

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL  
***PROPERTY TAX APPEAL***

David and Deborah K. Reese,  
Petitioners,

v

MTT Docket No. 327869

Township of Lyon,  
Respondent.

Tribunal Judge Presiding  
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

ORDER PARTIALLY GRANTING RESPONDENT'S MOTION FOR  
SUMMARY DISPOSITION

ORDER PARTIALLY GRANTING PETITIONER'S MOTION FOR  
SUMMARY DISPOSITION

INTRODUCTION

On January 8, 2009, the Tribunal held a prehearing conference in this matter. The parties proposed that this case be resolved pursuant to motions for summary disposition. The Tribunal established a scheduling order that provided for the filing and exchanging of motions for summary disposition on or before January 28, 2009, and briefs in response to those motions on or before February 11, 2009. Respondent filed a motion for summary disposition on January 26, 2009. Petitioners filed a motion for summary disposition on January 27, 2009. Respondent filed a brief in response to Petitioners' motion for summary disposition on February 10, 2009. Petitioners in this matter are represented by William L. Carey, Carey & Jaskowski, PLLC. Respondent is represented by Ronald C. Meiring.

## BACKGROUND

Respondent uncapped the taxable value of the property for the 2006 tax year. Petitioners appealed the uncapping to Respondent's March 2006 Board of Review which denied the appeal. Petitioners filed a petition with the Tribunal on June 26, 2006, appealing the denial of Respondent's Board of Review.

Respondent's contentions of the subject property's taxable value, as confirmed by the Board of Review, are:

Parcel Number	Year	TV
72-007-015-001-0075	2006	\$210,700
72-007-015-001-0075	2007	\$213,800
72-007-015-001-0075	2008	\$217,200

Petitioners' contentions of the subject property's taxable value, as confirmed by the Board of Review, are:

Parcel Number	Year	TV
72-007-015-001-0075	2006	\$101,923
72-007-015-001-0075	2007	\$105,694
72-007-015-001-0075	2008	\$108,125

## PETITIONERS' CONTENTIONS

Petitioners assert that William A. Reese, Jr. (Mr. Reese), Petitioner David Reese's father, owned the subject property in 1992 when he "transferred the subject property to [the William A. Reese, Jr. Revocable Living Trust] (Trust)"<sup>1</sup> Mr. Reese was the settlor of the Trust, Trustee, and the sole present beneficiary of the Trust until his death on December 22, 2000.<sup>2</sup> The Trust provided that if Mr. Reese became incapacitated, the resources of the Trust were to be used for his benefit and

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<sup>1</sup> Petitioner brief in support of motion for summary disposition, p 1

<sup>2</sup> Trust Agreement, paragraph 2.1

support.<sup>3</sup> The property was held in the Trust until Mr. Reese's death. Petitioners state that on July 8, 2005, "the subject property was transferred from the trust to Petitioners."<sup>4</sup> Respondent subsequently uncapped the taxable value of the subject property. Petitioners appealed the uncapping to the Board of Review, which denied their appeal. Taxable value for the 2005 tax year of the subject property was \$98,667. The taxable value for the 2006 tax year was increased to \$210,700.

Petitioners assert that the distribution to Petitioner David W. Reese pursuant to the Trust directions was exempt as an exception to the definition of transfer of ownership pursuant to MCL 211.27a(6) and (7).<sup>5</sup> Petitioners support this assertion by stating in their brief that the "subject real property remained capped under Proposal A from 1995 through 2005." They further support their conclusion by stating that "Respondent... did not attempt to adjust the taxable value of the property in 2001, the tax year following the death of William A. Reese, Jr."<sup>6</sup>

Petitioners contend that "[i]n July, 2005, the sole present beneficiary of the . . . Trust was David W. Reese,"<sup>7</sup> and further assert that at "no time between the creation of the trust . . . and the distribution of the subject property . . . was the . . . Trust changed or amended in any way . . . Clearly, David W. Reese was the distributee of the . . . Trust on July 8, 2005."<sup>8</sup> Based upon these assertions, Petitioners contend that they are entitled to summary disposition.

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<sup>3</sup> Trust Agreement, paragraph 2.1

<sup>4</sup> Petitioner brief in support of motion for summary disposition, p 2

<sup>5</sup> It is unclear from Petitioners' brief under which statutory provision they are claiming exemption. The Tribunal has determined that MCL 211.27a(6)(c) and 211.27a(6)(d) are the provisions to which Petitioners must be referring.

<sup>6</sup> Petitioner brief in support of motion for summary disposition, p 3

<sup>7</sup> Petitioner brief in support of motion for summary disposition, p 3

<sup>8</sup> Petitioner brief in support of motion for summary disposition, p 3-4

## RESPONDENT'S CONTENTIONS

Respondent states that the subject property was purchased by William A. Reese, Jr. and Jacquelin Joyce Reese on February 28, 1976 by land contract and a warranty deed was issued on January 30, 1992. Jacquelin Reese passed away on June 7, 1994 and title to the subject property vested solely in William A. Reese, Jr.<sup>9</sup> Respondent concurs with Petitioners that Mr. Reese executed a Revocable Living Trust and conveyed his interest in the subject property to that Trust. Upon Mr. Reese's death, the Trust was divided into two parts, Trust A and Trust B. Trust A was immediately distributed and Trust B was distributed in 2005 to Petitioner. Respondent asserts that the taxable value was uncapped for tax year 2006 as "there was a nonexempt conveyance of the property."<sup>10</sup>

Respondent contends that William A. Reese, Jr. created the Trust and thus was the settlor of the Trust and the sole income beneficiary. Under the Trust, Petitioner, David W. Reese, was a "residuary beneficiary and distributee but never an income beneficiary."<sup>11</sup> Respondent further asserts that there was a "change in beneficiary in 2000,"<sup>12</sup> and that the "property taxes should have been uncapped in calendar year 2001."<sup>13</sup> Respondent argues that this "change" was based upon the fact that William A. Reese was the income beneficiary until his death and that "then the income from the Trust was paid into/added to the principal of the Trust which was subsequently distributed to Mr. Reese's son, the Petitioner."<sup>14</sup> Respondent asserts that the Township would not be aware of the circumstances and did not become aware of the circumstances until there was a

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<sup>9</sup> Respondent's motion for summary disposition, p 2

<sup>10</sup> Respondent's motion for summary disposition, p 3

<sup>11</sup> Respondent's motion for summary disposition, p 4

<sup>12</sup> Respondent's motion for summary disposition, p 4

<sup>13</sup> Respondent's motion for summary disposition, p 4

<sup>14</sup> Respondent's motion for summary disposition, p 4

“deed out of the Trust.”<sup>15</sup> Respondent makes the following additional arguments and asks that the “petition be denied and that the Tribunal affirm the Township’s action in removing the cap from the tax on the subject property,”<sup>16</sup>

1. Section 53 of the Act (MCL 205.743) requires the payment of taxes as a condition to the final decision and in this matter the Petitioner has only paid a portion of the taxes due and thus is not entitled to a decision by the Tribunal.
2. If the Tribunal were a court of equity, the Petitioner would be estopped from proceeding with the action as he did not rescind the homestead exemption until some five years after his father’s death.<sup>17</sup>

#### FINDINGS OF FACT

The parties agree on the relevant facts in this matter as herein presented.

On August 19, 1992, William A. Reese, Jr., then owner of the subject property, transferred the property by quitclaim<sup>18</sup> to the William A. Reese, Jr. Revocable Living Trust established on that same date. Mr. Reese was listed as the “Original Trustee”<sup>19</sup> and Petitioner was listed as “Successor Trustee.”<sup>20</sup> Mr. Reese died on December 22, 2000.<sup>21</sup>

The Trust provided that, upon Mr. Reese’s death, a cash distribution should be made from the Trust assets and the remaining Trust property divided between “Trust A and Trust B.”<sup>22</sup> Trust A was immediately distributed to Petitioner. As to Trust B, the Trustee, Petitioner David W. Reese,

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<sup>15</sup> Respondent’s motion for summary disposition, p 4

<sup>16</sup> Respondent’s motion for summary disposition, p 5

<sup>17</sup> Respondent’s motion for summary disposition, p 4

<sup>18</sup> Petitioners’ exhibit B

<sup>19</sup> Petitioners’ exhibit A, title page

<sup>20</sup> Petitioners’ exhibit A, title page

<sup>21</sup> Petitioners’ exhibit C

<sup>22</sup> Petitioners’ exhibit A, 2, paragraph 3.4

was directed to “invest and manage the trust property for a period of two (2) years... At the expiration of the two (2) year period, Trustee shall distribute all remaining assets to the beneficiary, David W. Reese.”<sup>23</sup> That distribution took place on July 8, 2005.

#### CONCLUSIONS OF LAW

Although neither party addresses the Michigan Court Rule pursuant to which they have filed their motions for summary disposition and despite the fact that neither party addresses the standard for the granting of a motion for summary disposition under Michigan Court Rules, the Tribunal concludes that both Respondent and Petitioners move for summary disposition pursuant to MCR 2.116(C)(10).<sup>24</sup> In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated “[a] motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact.” Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

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<sup>23</sup> Petitioners’ exhibit A, 2, paragraph 3.5

<sup>24</sup> MCR 211(C)(10) provides, Rule 2.116 Summary Disposition... (C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based: ... (10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

MCL 211.27a(2) provides the general rule for the calculation of taxable value for the tax years here at issue,

...

Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:

- (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
- (b) The property's current state equalized valuation.

MCL 211.27a(3) provides for the calculation of taxable value after a transfer if owner of property,

Upon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer.

MCL 211.27a(6) defines the term "transfer of ownership" and provides for certain exceptions applicable to this matter,

(6) As used in this act, "transfer of ownership" means 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. Transfer of ownership of property includes, but is not limited to, the following:

...

(c) A conveyance to a trust after December 31, 1994, except if the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both.

(d) A conveyance by distribution from a trust, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.

Section 43 of the Tax Tribunal Act, MCL 205.743(1) provides,

If the date set by law for the payment of taxes has passed, the tribunal shall not make a final decision on the entire proceeding until the taxes are paid. *This requirement may be waived at the tribunal's discretion.* (emphasis added)

MCL 205.22(1) provides,

A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision, or order. The *uncontested* portion of an assessment, order, or decision shall be paid as a prerequisite to appeal. (emphasis added)

The Tribunal, having considered the affidavits, pleadings, depositions, admissions, and documentary evidence presented, concludes that the transfer of ownership of the subject property from Mr. Reese to the William A. Reese, Jr. Revocable Living Trust on August 18, 1992, was

prior to 1994 when MCL 211.27a(6)(c) became effective. And further, neither party claims that there should have been any change in value based upon this transfer to the Trust.

The distribution from the Trust to Petitioner David W. Reese on July 8, 2005, met the criteria for exemption from the definition of transfer of ownership under MCL 211.27a(6)(d). At the time of the distribution, Petitioner David W. Reese was the sole beneficiary of Trust B and the distributee. Taxable value of the subject property was improperly uncapped for the 2006 tax year.

The transfer of the subject property from the William A. Reese, Jr. Revocable Living Trust to Trust A and Trust B upon Mr. Reese's death in December 2000, was a transfer of ownership under MCL 211.27a. That transfer occurred after 1994 and no exception under 211.27a applies. The conveyance was from the William A. Reese, Jr. Revocable Living Trust to Trust A and Trust B. The settlor, Mr. Reese, did not convey the property and Petitioner David W. Reese, not Mr. Reese, was the sole present beneficiary of Trust A and Trust B at the time of that conveyance. Petitioners submitted no evidence that they filed a notice with the appropriate assessing office as required by MCL 211.27b(1) informing the office that a transfer of ownership occurred. Pursuant to MCL 211.27b, based upon this failure to give proper notice, Respondent could uncap the subject property and adjust the taxable value from that year forward. However, that is not the action before the Tribunal in this case. Petitioners here appeal Respondent's uncapping of the taxable value of the property based upon what it determined was a transfer of ownership in 2005.

Additionally, although Respondent in its brief in support of its motion for summary disposition presents arguments related to a “homestead exemption”<sup>25</sup> issue, the Tribunal does not have authority to address that matter as Petitioners have not appealed a denial of a principal residence exemption in the instant case.

As to the applicability of MCL 205.743, the Tribunal concludes that Respondent failed to include the statutory provision in its entirety. The statute allows the Tribunal the discretion to waive the requirement to pay the taxes before a final decision is made. Further, Respondent admits that Petitioners paid a portion of the taxes due and has not asserted that the uncontested portion of the taxes was not paid. Thus, Petitioners have met the standard under MCL 205.22.

The Tribunal’s conclusions as to the transfers of the subject property are based upon the assertions of the parties. Michigan Department of Treasury Form 3214, required to be completed when the assessor uncaps taxable value, was not presented to the Tribunal. Further, MCL 211.27b requires correction of the tax roll when an uncapping occurs. Respondent’s record cards for the 2000 through 2009 tax years indicate that the last transfer of the subject property was in 1976. Although the name and address of the owner of the property changes through these years, there is nothing on the public record to account for those changes.

The Tribunal concludes that the 2005 transfer of the subject property from Trust B to Petitioner David W. Reese qualified under the exception to the definition of transfer of ownership under MCL 211.27a(6)(d). The taxable value should not have been uncapped for tax year 2006.

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<sup>25</sup> Respondent’s motion for summary disposition, p 4

Based upon the Tribunal's determination that the transfer from the Trust to Trust A and Trust B was a transfer of ownership of the subject property that should have resulted in an uncapping of the taxable value of the subject property for the 2001 tax year, the Tribunal concludes that the taxable value of the subject property, based upon Petitioners' protest to Respondent's 2006 March Board of Review, should be adjusted to reflect what that taxable value would be for the years at issue if the taxable value had been uncapped for the 2001 tax year. See also MCL 211.29 and 211.30. The Tribunal established the taxable value of the subject property equal to the state equalized value of the property for tax year 2001 and applied the applicable cost of living increases for the subsequent years as required by MCL 211.27a. Respondent's property record cards indicate that there were no additions to the property for the period 2000 through 2009.

#### JUDGMENT

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

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

IT IS FURTHER ORDER that the taxable value of the subject property for the following years is as follows:

Parcel Number	Year	TV
72-007-015-001-0075	2006	\$153,665
72-007-015-001-0075	2007	\$159,350
72-007-015-001-0075	2008	\$163,015

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: March 19, 2009

By: Rachel J. Asbury