

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

Deborah E Rabun,  
Petitioner,

v

MTT Docket No. 16-004780

City of Farmington Hills,  
Respondent.

Tribunal Judge Presiding  
Steven H. Lasher

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment (“POJ”) on January 18, 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 February 7, 2017, Respondent filed exceptions to the POJ. In the exceptions, Respondent states that the “POJ does not properly interpret and apply the language of ... MCL 211.7b, to the undisputed facts in this case.” Respondent contends that the disabled veteran, Mr. Rabun, never occupied the subject property prior to his death. Mr. Rabun passed away in January of 2015, and Petitioner purchased the subject property in April of 2016. Further, Petitioner did not reside or have any ownership interest in the subject property as of December 31, 2015. Respondent contends that “the unremarried surviving spouse is only entitled to an exemption that the deceased disabled veteran was eligible for, which could never be on property the veteran never owned and occupied as a homestead.” Respondent states that there is no dispute that Mr. Rabun qualified as a “disabled veteran” under MCL 211.7b. Moreover, the Hearing Referee concluded that an unremarried surviving spouse has an “independent right to the exemption;” however, the language of the statute does not support that conclusion. Respondent contends that the exemption is available to an unremarried surviving spouse so long as the disabled veteran was eligible for the exemption prior to the veteran’s death. Here, since Mr. Rabun was never eligible for the exemption on the subject property, neither is his surviving spouse.

Petitioner has not filed exceptions to the POJ or a response to Respondent’s exceptions.

The Tribunal has considered the exceptions and the case file and finds that the Hearing Referee erred in the rendering of the POJ. More specifically, the POJ addressed the fact that MCL 211.7b(2)<sup>1</sup> remains silent as to whether the sale or transfer of the property might affect the exemption. Further, the POJ indicates that the language of the statute remains clear that the

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<sup>1</sup> “If a disabled veteran who is otherwise eligible for the exemption under this section dies, either before or after the exemption under this section is granted, the exemption shall remain available to or shall continue for his or her unremarried surviving spouse. The surviving spouse shall comply with the requirements of subsection (1).”

exemption remains available for the disabled veteran's unremarried surviving spouse, if the disabled veteran dies before or after the exemption is granted; moreover, the exemption shall continue provided the surviving spouse remains unremarried. The Tribunal notes that MCL 211.7b(2) states that the unremarried surviving spouse must comply with the requirements of MCL 211.7b(1). The first sentence of MCL 211.7b(1) states that the "[r]eal property used and owned as a homestead by a disabled veteran ... is exempt from the collection of taxes under this act." The Michigan Supreme Court has held that "[t]he primary goal of judicial interpretation of statutes is to ascertain the intent of the Legislature. The first criterion in determining intent is the specific language of the statute. The Legislature is presumed to have intended the meaning it plainly expressed. If the plain language of the statute is clear, no further judicial interpretation is necessary."<sup>2</sup> The Tribunal finds that the plain language of MCL 211.7b(1) indicates that the disabled veteran must have used and owned the real property as a homestead. Here, Mr. Rabun passed away in January of 2015, and Petitioner purchased the subject property in April of 2016. Mr. Rabun never owned or occupied the subject property as a homestead, thus Petitioner is unable to qualify for the exemption.

Given the above, Respondent has shown good cause to justify the modifying of the POJ or the granting of a rehearing.<sup>3</sup> As such, the Tribunal modifies the POJ, as indicated herein, and adopts the modified POJ as the Tribunal's final decision in this case.<sup>4</sup> The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ as modified herein, in this Final Opinion and Judgment. As a result:

Parcel No. 23-26-131-021 is not entitled to a disabled veteran's exemption under MCL 211.7b for the 2016 tax year.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's disabled veteran's exemption as provided in this Final Opinion and Judgment within 20 days of entry of this Final Opinion and Judgment.

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

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<sup>2</sup> *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000).

<sup>3</sup> See MCL 205.762.

<sup>4</sup> See MCL 205.726.

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.

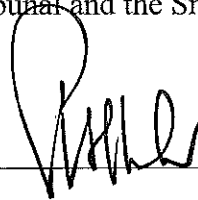
### APPEAL RIGHTS

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.<sup>5</sup> 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, there is no filing fee.<sup>6</sup> 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.<sup>7</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>8</sup>

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."<sup>9</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>10</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>11</sup>

By \_\_\_\_\_



Entered: MAR 15 2017  
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<sup>5</sup> See TTR 261 and 257.

<sup>6</sup> See TTR 217 and 267.

<sup>7</sup> See TTR 261 and 225.

<sup>8</sup> See TTR 261 and 257.

<sup>9</sup> See MCL 205.753 and MCR 7.204.

<sup>10</sup> See TTR 213.

<sup>11</sup> See TTR 217 and 267.

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Deborah E Rabun,  
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v

MTT Docket No. 16-004780

City of Farmington Hills,  
Respondent.

Case Type: Disabled Veterans Exemption

**PROPOSED OPINION AND JUDGMENT**

Personnel Presiding:	Diana Shkreli, Hearing Referee
Location of Hearing:	Pontiac, MI
Hearing Held on:	December 5, 2016
Appearances on Behalf of Petitioner:	Deborah Rabun (telephonic)
Appearances on Behalf of Respondent:	Matt Dingman; Gary Dove

**PROPOSED JUDGMENT**

The subject property, parcel number 23-26-131-021, shall be granted an exemption, under MCL 211.7b, for the 2016 tax year; the amount of the exemption is 100%.

**PROCEDURAL HISTORY**

Petitioner filed an affidavit with the supervisor or other assessing officer on July 14, 2016.

Petitioner filed her Petition with the Tribunal on August 19, 2016, and Respondent filed its Answer on August 29, 2016.

The amount of the taxable value in dispute, as set forth in the pleadings, for all tax years at issue is within the jurisdictional limits of the Small Claims Division.<sup>1</sup>

**ISSUES AND APPLICABLE LAW**

The issue in this matter is:

Whether Petitioner's property qualifies for a property tax exemption pursuant to MCL 211.7b.

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<sup>1</sup> See MCL 205.762(1).

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“In general, tax exempt statutes must be strictly construed in favor of the taxing authority.”<sup>2</sup> The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption.<sup>3</sup>

MCL 211.7b provides in pertinent part:

Real property used and owned as a homestead by a disabled veteran who was discharged from the armed forces of the United States under honorable conditions . . . is exempt from the collection of taxes under this act. . . . If a disabled veteran who is otherwise eligible for the exemption under this section dies, either before or after the exemption under this section is granted, the exemption shall remain available to or shall continue for his or her unmarried surviving spouse.

To qualify for the Disabled Veterans Exemption, MCL 211.7b requires that:

[A]n affidavit showing the facts required by this section and a description of the real property shall be filed by the property owner or his or her legal designee with the supervisor or other assessing officer during the period beginning with the tax day for each year and ending at the time of the final adjournment of the local board of review. The affidavit when filed shall be open to inspection. The county treasurer shall cancel taxes subject to collection under this act for any year in which a disabled veteran eligible for the exemption under this section has acquired title to real property exempt under this section. Upon granting the exemption under this section, each local taxing unit shall bear the loss of its portion of the taxes upon which the exemption has been granted.

MCL 211.7b(3) defines a disabled veteran as a person who resides in Michigan and satisfies one of the following requirements:

- (1) Has been determined by the United States department of veteran’s affairs to be permanently and totally disabled as a result of military service and entitled to veterans’ benefits at the 100% rate.
- (2) Has a certificate from the United States veterans’ administration, or its successors, certifying that he or she is receiving or has received pecuniary assistance due to disability for specially adapted housing.
- (3) Has been rated by the United States department of veteran’s affairs as individually unemployable.

### SUMMARY OF EVIDENCE

#### *A. Petitioner’s Evidence*

Petitioner offered the following exhibits:

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<sup>2</sup> *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); see also *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753; 298 NW2d 422 (1980).

<sup>3</sup> See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

1. Evidence, filed on August 26, 2016.
  - a. STC Bulletin 22 of 2013
  - b. Letter regarding tax exemption availability
  - c. Denial of exemption
  - d. Letter to Board of Review regarding exemption availability
  - e. Board of Review affidavit

No exhibits were excluded from evidence.

Based on the pleadings, admitted exhibits, and sworn testimony, Petitioner claims

She went to the Veteran's administration that gave her the letter indicating her husband was 100% disabled and indicated that according to the law, a surviving spouse is eligible for the exemption. She states that she did not have to live in the house as a homestead and that the law did not require thing to have lived in the property as a homestead. She currently lives at 23729 Haynes, which she purchased in 2016. She indicates that the representative at the VA indicated that the exemption continues for the benefit of the unmarried spouse. The veteran does not have to live in the home.

*B. Respondent's Evidence*

Respondent offered the following exhibits, which were admitted into evidence unless indicated otherwise:

1. Evidence, filed on November 10, 2016.
  - a. Affidavit for Disabled Veteran's Exemption
  - b. VA Disability confirmation letter for William Rabun
  - c. Death certificate
  - d. Warranty deed
  - e. City Attorney letter to Board of Review
  - f. Board of Review minutes
  - g. Board of Review decision
  - h. MCL 211.7b
  - i. MTT Docket No. 14-006578
  - j. Statement of Respondent's legal position regarding STC Bulletin 22 of 2013

No exhibits were excluded from evidence.

Based on the pleadings, admitted exhibits, and sworn testimony, Respondent claims

The counsel provided by the Veteran's advisor is not an accurate indication of the statute. Under the VA exemption a deceased veteran must have owned or occupied the subject as a homestead. Petitioner purchased the subject property in April of 2016 as a single woman. Veteran in the case passed away in January of 2015 before the purchase of the subject property. This analysis was

requested by the Board of Review and our analysis indicates that real property must be owned and used by the disabled veteran in order to be exempt. The statute indicates that the exemption remains available to the surviving spouse but in this case the subject property was never occupied by the veteran and therefore the property does not qualify for the exemption. The language of the statute is what is important and the STC indication that it could be owned by the veteran or the surviving spouse is incorrect. The STC is an advisory body and has no authority to change the statute. While it is unfortunate that Ms. Rabun was misinformed the law does not allow for her to be granted the exemption. Further, in the submitted affidavit Ms. Rabun did not indicate that she was using the property as her homestead.

### **FINDINGS OF FACT**

The following facts were found to be proven by a preponderance of the evidence:

1. The subject property is located at 23729 Haynes in the county of Oakland.
2. The subject property is classified as residential
3. Petitioner is the owner of the subject property.
4. The subject property is used and owned as a homestead.
5. Petitioner requested the exemption on July 14, 2016.
6. The notice of denial was sent to Petitioner on July 21, 2016.
7. Petitioner is the surviving spouse of the deceased disabled Veteran William Rabun who was rated as 100%, totally and permanently disabled and unemployable due to service connected disability.
8. Petitioner purchased the subject property on April 22, 2016.
9. Petitioner's late husband passed away on January 9, 2015.

### **CONCLUSIONS OF LAW**

1. The following authority and reasoned opinion supports the Tribunal's determination:

Petitioner is the surviving spouse of qualifying disabled veteran who was rated 100% disabled and unemployable due to service-connected disabilities. Petitioner's husband passed away on January 9, 2015. Petitioner purchased the subject property on April 22, 2016 and received a 100% PRE on the subject property. Petitioner contend that as surviving spouse of a qualifying veteran, who remains unmarried, she qualifies for the exemption regardless of whether her late husband resided or owned the subject property. The Tribunal agrees.

While Respondent in its presented testimony and filings indicates that the statute requires that the subject property be owned or used by the disabled veteran or that the deceased disabled veteran must have been eligible for the exemption on the property by having used and owned it as a homestead. Respondent indicates that the unmarried surviving spouse is only entitled to an exemption that the deceased disabled veteran was eligible for, which he could never be on the property the veteran never owned as a homestead.

The language of MCL 211.7b (2): reads as follows:

“If a disabled veteran who is otherwise eligible for the exemption under this section dies, either before or after the exemption under this section is granted, the exemption shall remain available to or shall continue for his or her unmarried surviving spouse. The surviving spouse shall comply with the requirements of subsection (1) and shall indicate on the affidavit that he or she is the surviving spouse of a disabled veteran entitled to the exemption under this section. The exemption shall continue as long as the surviving spouse remains unremarried.”

While the statute remains silent as to what might occur in the event of a sale or transfer of property, the remaining language is clear that the exemption would remain available for the veteran’s unremarried surviving spouse if the disabled veteran were to pass away before or after the exemption is granted, and that the exemption shall continue as long as the surviving spouse remains unremarried. No other conditions or qualifications regarding a surviving unmarried spouse’s eligibility for the exemption exist. Based upon the clear language of the statute, these purposes, Petitioner qualifies for the exemption under MCL 211.7b(2).

2. Based upon the findings of fact and conclusions of law, the property’s Disabled Veterans Exemption for the tax years at issue are as listed in the Proposed Judgment Section of this Proposed Opinion and Judgment (POJ).

### JUDGMENT

This is a proposed decision and not a final decision. As such, no action should be taken based on this decision.

After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

- a. Issue an FOJ adopting the POJ as a Final Decision.
- b. Issue an FOJ modifying the POJ and adopting the Modified POJ as a Final Decision.
- c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

### EXCEPTIONS

This POJ was prepared by the Michigan Administrative Hearings System. 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**, if 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 prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions.

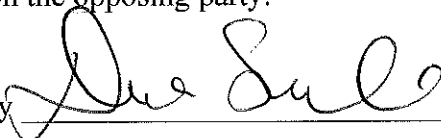


The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.

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 by mail or electronic service, if agreed upon by the parties**, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party.

Date Entered by Tribunal: **JAN 18 2017**

By  \_\_\_\_\_