor Ms. Scott were engaged in business or trade activities. Respondent's failure to uncap the property' taxable value in the calendar year following the year of transfer (i.e., 2014) is, however, irrelevant, as the 2014 Transfer was also an uncapping event and that uncapping impacts the only remedy available to correct that failure, as indicated above.

As for the 2014 Transfer, the Tribunal is charged with administering and enforcing the General Property Tax Act and, in ascertaining the Legislature's intent, the Tribunal must "focus first on the plain language of the statute in question" and read the contested portions of a statute "in relation to the statute as a whole" so that the contested portions "work in mutual agreement" with the statute.[42] Further, "[w]hen confronted with two conflicting statutory provisions, specific statutory provisions prevail over more general ones."[43] In that regard, the underlying issue relates to the termination of a life estate and the more specific provisions are found in MCL 211.27a(c) and (d), rather than MCL 211.27a(t) and (u).[44] More specifically, the statutory change found in 2015 PA 243, which added the current subsection (d), demonstrates the legislative intent to create a familial exception for transfers upon the termination of a life estate, that would not have been required if such transfers were intended to be included in MCL 211.27a(7)(t) or (u), which were amended and added by earlier public act (i.e., 2014 PA 310).[45]

The Legislative Analysis of 2015 Public Act 243 also provided, in pertinent part:

> **The bill allows** property that was subject to a life estate or life lease to be transferred to a relative after the life estate or life lease has expired or terminated without being considered a "transfer of ownership," thus preventing the taxable value of that property from being uncapped and re-established based on market value. In other words, such property would continue to enjoy the benefit of the constitutionally established limit on annual increases in taxable values. This only

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[41] See *Spartan Stores*, *supra* at pp 575.
[42] See *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014), *appeal denied*, 498 Mich 932; 871 NW2d 203 (2015).
[43] See *Fed Nat Mortgage Ass'n v Lagoons Forest Condo Ass'n*, 305 Mich App 258, 267; 852 NW2d 217 (2014).
[44] Contrary to Petitioners' contentions, the termination of the life estate did not result in a new conveyance of the property. Rather, the property had already been conveyed to Petitioners. That conveyance was, however, subject to Mrs. Scott's retained life estate, which delayed the uncapping "**until** expiration or termination of the life estate." [Emphasis added.] See MCL 211.27a(7)(c).
[45] See *Bush v Shabahang*, 484 Mich 156, 166-7; 772 NW2d 272 (2009).

> applies to residential property not used for commercial purposes after the transfer. [Emphasis added.]

The Analysis further provided, in pertinent part:

> Generally speaking, **the act provides** that the transfer of property subject to a life estate or life lease not retained solely by the transferor of the property (i.e., the person making the transfer) is a transfer of ownership that results in a "pop-up" of the taxable value property at the time of the transfer. **If the property subject to the life estate or life lease is retained solely by the transferor, then the property's taxable value results in a "pop-up" at the expiration of the life estate or life lease no matter to whom it is transferred.**
>
> House Bill 4930 **creates an exception** to the paragraph above and provides, **beginning December 31, 2014**, that the transfer of that portion of residential real property that had been subject to a life estate or life lease retained by the transferor resulting from the expiration or termination of that life estate or life lease is **not** a "transfer of ownership" **if** the transferee of the property (i.e., the person to whom the property is transferred) is the mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter of the transferor or transferor's spouse, and the residential real property is not used for any commercial purpose following the transfer. [Emphasis added.]

Although such analyses are entitled to little judicial consideration as they do not "officially summarize [legislative] intentions,"[46] the analysis supports a finding that no such amendment would have been necessary under Petitioners' arguments (i.e., "stacking," "separate conveyances," etc.).

With respect to Petitioners' contention relative to the application or impact of the enacting section in PA 243, the Court of Appeals has, in addition to the above, stated:[47]

> The language of the statute expresses the legislative intent. *Dep't of Transportation v Tomkins,* 481 Mich 184, 191; 749 NW2d 716 (2008). The rules of statutory construction provide that a **clear and unambiguous** statute is **not** subject to judicial construction or interpretation. *Id.* Stated otherwise, when a statute **plainly and unambiguously** expresses the legislative intent, the role of the court is **limited** to applying the terms of the statute to the circumstances in a particular case. *Id.* We may **not** speculate regarding the intent of the Legislature beyond the words expressed in the statute. *Lash v Traverse City,* 479 Mich 180, 194; 735 NW2d 628 (2007). [Emphasis added.]

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[46] See *In re Certified Question from US Court of Appeals for Sixth Circuit*, 468 Mich 109, 116-17; 659 NW2d 597 (2003) and *In re Certified Question, supra*, footnote 5 at 115.

[47] See *GMAC LLC v Treasury Dep't*, 286 Mich App 365, 372; 781 NW2d 310 (2009). See also *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014) (i.e., "'[w]hen ascertaining the Legislature's intent, a reviewing court **should focus first** on the plain language of the statute in question....'" citing *Fisher Sand & Gravel Co v. Neal A. Sweebe, Inc,* 494 Mich 543, 560; 837 NW2d 244 (2013)).

Although it is unclear as to why the enacting section included language relating to the levying of taxes in 2015 (i.e., the passage of the bill in late 2015, etc.), Petitioners' contention would require the Tribunal to ignore the plain and unambiguous language of MCL 211.27a(7)(d) and "violate the fundamental rule of statutory construction" – i.e., render certain statutory language ("[b]eginning December 31, 2014") as surplusage or nugatory.[48] More specifically, MCL 211.27a(7)(d) provides an additional exception to uncapping "[b]eginning December 31, 2014," for the expiration or termination of a life estate or life lease on or after that date for familial transferees. In the instant case, the life estate terminated prior to December 31, 2014 (i.e., on January 15, 2014) and the taxable value is subject to uncapping in 2015 under MCL 211.27a(7)(d) even though said uncapping would result in an increase in taxes levied for the 2015 tax year.

As for Petitioners' reliance on the STC Guidelines, the applicable Guidelines were not promulgated as an administrative rule under the Michigan Administrative Procedures Act and the "statements" contained therein do not have the force of law. Further, the statements, although binding on the STC, are not binding on the Tribunal or "any other person."[49] Rather, they were merely "explanatory" in nature and incorrect or, at the very least, misleading. More importantly, the Tribunal is, as indicated by Respondent, "the final agency for the administration of property tax laws."[50]

With respect to the 2013 Transfer, the *Transfer of Ownership Guidelines* ("Guidelines") issued by the STC in March 2001, August 2010, June 2013, December 2013, and April 2014 all indicate that "[t]here are some circumstances that constitute a common control situation – even though the entities involved may not qualify as entities under common control under Michigan Revenue Administrative Bulletin 1989-48" based on an STC "policy" that was not articulated. The Guidelines issued by the STC in December 2014 also indicate that "[t]here are some circumstances that constitute a common control situation – even though the entities involved may not qualify as entities under common control under Michigan Revenue Administrative Bulletin 1989-48." In that regard, the Guidelines identify "two" circumstances and condition those circumstances by indicating the need for a "business purpose." The earlier Guidelines seem to be contradictory to the STC's "direction" that RAB 1989-48 "be used in determining whether entities are commonly controlled," while the December 2014 Guidelines seem to be consistent with that "direction." Nevertheless, the Court of Appeals had, as indicated above, already considered the issue and provided notice in 2002 and 2007 that the application of RAB 1989-48 for purposes of determining whether entities were commonly controlled was "reasonable and likely what the Legislature intended."

As for the 2014 Transfer, Petitioners are correct that Guidelines issued by the STC in December 2013, did provide, in pertinent part:

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[48] See *Pittsfield Charter Twp v Washtenaw County*, 468 Mich 702, 714; 664 NW2d 193 (2003). See also *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 545; 656 NW2d 215 (2002).
[49] See MCL 24.203(7). See also *Danse Corp v City of Madison Heights*, 466 Mich 175, 181; 644 NW2d 721 (2002).
[50] See MCL 205.753.

> **In 2011 Jane Doe conveys her residential property to her son, John Doe, retaining a life estate on the entire parcel. In 2014, Jane Doe dies, does the death of Jane Doe result in a transfer of ownership?** [Emphasis in original.]
>
> **No.** A transfer of ownership does **not** occur **because** the transfer is after December 31, 2013 **and** is a transfer of residential property between Jane Doe and John Doe who are related by blood in the first degree **and** the use of the residential real property has not changed following the transfer. See MCL 211.27a(7)(s). [Emphasis added.]

While the Guidelines issued by the STC in December 2014 provided, in pertinent part:

> **In 2013 Sandy Smith owns property and conveys the property to her son, Noah, retaining a life estate over the entire parcel. Sandy dies in 2014 and the life estate is terminated. Does the death of Sandy Smith result in a transfer of ownership?** [Emphasis in original.]
>
> **Yes.** A transfer of ownership occurs upon the death of Sandy Smith since death terminated the life estate. **No other exceptions or exemptions apply**. [Emphasis added.]

The fact that the example conveyances occurred during 2011 and 2013 is irrelevant, as the determining factor in both examples is when the life estate terminated and the life estates terminated, like the instant case, during 2014 prior to December 31, 2014. The second example is, however, supported by the plain language of the applicable statutory provisions and rules of statutory construction, while the first example is not. More specifically, neither Respondent nor the Tribunal are "bound by the . . . contemporaneous construction" relied upon by Mrs. Scott, as that construction was not a "plausible and defensible construction."[51] In that regard, the underlying statute in *D'Amico* provided that "no state tax 'of any kind whatsoever' shall be imposed on the proceeds of a state lottery prize," which was consistent with Treasury's original "contemporaneous construction" of no taxation (i.e., "plausible and defensible").

Given the above, the 2013 Transfer was not a transfer between legal entities that were commonly controlled and the 2014 Transfer occurred prior to "December 31, 2014." As such, and inasmuch as the Tribunal's powers are limited to those authorized by statute and do not include powers of equity, the Tribunal has no authority to grant Petitioners the relief requested.[52] More specifically, Respondent, and not Petitioners, has shown good cause to justify the granting of its Motion for Summary Disposition. Therefore,

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

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[51] See *In re D'Amico Estate*, *supra* at p 564.
[52] See *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346, 359; 411 NW2d 169 (1987); *Electronic Data Systems*, *supra* at pp 547-8; and *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 634; 752 NW2d 479 (2008).

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

IT IS FURTHER ORDERED that the subject property's taxable value ("TV") for the tax year at issue is as follows:

Parcel Number:

Year	TV
2015	$501,800

JUDGMENT

This is a proposed decision ("POJ") prepared by the Michigan Administrative Hearings System. It is not a final decision. As such, no action should be taken based on this decision. In that regard, the Tribunal will, after the expiration of the time period for the opposing party to file a response to exceptions, will review the case file, including the POJ and all exceptions and responses, if any, and:[53]

a. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
b. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing**, if available, that they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are **limited** to the evidence submitted with the Motion, the Response, and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to or electronically served on that party (i.e., email), **if** the parties agree to service by email, to file a written response to the exceptions.[54]

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

A copy of a party's written exceptions or response **must** be sent to the opposing party **by mail or email, if** email service is agreed upon by the parties, and proof **must** be submitted to the Tribunal demonstrating that the exceptions or response were served on the opposing party.

Entered: April 26, 2017 By Peter M. Kopke
pmk

[53] See MCL 205.726.
[54] See also MCL 205.762(2) and TTR 289(1) and (2).