

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

James R. Loshaw,
Petitioner,

MTT Docket No. 14-000197

v

Case Type: Disabled Veterans Exemption

Richfield Township,
Respondent.

Tribunal Member Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

Location of Hearing: Clare, MI
Hearing Held on: June 20, 2014
Petitioner's Representative: Wendy D. Loshaw
Respondent's Representative: Hear on File

SUMMARY OF JUDGMENT

The subject property shall be granted an exemption, under MCL 211.7b, for the 2013 tax year; the amount of the exemption is 100%.

PROCEDURAL HISTORY

Petitioner applied to the December Board of Review for a Disabled Veterans exemption which was granted.

Respondent issued a denial of the exemption on January 9, 2014.

Petitioner filed the petition with the Tribunal on February 2, 2014, and Respondent filed its Answer on March 7, 2014.

Petitioner's surviving spouse filed an Affidavit for Disabled Veterans Exemption for the 2014 tax year on May 12, 2014.

The amount of the state equalized or 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. See MCL 205.762(1).

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.

"In general, tax exempt statutes must be strictly construed in favor of the taxing authority." *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). The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption. See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

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 unremarried 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 veterans 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 veterans affairs as individually unemployable.

SUMMARY OF EVIDENCE

A. Petitioner's Evidence

Petitioner offered the following exhibits:

1. Petition filed on February 7, 2014:
 - a. Notice of Denial of Disabled Veteran's Exemption dated January 13, 2013,
 - b. State Tax Commission Additional Guidance for Disabled Veterans Exemption.
2. Evidence filed on May 23, 2014:
 - a. Appeal letter.
 - b. Property Deed dated February 26, 1986, to James and Thelma Loshaw as Joint Tenants.
 - c. Property Deed dated June 8, 1990, to James R., Donna J., and Thomas J. Loshaw as Joint Tenants.
 - d. Quit Claim Deed dated September 18, 1997, to Thomas J., Michael R., and James R. Loshaw.
 - e. Homestead Exemption Affidavit dated December 4, 2000.
 - f. The General Property Tax Act (Excerpt) – 211.7b.
 - g. Letter to Board of Review from Thomas J. Loshaw dated December 3, 2013.
 - h. Disabled Veterans Exemption Affidavit dated December 4, 2013.
 - i. Copy of Michigan Driver License (James R. Loshaw).
 - j. Correspondence and file from Department of Veterans Affairs.
 - k. Bulletin 22 of 2013 dated December 16, 2013.
 - l. Certificate of Death.
 - m. State Tax Commission Affidavit for Disabled Veterans Exemption dated May 12, 2014.
 - n. Copy of Michigan Identification Card (Donna J. Loshaw).
 - o. Marriage License.
 - p. Principal Residence Exemption Affidavit.
 - q. Durable Power of Attorney.
 - r. Warranty Deed dated October 10, 1997.
 - s. Property record card.
 - t. Quit Claim Deed.
 - u. Copy of Massachusetts Driver's License (Michael R. Loshaw).
 - v. State Tax Commission (Excerpt) – 209.101.
 - w. Administrative Procedures Act of 1969.

No exhibits were excluded from evidence:

Based on the pleadings, admitted exhibits, and sworn testimony, if any, Petitioner claims that the 2013 December Board of Review granted the Disabled Veterans Exemption on the subject property. Subsequently, on January 9, 2014, the Assessor denied the exemption based on the State Tax Commission's Bulletin 22 of 2013. The exemption was denied solely based upon the fact that the subject property was jointly owned, which the State Tax Commission indicates is

justification for denial. See STC Bulletin 22 of 2013. Petitioner's representative contends that James R. Loshaw owned and used the subject property as his principal residence prior to his passing in August 2013. He, therefore, qualified for the veteran's exemption which should continue for his surviving spouse Donna Loshaw.

B. Respondent's Evidence

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

1. Answer filed on March 7, 2014:
 - a. Email from State Tax Commission dated December 18, 2013,
 - b. Bulletin 22 of 2013 dated December 16, 2013,
 - c. Quit Claim Deed.

No exhibits were excluded from evidence:

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

"The [P]etitioner's application for the Disabled Veteran's Exemption was denied per State Tax Commission Bulletin 22 of 2013. Frankly, I disagree with the State Tax Commission's interpretation of the law and am very interested to see the Tribunal's interpretation."

FINDINGS OF FACT

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

1. The subject property is located at 2914 Glenn Ave in the county of Roscommon.
2. The subject property is classified as residential.
3. Petitioner was an owner of the subject property.
4. The subject property was used and owned as a homestead by Petitioner in 2013.
5. Petitioner was a resident of Michigan.
6. Petitioner received 100% veteran's benefits as he was unable to work due to his service related disabilities.
7. Petitioner passed away on August 14, 2013.
8. Petitioner was survived by his spouse, Donna Loshaw.

CONCLUSIONS OF LAW

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

The issue at hand is whether the subject property shall receive a disabled veteran's exemption for the 2013 tax year. Respondent denied the exemption relying on the State Tax Commission's Bulletin No. 22 of 2013. The Bulletin states in pertinent part:

My home is in a joint tenancy, am I eligible for the exemption?

No. A joint tenancy is a form of concurrent ownership wherein each co-tenant owns an undivided share of property and the surviving co-tenant has the right to the whole estate. The Act does not provide for a partial exemption in the situation where you are a partial owner of a property. [*Id.* at 4.]

The Tribunal finds that the State Tax Commission Bulletin provides *some* beneficial guidance, but is not binding on the Tribunal. “[A]gency interpretations are entitled to respectful consideration, but they are not binding on courts and cannot conflict with the plain meaning of the statute.” *In re Rovas Complaint*, 482 Mich 90, 117-118; 754 NW2d 259 (2008). The Tribunal finds, therefore, that it is not bound by the STC interpretation of MCL 211.7b as there is no basis in the statue to find that property that is jointly owned is not eligible for an exemption. More specifically, MCL 211.7b(1) states in pertinent part that:

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 or by an individual described in subsection (2) is exempt from the collection of taxes under this act. [Emphasis added.]

Words and phrases in a statute are to be given their plain and ordinary meaning. *Kinder Morgan Mich, LLC v City of Jackson*, 277 Mich App 159, 163; 744 NW2d 184, 188 (2007). The Tribunal finds that the plain meaning of the statue only indicates that the disabled veteran must *own* the subject property. There is no indication that the legislature intended to require that the property be *solely* owned by the disabled veteran. The word “owned” is not defined in the statute, and the Tribunal finds that dictionary definitions may be helpful in construing statutory language according to its common and approved usage. *People v Bobek*, 217 Mich App 524, 529; 553 NW2d 18, 21 (1996). Black's Law Dictionary defines “own” as “[t]o rightfully have or possess as property; to have legal title to;” Black's Law Dictionary (9th ed). Therefore, without modification, that the mere use of the word “owned” does not indicate a sole possessory right. Rather, the veteran must only rightfully have or possess the subject property. Therefore, the Tribunal finds that the State Tax Commission Bulletin No. 22 of 2013 erroneously indicates that the veteran must be a sole owner. This interpretation is contrary to the plain language of the statute.

In this case, there is no dispute that the Petitioner, James R. Loshaw, qualified for the exemption as a disabled veteran MCL 211.7b. Respondent admits that the only reason the exemption was denied is because of the STC’s erroneous interpretation of the statute at hand. There is also no dispute that prior to Petitioner’s passing he was *an owner*, albeit a joint owner. Given the Tribunal’s analysis that the STC’s interpretation is erroneous, there is no dispute that Petitioner was eligible for the 2013 tax year exemption. In addition, Petitioner’s representative submitted substantial evidence that demonstrates that Petitioner qualified for the exemption. More specifically, the deeds transferring the subject property in 1986, 1990, and 1997, were submitted and indicate that, at all times, Petitioner was an owner. Therefore, Petitioner meets the ownership requirement. Petitioner’s driver’s license was submitted which lists the subject property as his

home address and Petitioner's representative testified that Petitioner used the subject as his homestead until his passing in August 2013. See James Loshaw Driver's License. Thus, Petitioner meets the requirement of using the subject as his homestead. Petitioner's veteran's records were also submitted which indicate that Petitioner qualified for 100% disability payment due to his service related disabilities. See Correspondence from the Department of Veterans Affairs. Therefore, the Tribunal finds that the evidence and testimony on record reliably support that Petitioner qualified for the disabled veteran's exemption under MCL 211.7b for the 2013 tax year.

MCL 211.7b(2) indicates:

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.

Given the statutory language, the Tribunal finds that it is irrelevant that the exemption was not granted prior to Petitioner's passing. The plain language of the statute indicates that as long as Petitioner was eligible during the tax year at issue the exemption "shall remain available to or shall continue for his or her unremarried surviving spouse." MCL 211.7b(2). Petitioner's surviving spouse is Donna Loshaw. See Marriage License, Death Certificate, and Affidavit for Disabled Veterans Exemption. The Tribunal finds that since Petitioner qualified for the exemption in the 2013 tax year, the exemption remained available to his surviving spouse, Donna Loshaw. Therefore, the 2013 exemption shall be granted.¹

2. Based upon the findings of fact and conclusions of law, the property's exemption and taxable value for the tax years at issue are as listed in the Summary of Judgment section of this Opinion and Judgment.

JUDGMENT

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Opinion, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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

¹ The Tribunal finds that it does not have jurisdiction over the 2014 tax year. Although an affidavit for the 2014 tax year was filed on May 12, 2014, there is no evidence or testimony on the record to demonstrate that the 2014 year exemption was also denied.

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 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 Opinion. 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, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through December 31, 2014, at the rate of 4.25%.

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

By _____ Steven H. Lasher _____

Date Entered by Tribunal: July 16, 2014
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