



Transfer of Ownership Exemption from Uncapping of Taxable Value

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A recent published Michigan Court of Appeals case narrowed the State Tax Commission's interpretation of when the transfer of a joint tenancy ownership interest results in the uncapping of a property's taxable value. (see *Moshier v Whitewater Township*, 277 Mich App 403 (2007)).

Prior to the adoption of Proposal A in 1994, Moshier's parents acquired the property at issue as tenants by the entirety. Also prior to Proposal A, Moshier's parents deeded the property to themselves and their son as joint tenants. Some time after the father died, the mother quit-claimed her interest in the property to her son. Relying on MCL 211.27a(3) and STC Bulletin No. 16 of 1995, the township uncapped the taxable value of the property in the year following this "transfer of ownership" from mother to son.

MCL 211.27a(7)(h) provides that a "transfer of ownership" does not include:

"a transfer creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property."

In interpreting this statutory exemption and relying on the State Tax Commission bulletin, the Michigan Tax Tribunal essentially applied a three-prong test to determine whether the quit-claim deed from mother to son was exempt from the transfer of ownership provisions: 1) the transferee must have been an original owner of the property before the joint tenancy was created; 2) that person became a joint tenant when the joint tenancy was created; and 3) that person remained a joint tenant since the joint tenancy was originally created.



Here, the second and third parts of the part were satisfied by Moshier, in that he was a joint tenant when the joint tenancy was created and he remained a joint tenant until the his mother conveyed her interest in the property to him. However, because Moshier was not an original owner of the property prior to creation of the joint tenancy, the Tax Tribunal upheld the uncapping of taxable value on the property.

The Michigan Court of Appeals held that the first prong of the test is not required by the statute. Specifically, the Michigan Court of Appeals concluded that the statutory exemption will be applicable to transfers of ownership between two or more persons that creates or terminates a joint tenancy if:

"(1) at least 1 of the persons involved in the transfer was an original owner of the property before the tenancy was created and, if the property was held as a joint tenancy at the time of the transfer,

(2) 'at least 1 of the persons' involved in the transfer was a joint tenant at the time the joint tenancy was originally created and has remained a joint tenant since that time."

Thus, the fact that Moshier was not an original owner of the property prior to creation of the joint tenancy does not negate the transfer of ownership exemption when the property was ultimately conveyed to Moshier by his mother.