

02/17/15

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

Jack Turner,  
Petitioner,

v

MTT Docket No. 14-005728

Egelston Township,  
Respondent.

Tribunal Judge Presiding  
Steven H. Lasher

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment on February 6, 2015. The Proposed Opinion and Judgment 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 17, 2015, Petitioner filed exceptions to the Proposed Opinion and Judgment. In the exceptions, Petitioner states:

1. “[T]he POJ concludes that a ‘dwelling’ only includes the residence structure proper, and does not include the detached garages.”
2. “The Michigan General Property Tax Act . . . does not define the term ‘dwelling’, or whether the term encompasses such common features as a detached garage. The POJ fails to recognize this lack of definition, and therefore fails to take the customary approach taken by courts in seeking to construe a commonly used and understood term used by, but not defined by, the legislature.”
3. “It is Petitioner’s position that had the POJ complied with this rule of construction for the undefined term ‘dwelling’, that the result would be the inclusion of detached garage(s) within that term.”
4. “Petitioner asserts that because the term ‘dwelling’ is not defined in this Act, that resort must be made to other sources in order to ascertain the legislature’s intent. And if the issue is subject to such scrutiny, then it will become clear that the term ‘dwelling’ means more than merely a ‘house’ (which term the legislature did not use), and incorporates a detached garage on contiguous lots occupied by the occupants as a single dwelling unit.”

5. "Based on the State Tax Commission's own answer to a frequently asked question regarding the Disabled Veterans Exemption, . . . the garages located on Lots 32 and 33 should also be found to qualify for the Disabled Veteran's Exemption."

Respondent has not filed exceptions to the Proposed Opinion and Judgment or a response to Petitioner's exceptions.

The Tribunal has considered the exceptions and the case file and finds that the Hearing Referee properly considered the testimony and evidence submitted in the rendering of the Proposed Opinion and Judgment.

Contrary to Petitioner's contentions, the Hearing Referee did recognize the lack of a definition of dwelling in the General Property Tax Act and, as indicated on page 5 of his Proposed Opinion and Judgment, concluded that "dwelling," for purposes of MCL 211.7b, means "house." Although the Hearing Referee did not expand on how he arrived at this definition, the Tribunal will do so now to provide additional analysis as to why it concurs with the Hearing Referee's definition of dwelling for purposes of MCL 211.7b.

"Dwelling," as both parties are aware, is not defined by the General Property Tax Act, 1893 PA 206, for purposes of MCL 211.7b; therefore, the Tribunal finds it appropriate to obtain a dictionary definition for guidance in ascertaining its common and ordinary meaning as intended by the Legislature in drafting such legislation. See *Spectrum Health Hospitals v Farm Bureau Mutual Ins Co of Michigan*, 492 Mich 503, 515; 821 NW2d 117 (2012). In that regard, according to *Webster's New World Compact Desk Dictionary and Style Guide* (1998) at 136, the definition of "dwelling" means "a residence; abode." Further, the definition of "residence" includes "the place where one resides," and the definition of "abode" means "a home; residence." *Id.* at 2, 365. As a result, the Tribunal finds that employing the definition of "dwelling" to be mean a "home," or "house," as stated by the Hearing Referee, best effectuates the legislative intent, which is the principal rule of statutory construction. Additionally, the fact that the word "contiguous" is not mentioned in MCL 211.7b is quite compelling, considering such word was included by the Legislature in other portions of the General Property Tax Act, including MCL 211.7dd. As such, because the subject property's residential building (i.e., house or home) is not located on Parcel Nos. 61-11-360-017-0032-00 and 61-11-360-017-0033-00, the Hearing Referee appropriately concluded that those parcels are not entitled to a disabled veteran's exemption for the tax year at issue.<sup>1</sup>

Given the above, Petitioner has failed to show good cause to justify the modifying of the Proposed Opinion and Judgment or the granting of a rehearing. See MCL 205.762. As such, the Tribunal adopts the Proposed Opinion and Judgment as the Tribunal's final decision in this case.

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<sup>1</sup> If the parcels at issue had been combined, along with Parcel No. 61-11-360-017-0009-00, the entire property, including the real property located on Parcel Nos. 61-11-360-017-0032-00 and 61-11-360-017-0033-00, would have qualified for a disabled veteran's exemption of 100% under MCL 211.7b for the 2014 tax year.

See MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the Proposed Opinion and Judgment in this Final Opinion and Judgment. As a result:

Parcel No. 61-11-360-017-0010-00 is entitled to a disabled veteran's exemption under MCL 211.7b of 100% for the 2014 tax year.

Parcel Nos. 61-11-360-017-0032-00 and 61-11-360-017-0033-00 are not entitled to a disabled veteran's exemption under MCL 211.7b for the 2014 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 exemption within 20 days of entry of this Final Opinion and Judgment, 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 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, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through June 30, 2015, at the rate of 4.25%.

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

#### APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

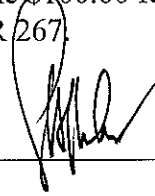
A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with

the \$25.00 filing fee, if applicable, within 21 days from the date of entry of this final decision. See TTR 257 and TTR 267. A copy of a party's motion for reconsideration 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 motion for reconsideration was served on the opposing party. See TTR 225. However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument. See TTR 257.

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision. See MCR 7.204. If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the \$100.00 fee, if applicable, for the certification of the record on appeal. See TTR 213 and TTR 267.

Entered: MAR 17 2015  
lka

By \_\_\_\_\_

A handwritten signature in black ink, appearing to be "M. L. K.", is written over a horizontal line that serves as a signature line.

STATE OF MICHIGAN  
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Jack Turner,  
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MTT Docket No. 14-005728

Egelston Township,  
Respondent.

Case Type: Disabled Veterans Exemption

**PROPOSED OPINION AND JUDGMENT**

Personnel Presiding: Robert H. Skilton, Hearing Referee  
Location of Hearing: Muskegon Township, MI  
Date of Hearing: January 20, 2015  
Appearances on Behalf of Petitioner: Rachael Novak, Esq., Jack Turner and Shirley Turner  
Appearances on Behalf of Respondent: Deborah Balcom

Parcel No. 61-11-360-017-0010-00 shall be granted an exemption, under MCL 211.7b, for the 2014 tax year; the amount of the exemption is 100%.

Parcel Nos. 61-11-360-017-0032-00 and 61-11-360-017-0033-00 shall not be granted an exemption, under MCL 211.7b, for the 2014 tax year; the amount of the exemption is 0%.

**PROCEDURAL HISTORY**

Petitioner filed an affidavit with the supervisor or other assessing officer prior to the adjournment of the adjournment of the 2014 December BOR<sup>1</sup>.

Petitioner filed his Petition with the Tribunal on August 4, 2014, and Respondent filed its Answer on August 12, 2014

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. See MCL 205.762(1).

**ISSUES AND APPLICABLE LAW**

The issue in this matter is:

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<sup>1</sup> Neither Petitioner no Respondent had a copy of the affidavit with them. Respondent's representative testified that the appropriate affidavit had been timely filed for 2014.

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. Evidence, filed August 4, 2014:
  - a. Order, Board of Veterans' Appeals dated June 16 2014 certifying as to Petitioner's disability.
  - b. 2014 July Board of Review decision certifying exemption for parcel number 11-360-017-0009-00 (Lot 9).
2. Evidence, filed December 18, 2014.
  - a. Hearing Memorandum.
  - b. Aerial view of the subject properties.
  - c. Letter dated December 1, 2014 from the Department of Veterans Affairs certifying that Petitioner at a combined service-connected disability of 70 percent and is considered totally and permanently disabled due to service-connected disabilities.
3. Evidence, filed January 20, 2015 at the hearing. (admitted without objection)
  - a. Additional maps showing separate parcel numbers for each of the parcels at issue.
  - b. State Tax Commission's Frequently Asked Questions Approved August 26, 2014.

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

- There are four separate platted lots that are being utilized for a single purpose as Petitioner homestead. The Township granted a 100 percent veterans exemption for Lot 9 and denied the exemption for the other three platted lots based upon an interpretation made by the State Tax Commission that a disabled veterans exemption could only apply to the parcel used as a homestead and that adjacent unoccupied parcels even though part of a principal residence exemption were not eligible for exemptions under MCL 211.7b.
- In the instant case all of the four lots are used by Petitioner as part of his homestead. The house sits on Lots 9 and 10. Lot 32 has a small garage which is used to store hunting equipment. Lot 33 has the driveway and an outbuilding located on it. The outbuilding houses boats, cars and other personal property. There is no commercial activity occurring on any of the lots and all of the uses are consistent with ordinary uses for residential property.
- There is no issue as to eligibility. Petitioner has been determined by the Department of Veterans Affairs to be permanently and totally disabled and entitled to receive veteran's benefits at the 100% rate and has been rated as individually unemployable.
- Respondent cites State Tax Commission Bulletin 22 of 2013 in which it is stated that "contiguous vacant parcels qualification under PRE would not apply" in denying the exemption for the three parcels.
- The State Tax Commission's Frequently Asked Questions Approved August 26, 2014 concerning the veterans exemption states on Page 3 that a "homestead is generally defined as any dwelling with its land and buildings where a family makes it home." All four lots are used for this purpose and comply with this definition of a homestead.

- Nowhere in the statute is there a requirement that all of the land be included on one permanent parcel number.

#### *B. Respondent's Evidence*

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

1. Evidence, filed August 12, 2014.
  - a. Notices of Assessment for all three parcels.
  - b. Property Record Cards for all three parcels
  - c. State Tax Commission Bulletin 22 of 2013 entitled Disabled Veterans Exemption.

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

- Respondent agrees that Petitioner is a disabled veteran entitled to an exemption under MCL211.7b. An exemption was granted for Lot 9 upon which the residence sits.
- The denial was based on the guidance from the State Tax Commission and the instructions contained in Bulletin 22 that contiguous parcels are not eligible for exemption even though they would be included for the purposes of a principal residence exemption.
- Respondent does not dispute that facts testified to by Petitioner's wife as to the uses found on the subject parcels.

#### **FINDINGS OF FACT**

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

1. The subject parcels are located at 76 North Michigan Street, city of Muskegon in the county of Muskegon.
2. The subject parcels are classified as residential.
3. Petitioner is the owner of the subject parcels.
4. The subject parcels are adjacent to Petitioner's parcel, Lot 9, for which a veterans exemption was granted by Respondent for 2014.
5. Petitioner is a disabled veteran within the meaning of MCL 211.7b in that he has been certified by the Department of Veterans Affairs that is considered totally and permanently disabled due to service-connected disabilities.
6. Petitioner's house is on Lot 9 and Lot 10. Petitioner has a detached outbuilding that is on Lots 32 and 33.

#### **CONCLUSIONS OF LAW**

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

MCL 211.7b. provides in 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. . . .

The parcel numbers that are involved in this appeal are all contiguous properties. Separate parcel numbers were assigned to the platted lots that comprise the plat. Parcel Number 61-11-360-017-0010-00 was assigned to Lot 10, Parcel Number 61-11-360-017-0032-00 was assigned to Lot 32 and Parcel Number 61-11-360-017-0033-00 was assigned to Lot 33. Most of the house sits on Parcel Number 61-11-360-017-009-00 which was assigned to Lot 9. Respondent granted a Disabled Veterans Exemption for Lot 9 because the house is mostly located on Lot 9. The Disabled Veterans Exemption for Lots 10, 32 and 33 were denied. The uses present on the four lots as follows: Lot 9 contains the house, Lot 10 contains a portion the house, Lot 32 has a small garage located on it which is used to store hunting equipment, and Lot 33 has the driveway located on it as well as an outbuilding that houses boats, cars and other personal property. There is no commercial activity occurring on any of the lots and all of the uses are consistent with ordinary uses for residential property. If this were a case involving the entitlement for a Principal Residence Exemption (“PRE”) there would be no question that all of the lots are contiguous and unoccupied and therefore entitled to the exemption. However, a PRE and Disabled Veterans Exemption are separate and distinct exemptions and that an inclusion of property under a PRE does not govern the inclusion of property under a Disabled Veterans Exemption. The question then is whether the Disabled Veterans Exemption (“PRE”) itself provides for the inclusion of all of these properties as part of the Disabled Veterans Exemption.

A Disabled Veterans Exemptions is provided for “[r]eal 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. . . .” (Emphasis added).

The General Property Act at MCL 211.7a(1)(c) defines the term homestead as “a dwelling or a unit in a multipurpose or multidwelling building which is subject to ad valorem taxes and which is owned and occupied as the principal domicile by the owner thereof.”

The Tribunal finds that Petitioner is only entitled to a Disabled Veterans Exemption on the parcel or parcels used and owned by Petitioner as a homestead, which is defined in the General Property Tax Act as a dwelling. Respondent granted the exemption to Lot 9, on which a portion of the house sits. The Tribunal finds that the exemption should also be granted to Lot 10, as Petitioner’s house, or “dwelling” also sits on this parcel. Petitioner is not, however, entitled to the exemption for Lots 32 or 33, as there is no “dwelling” on either parcel.

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). There is no fee for filing exceptions.

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

Exceptions are **limited** to the evidence submitted prior to or at the hearing and any matter addressed in the POJ.

A copy of a party's written exceptions **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 were served on the opposing party. The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.

By \_\_\_\_\_  


Date Entered by Tribunal:

**FEB 06 2015**