

STATE OF MICHIGAN  
IN THE SUPREME COURT

Appeal from The Michigan Court of Appeals  
Honorable Kurtis T. Wilder, Presiding

LAKE FOREST PARTNERS 2, INC., a  
Michigan corporation,

Petitioner/Appellee,

v

MICHIGAN DEPARTMENT OF  
TREASURY,

Respondent/Appellant.

Supreme Court Docket No. 132013

Court of Appeals No. 257417

Michigan Tax Tribunal Docket No. 292089

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**MOTION OF THE MICHIGAN ASSOCIATION OF REALTORS®  
FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT  
OF THE POSITION OF PETITIONER/APPELLEE,  
LAKE FOREST PARTNERS 2, INC.**

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**MOTION OF THE MICHIGAN ASSOCIATION OF REALTORS®  
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LAKE FOREST PARTNERS 2, INC.**

NOW COMES Amicus Curiae, the Michigan Association of REALTORS®, by its attorneys, McClelland & Anderson, L.L.P., and pursuant to MCR 7.306(D), moves for leave to file a Brief Amicus Curiae in support of the position of Petitioner/Appellee, Lake Forest Partners 2, Inc., and for its Motion states:

1. The Michigan Association of REALTORS® (the “Association”) is Michigan’s largest non-profit trade association, comprised of 48 local boards and a membership of more than 34,000 brokers and salespersons licensed under Michigan law.

2. One of the primary goals of the Association is to provide the opportunity for all Michigan residents to own affordable housing. To promote this goal and others, the Association seeks to oppose laws and court decisions which delay, restrict, or otherwise impede the ability of the Association’s members to provide affordable housing in Michigan.

3. The present case involves an issue of major significance to the Association, its members, and consumers. At issue in this appeal is when a “transfer” takes place for purposes of establishing the amount of state transfer tax that consumers must pay in situations where the consumer contracts with a home builder to purchase a vacant lot and build a new home.

4. Specifically, the Michigan Tax Tribunal (the “Tribunal”) held that such “transfer” takes place, not at the time of execution of the purchase agreement and construction contract, but, rather, after completion of construction of the home and conveyance of the property by warranty deed.

5. Therefore, the calculation of the amount of transfer tax is not based on the only real estate being transferred – a vacant lot. Instead, the transfer tax is calculated based on the value of the real estate and the amount of the construction contract.

6. The Court of Appeals reversed the Tribunal in a published opinion dated June 6, 2006 (the “Court of Appeals’ Opinion”).

7. The Court of Appeals correctly determined that the Tribunal’s conclusion was in error for the reason that it contradicts the plain language of the applicable transfer tax statute. See, MCL 207.52 *et seq.* In addition, and perhaps most importantly, the Court of Appeals’ Opinion eliminates an unlawful double tax to the consumer. At the time the consumer pays transfer tax, which includes not just the value of the real estate, but also the value of the newly constructed home, the consumer has already paid sales tax on all components of the home.

8. The immediate effect of the Tribunal’s decision was to deny Petitioner/Appellee the ability to continue to provide affordable housing. The long-term effect of the Tribunal’s decision would be to deny future developers, builders and Association members the ability to provide the citizens of Michigan with affordable housing.

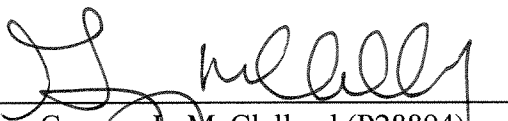
9. Accordingly, the issues presented to this Court are critical to Association members. The Association could, based upon the collective experience and expertise of its members, provide beneficial information to this Court in considering the issue presented by this case.

10. The appellate courts of this State are “always desirous of having all the light they may have on the question before it.” *Grand Rapids v Consumers Power Co*, 216 Mich 409, 415; 185 NW 352 (1921). Accordingly, the Association seeks leave to file a brief amicus curiae in support of the position taken by Petitioner/Appellee.

11. The Association's proposed Brief Amicus Curiae accompanies this Motion.

WHEREFORE, the Association respectfully requests that this Court allow the Association to file a brief amicus curiae in support of the position of Plaintiff/Appellee.

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**TABLE OF CONTENTS**

	<u>Page</u>
INDEX OF AUTHORITIES .....	iv
STATEMENT OF BASIS OF JURISDICTION .....	vi
STATEMENT OF QUESTIONS PRESENTED .....	vii
I. INTRODUCTION AND STATEMENT OF INTEREST .....	1
II. STATEMENT OF FACTS .....	3
III. ARGUMENT .....	5
A. The Plain Language Of The State Real Estate Transfer Tax Act Does Not Impose A Transfer Tax On The Value Of Improvements Made To Real Property After “Transfer” Of That Property .....	5
1. Standard Of Review .....	5
2. The Court of Appeals Correctly Followed The Plain Language Of The State Real Estate Transfer Tax Act .....	5
B. Constitutional And Public Policy Concerns Weigh Heavily In Favor Of Affirming The Court Of Appeals’ Decision .....	7
1. Treasury’s Interpretation Of The Act, Resulting In Different And Arbitrary Tax Treatment Among Similarly Situated Persons, Violates Equal Protection .....	7
2. The Legislative Intent Is To Not Impose A Transfer Tax On The Value Of Improvements Made To Real Property After “Transfer” Of That Property .....	10
C. Practical Considerations Weigh Heavily In Favor Of Affirming The Court Of Appeals’ Decision And This Court Should Consider The Effects Of Increased Taxation Of New Home Construction On The Importance Of Home Construction To Michigan’s Economy .....	11
IV. CONCLUSION AND RELIEF REQUESTED .....	14

**INDEX OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>Page</u></b>
<i>Allied Stores of Ohio v Bowers</i> , 358 US 522; 79 S Ct 437; 3 L Ed 2d 480 (1959) . . . . .	8
<i>Armco Steel Corp v Dep't of Treasury</i> , 419 Mich 582; 358 NW2d 839 (1984) . . . . .	7-9
<i>Beauty Built Constr Corp v City of Warren</i> , 375 Mich 229; 134 NW2d 214 (1965) . . . . .	8
<i>Brin v Spruance</i> , 348 Mich 29; 81 NW2d 401 (1957) . . . . .	7
<i>Catalina Marketing Sales Corp v Dep't of Treasury</i> , 470 Mich 13; 678 NW2d 619 (2004), aff'd after remand 471 Mich 1209 (2004) . . . . .	10
<i>Chauncey &amp; Marion Deering McCormick Fdn v Wawatam Twp</i> , 186 Mich App 511; 465 NW2d 14 (1990), after remand 196 Mich App 179 (1992) . . . . .	9
<i>Grand Rapids v Consumers Power Co</i> , 216 Mich 409; 185 NW 852 (1921) . . . . .	2
<i>Great Scott Supermarkets, Inc v Dep't of Treasury</i> , 113 Mich App 679; 318 NW2d 537 (1982) . . . . .	9
<i>Lincoln v Gen Motors Corp</i> , 461 Mich 483; 607 NW2d 73 (2000) . . . . .	5
<i>McJunkin v Cellasto Plastic Corp</i> , 461 Mich 590; 608 NW2d 57 (2000) . . . . .	5
<i>Nation v WDE Electric Co</i> , 454 Mich 489 n 12; 563 NW2d 233 (1997) . . . . .	10, 11
<i>Penn Mut Life Ins Co v Dep't of Lic &amp; Reg</i> , 162 Mich App 123; 412 NW2d 668 (1987) . . . . .	9
<i>Pro-Staffers, Inc v Premier Mfg Support Serv, Inc</i> , 252 Mich App 318; 651 NW2d 811 (2002) . . . . .	11
<i>Ray v Transamerica Ins Co</i> , 10 Mich App 55; 158 NW2d 786 (1968), after remand 46 Mich App 647 (1973) . . . . .	11
<i>Walen v Dep't of Corrections</i> , 443 Mich 240; 505 NW2d 519 (1993) . . . . .	11
 <b><u>STATUTES</u></b>	
MCL 207.522(e) . . . . .	1, 2, 6

MCL 207.523 .....	6
MCL 207.523(1) .....	6
MCL 207.523(1)(a) .....	6, 7
MCL 207.523(1)(b) .....	6, 7
MCL 207.525 .....	1
MCL 207.525(1)(a) .....	6
MCL 207.525(2) .....	6, 10
MCL 207.532(1) .....	6

**OTHER**

2003 HB 4573 .....	10, 11
2003 SB 416 .....	10, 11
Potential Impacts of Increases in Real Estate Transfer Taxes, Research Division of the National Association of REALTORS® (Aug 2003) .....	11
Summary of Real Estate Transfer Taxes By State (2005) .....	11
The State of the Nation’s Housing (2002) .....	13
United States Bureau of the Census, R 2511, Median Monthly Housing Costs for Owner- Occupied Housing Units with a Mortgage (2005) .....	12
United States Bureau of the Census, R 2512, Percent of Occupied Housing Units that are Owner-Occupied (2005) .....	12

## **STATEMENT OF BASIS OF JURISDICTION**

Amicus Curiae, Michigan Association of REALTORS®, states that this Court has jurisdiction pursuant to MCR 7.302, Treasury having filed its Application for Leave to Appeal on September 6, 2006 from the denial of its Motion for Reconsideration pursuant to Order of the Court of Appeals entered July 26, 2006.

## STATEMENT OF QUESTIONS PRESENTED

- I. DID THE COURT OF APPEALS CORRECTLY FOLLOW THE PLAIN LANGUAGE OF THE STATE REAL ESTATE TRANSFER TAX ACT BY REFUSING TO IMPOSE A TAX ON THE VALUE OF IMPROVEMENTS MADE ON REAL PROPERTY SUBSEQUENT TO ITS TRANSFER?

The Court of Appeals answered, “Yes”;

The Tax Tribunal answered, “No”;

Petitioner/Appellee, Lake Forest Partners 2, Inc., answers, “Yes”;

Respondent/Appellant, Michigan Department of Treasury, would answer “No”;

Amicus Curiae, Michigan Association of REALTORS®, answers “Yes.”

- II. DO CONSTITUTIONAL AND PUBLIC POLICY CONCERNS WEIGH IN FAVOR OF AFFIRMING THE COURT OF APPEALS’ DECISION?

The Court of Appeals would answer, “Yes”;

The Tax Tribunal would answer, “No”;

Petitioner/Appellee, Lake Forest Partners 2, Inc., answers, “Yes”;

Respondent/Appellant, Michigan Department of Treasury, would answer “No”;

Amicus Curiae, Michigan Association of REALTORS®, answers “Yes.”

- III. DO PRACTICAL CONSIDERATIONS WEIGH IN FAVOR OF AFFIRMING THE COURT OF APPEALS’ DECISION?

The Court of Appeals would answer, “Yes”;

The Tax Tribunal would answer, “No”;

Petitioner/Appellee, Lake Forest Partners 2, Inc.,  
answers, “Yes”;

Respondent/Appellant, Michigan Department of  
Treasury, would answer “No”;

Amicus Curiae, Michigan Association of  
REALTORS®, answers “Yes.”

## I. INTRODUCTION AND STATEMENT OF INTEREST

The Michigan Association of REALTORS® (the “Association”) is Michigan’s largest non-profit trade association, comprised of 48 local boards and a membership of more than 34,000 brokers and salespersons licensed under Michigan law. Each day, the Association’s members are involved in hundreds of real estate transactions, each of which involves State transfer tax issues. For this reason, the Association and its members have a significant interest in the outcome of any court decision which might address or otherwise impact the calculation and payment of State transfer tax.

At issue in this appeal is when a “transfer” takes place for purposes of establishing the amount of state transfer tax which consumers must pay in situations where the consumer contracts with a home builder to purchase a vacant lot and build a new home. The Michigan Tax Tribunal (the “Tribunal”) held that such “transfer” takes place, not at the time of execution of the purchase agreement and construction contract, but, rather, after completion of construction of the home and conveyance of the property by warranty deed. Under the Tribunal’s analysis, the calculation of the amount of transfer tax is not based only on the real estate being transferred – a vacant lot. Instead, the transfer tax is calculated based on the value of the real estate *and* the amount of the construction contract.

The Court of Appeals reversed the Tribunal and corrected the Tribunal’s error for the reason that it contradicted the plain language of the applicable transfer tax statute. In significant part, the Court of Appeals stated:

The [state transfer tax] is “levied at the rate of \$3.75 for each \$500.00 or fraction of \$500.00 of the total value of the property being transferred.” MCL 207.525. “‘Value’ means the current or fair market worth in terms of legal monetary exchange *at the time of the transfer.*” MCL 207.522(e) (emphasis added ). While the transfer tax is paid “when the instrument is recorded,” the transfer tax is

assessed on “the current or fair market worth . . . at the time of the transfer.” MCL 207.522(e).

\* \* \*

. . . [E]xecution of the purchase agreement transfers to the buyer an equitable interest in the property, which gives rise to a cause of action for possession of the property. Therefore, we conclude that the value of the property for purposes of assessment is determined at the time the parties execute the purchase agreement.

“Court of Appeals’ Opinion” (emphasis in original), attached as Exhibit 1, pp 3, 4. The Court of Appeals’ reversal of the Tribunal’s decision is not only consistent with the plain language of the applicable transfer tax statute, but also eliminates serious constitutional and public policy concerns to the Tribunal’s decision, as well as practical considerations involving the construction of affordable housing in Michigan.

In *Grand Rapids v Consumers Power Co*, 216 Mich 409, 418; 185 NW 852 (1921), the Supreme Court stated: “[t]his Court is always desirous of having all the light it may have on the questions before it. In cases involving questions of important public interest, leave is generally granted to file a brief *Amicus Curiae* . . . .” The Association believes that this case involves an issue of fundamental importance to the Association and its more than 34,000 members, as it involves the calculation and payment of State transfer tax which impacts upon the sale of real estate in this state. The Association’s experience and expertise could be beneficial to this Court in resolving the substantive issue presented by this appeal. Accordingly, the Association seeks leave to file this Brief *Amicus Curiae* in support of the position of Petitioner/Appellee.

## II. STATEMENT OF FACTS

The Association accepts the Statement of Facts contained in Petitioner/Appellee's Brief on Appeal, as highlighted by the following:

1. Petitioner/Appellee, Lake Forest Partners 2, Inc. ("Lake Forest"), is engaged in the business of acquiring real estate, developing and selling vacant lots, and constructing custom homes.

2. In each of the transactions at issue, Lake Forest sold a vacant lot to a customer and concurrently entered into an agreement to build a house on that lot.

3. The sale of the real estate (vacant lot) and the construction contract (agreement to build the house) were contained in a single document entitled "Purchase Agreement."

4. In general, each "Purchase Agreement" at issue separately specified the consideration being paid by the customer for the vacant lot – the real estate – and the construction of the house – a service contract.

5. Upon Lake Forest's complete performance of the construction contract, Lake Forest provided the purchaser with a warranty deed and paid state real estate transfer tax.

6. The amount of the state real estate transfer tax paid was calculated based on the value of the real estate being transferred; that is, the value of the vacant lot at the time the Purchase Agreement was entered into between Lake Forest and its customer.

7. On May 28, 2002, Respondent/Appellant, the Michigan Department of Treasury ("Treasury"), issued its Final Assessment against Lake Forest, claiming that Lake Forest should have paid state real estate transfer tax, not just on the value of the real estate transferred by

Lake Forest, but on the combined cost of both the real estate and the amount of the construction contract (the “Final Assessment”).

8. On June 24, 2002, Lake Forest filed a Petition with the Tribunal, appealing the Final Assessment.

9. On July 12, 2004, the Tribunal issued its Opinion affirming the Final Assessment (the “Tribunal Opinion”).

10. The Tribunal’s affirmation was based on its determination that transfer tax is imposed as of the date of “transfer” and that the “transfers” in this case did not occur when the Purchase Agreements were signed, but, rather, when the deeds were given. Tribunal Opinion, p 14, Exhibit 2.

11. Lake Forest timely appealed the Tribunal Opinion to the Court of Appeals on August 17, 2004.

12. The Court of Appeals reversed the Tribunal Opinion and held that the execution of the Purchase Agreement was a “transfer” such that the value of the Property for purposes of assessment is determined at the time the parties executed the Purchase Agreement. Court of Appeals’ Opinion, Exhibit 1.

13. On June 26, 2006, Treasury filed a Motion for Reconsideration which, by Order dated July 26, 2006, was denied. A copy of the Court of Appeals’ 7/26/06 Order is attached as Exhibit 3.

14. Treasury filed an Application for Leave to Appeal with this Court on September 6, 2006 (“Treasury’s Application”).

15. The Association now files this Brief in conjunction with its Motion for Leave to File a Brief Amicus Curiae in Support of the Position of Petitioner/Appellee, Lake Forest.

### III. ARGUMENT

#### A. **The Plain Language Of The State Real Estate Transfer Tax Act Does Not Impose A Transfer Tax On The Value Of Improvements Made To Real Property After “Transfer” Of That Property**

##### 1. **Standard Of Review**

The standard of review in this matter is de novo as it involves the interpretation and application of a statute. *See, McJunkin v Cellasto Plastic Corp*, 461 Mich 590, 596; 608 NW2d 57 (2000), citing *Lincoln v Gen Motors Corp*, 461 Mich 483, 489-490; 607 NW2d 73 (2000).

##### 2. **The Court of Appeals Correctly Followed The Plain Language Of The State Real Estate Transfer Tax Act**

The State Real Estate Transfer Tax Act (the “Act”) requires that a tax be paid on the transfer of real estate and, among other things, establishes: (1) the amount of transfer tax that must be paid; and (2) when that tax must be paid. Pursuant to the Act, the date upon which the amount is established and the date upon which the tax must be paid are two different dates and occur at separate points in time during any real estate transaction. Therefore, the Court of Appeals correctly reversed the Tribunal Opinion.

Section 3 of the Act contains provisions which are relevant to both dates. Section 3 provides:

Sec. 3. (1) There is *imposed*, in addition to all other taxes, a tax upon the following written instruments executed within this state *when the instrument is recorded*:

- (a) Contracts for the sale or exchange of property or any interest in the property or any combination of sales or exchanges or any assignment or transfer of property or any interest in the property.
- (b) Deeds or instruments of conveyance of property or any interest in property, for consideration.
- (2) The person who is the seller or grantor of the property is liable for the tax imposed under this act.

MCL 207.523.

Section 3(1) specifies the date upon which transfer tax is to be paid – “when the instrument is recorded.” MCL 207.523(1). The amount of the tax is based on the “value” of the property. MCL 207.525(2). “Value” is defined as the current or fair market worth “at the time of the transfer.” MCL 207.522(e). Subsections (a) and (b) of Section 3(1) specify the date upon which “transfer” occurs. MCL 207.523(1)(a), (b), 207.522(e), and MCL 207.532(1). Relevant here, a “transfer” occurs when a purchase agreement is executed. MCL 207.525(1)(a). As such, the amount of the tax is calculated based on the value of the property on the date the property is transferred.

Accordingly, under the plain language of the Act, the value of the real estate is determined as of the date of transfer, which, in turn, dictates the amount of tax to be paid. The actual payment of that tax, however, is deferred until such time as an instrument is recorded. Therefore, the simple issue is when does a “transfer” occur within the meaning of the Act such that it becomes the defining moment for purposes of calculating the amount of tax.

Section 3 of the Act defines what types of instruments, upon execution, constitute a “transfer.” The instruments which are defined include not only deeds, but also “contracts for sale.” MCL 207.523(1)(a) and (b). Therefore, the execution of “contracts for sale,” or purchase

agreements, constitute a “transfer.” And, since purchase agreements constitute a “transfer,” the date of their execution established the date upon which the “value” of the property is determined for purposes of calculating the amount of tax. The Court of Appeals correctly reached this conclusion.

Further, upon the execution of a contract for the sale of land, a purchaser acquires equitable title, including *the right to compel transfer of legal title*. For example, in *Brin v Spruance*, 348 Mich 29, 30-31; 81 NW2d 401 (1957), the parties entered into a purchase agreement for a gasoline station, personal property, and real property. “The offer was definite in amount for the business, fixtures, equipment and stock. Appellants accepted that offer and consequently were not entitled to refuse to carry out their agreement in the face of plaintiff’s demand that they do so.” *Id.* at 34. In sum, once a contract has been executed, both parties obtain the right to demand specific performance under the contract.

Accordingly, if a buyer obtains the right of specific performance on execution of a purchase agreement, then the buyer has also obtained a “transfer” – at least of equitable title – under MCL 207.523(1)(a), (b). Thus, under the plain language of the Act, combined with the rights and equitable title obtained upon execution of a purchase agreement, the transfer tax is properly assessed on the value of the real property at the time of the execution of the purchase agreement.

**B. Constitutional And Public Policy Concerns Weigh Heavily In Favor Of Affirming The Court Of Appeals’ Decision**

**1. Treasury’s Interpretation Of The Act, Resulting In Different And Arbitrary Tax Treatment Among Similarly Situated Persons, Violates Equal Protection**

Under the Uniformity of Taxation Clause of the Michigan Constitution, similarly situated taxpayers must be treated equally. *Armco Steel Corp v Dep’t of Treasury*, 419 Mich 582,

592; 358 NW2d 839 (1984). In *Armco, supra* at 592, the Court held: “As a practical matter, in cases involving taxing statutes, there is no discernible difference between the Equal Protection and Uniformity of Taxation Clauses. Some rational basis for a disputed classification must be shown to exist.” The Court explained the standard to be applied under both clauses as follows:

In *Allied Stores of Ohio v Bowers*, 358 US 522, 527; 79 S Ct 437, 441; 3 L Ed 2d 480 (1959), the United States Supreme Court stated:

“[. . .] The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule has often been stated to be that the classification ‘must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.’”

These principles are equally applicable to cases involving taxing statutes. In *Beauty Built Constr Corp v City of Warren*, 375 Mich 229; 134 NW2d 214 (1965), the City of Warren imposed a special water tax fee upon all new homes in response to the unexpected growth that was burdening the city’s water and sewage system. Existing buildings were exempt from the tax. This classification in the city’s ordinance between existing buildings and new homes was held to violate the Equal Protection Clauses of both the United States and Michigan Constitutions:

“This Court has repeatedly held that classification of objects to which a municipal ordinance may be made applicable must be based on natural distinguishing characteristics and must bear a reasonable relation to the object of the ordinance. . . .

“Where an ordinance fails to include and affect alike all persons of the same class, and extends immunities or privileges to one part and denies them to others of like kind by unreasonable or arbitrary classification, the same is contrary to the equal protection guarantees of the State and Federal Constitutions.” [*Id.* at] 235-236 [. . .]

*Armco, supra* at 591-2, *aff'g Great Scott Supermarkets, Inc v Dep't of Treasury*, 113 Mich App 679; 318 NW2d 537 (1982) (no rational basis for arbitrary treatment of similarly situated corporate franchise taxpayers).

Likewise, in *Penn Mut Life Ins Co v Dep't of Lic & Reg*, 162 Mich App 123, 124-5; 412 NW2d 668 (1987), out-of-state insurers sued to recover taxes they were required to pay on premiums for insurance written in Michigan. The plaintiffs had argued that the State simply wanted to “raise revenue at the expense of foreign insurers.” *Id.* at 131. The Court of Appeals inquired whether the statute had a legitimate purpose and whether it was “reasonable for lawmakers to believe that use of the challenged classification would promote that purpose.” *Id.* at 130. The court noted that the statute’s purpose of providing insurance was legitimate, but determined that the means chosen – discrimination based on whether the insurer is foreign or domestic – was not rationally related to that purpose. *Id.* at 132.

In the present case, there is no rational basis for, on one hand, assessing a transfer tax on both the value of the land and the newly constructed home when a builder transfers but retains legal title to property during construction of the home, and, on the other hand, assessing a transfer tax on only the value of the land when a builder conveys legal title to a vacant lot prior to commencement of construction. The two groups of taxpayers in these scenarios are identical with respect to the end product they have purchased, yet would be arbitrarily treated differently, based on the mere timing of the recording of the deed. In sum, Treasury cannot violate equal protection and the uniformity of taxation principle and “raise revenue at the expense of [buyers of new homes]” who buy a vacant lot and construct a home on that lot but choose to not have the deed recorded until after construction is complete. *Id.* at 131; see also, *Chauncey & Marion Deering McCormick Fdn*

*v Wawatam Twp*, 186 Mich App 511, 514-515; 465 NW2d 14 (1990) (denial of charitable institution exemption to foreign corporation violated equal protection), after remand 196 Mich App 179 (1992).<sup>1</sup>

**2. The Legislative Intent Is To Not Impose A Transfer Tax On The Value Of Improvements Made To Real Property After “Transfer” Of That Property**

In Spring 2003, each house of the Legislature introduced an identical amendment to the Act that would tax “initial improvements” made to real property under a purchase agreement like the present one. See, 2003 SB 416, 2003 HB 4573, attached as Exhibit 4. However, the two Bills never progressed in the Legislature and were never reintroduced. See, Exhibit 4. Thus, the Legislature has shown that its intent under the present Act is to exempt new construction from taxation under the facts of this case.<sup>2</sup> Cf., *Nation v WDE Electric Co*, 454 Mich 489, 497 n 12; 563 NW2d 233 (1997). “We are aided in discovering legislative intent in enacting any statute by examining the proposed legislation it considered and rejected, contrasted with the provisions finally

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<sup>1</sup> Moreover, to apply the transfer tax as Treasury advocates would amount to a tax on the builder’s services of building a home. A transfer tax on services is indefensibly unlawful under the statute, which assesses the tax on the “value” of the property only, MCL 207.525(2), not on a builder’s services. Cf., *Catalina Marketing Sales Corp v Dep’t of Treasury*, 470 Mich 13, 19; 678 NW2d 619 (2004), *aff’d* after remand 471 Mich 1209 (2004) (a contract for services is not taxable under the sales, use, or transfer tax acts). Similarly, by virtue of the purchaser’s payment to the builder under the construction contract, the purchaser is paying for each component of the home and is paying sales tax on each component. Treasury’s position results in an unlawful double tax. Lake Forest and other builders who sell a vacant lot but retain legal title during construction are not asserting that there should be no transfer tax, just that the tax should be assessed lawfully under the Act and assessed on true items of “real estate” – under these facts, the vacant land.

<sup>2</sup> Obviously, the facts in this case are distinguishable from the situation where a builder constructs a home on speculation and upon completion of the home enters into a contract to sell with a buyer.

adopted.” *Id.* Moreover, if, in fact, the current version of the Act already imposes a transfer tax on the lot price and the construction contract amount, as claimed by Treasury, this proposed, but rejected, amendment would not have been necessary. See, *Walen v Dep’t of Corrections*, 443 Mich 240, 248; 505 NW2d 519 (1993) (“... the Legislature is presumed to be aware of all existing statutes when enacting a new statute”).

In sum, the status of SB 416 and HB 4573 shows that the Legislature’s intent is not to impose a tax on the value of improvements made to real property after the builder enters into a purchase agreement with a buyer. *Nation, supra*. It is a matter for the Legislature to change the plain language of the Act. It is not for this Court to change the Legislature’s plain language “by judicial fiat.” *Ray v Transamerica Ins Co*, 10 Mich App 55, 61; 158 NW2d 786 (1968), after remand 46 Mich App 647 (1973), cited in *Pro-Staffers, Inc v Premier Mfg Support Serv, Inc*, 252 Mich App 318, 327; 651 NW2d 811 (2002).

**C. Practical Considerations Weigh Heavily In Favor Of Affirming The Court Of Appeals’ Decision And This Court Should Consider The Effects Of Increased Taxation Of New Home Construction On The Importance Of Home Construction To Michigan’s Economy**

Transfer taxes are costs which are ultimately borne by the consumer/home buyer. Therefore, increased taxation drives up the price of new construction and has a negative impact upon housing costs and, therefore, economic development. See, Potential Impacts of Increases in Real Estate Transfer Taxes, Research Division of the National Association of REALTORS®, p 2 (Aug 2003), Exhibit 5. Further, transfer taxes are regressive. The burden of transfer taxes “relative to income is greater in lower income people compared to higher income people.” *Id.* at 3. In addition, Michigan has one of the higher transfer tax rates in the nation. See, Summary of Real Estate

Transfer Taxes By State (2005), Exhibit 6. These factors make it unlikely, at best, that the average new home buyer would be willing or, in many cases, able to absorb higher up-front taxation costs. Further still, increases in taxation in new home construction in Michigan may push this state from its position as a high ownership, low cost housing state.

According to United States Census Bureau 2005 statistics, 74.7% of all occupied housing units in Michigan are owner-occupied. Only West Virginia and Minnesota, with owner-occupancy rates of 75.4% and 75.8%, respectively, top Michigan. See, Owner-Occupied Statistics for 2005, Exhibit 7.<sup>3</sup> Michigan is a “high ownership” state that is also well below the nationwide 2005 average for home ownership costs for homes with mortgages.<sup>4</sup> Moreover, it is unlikely to be a coincidence that the states with the lowest home ownership rates [D.C. (42.5%), New York (55.3%), California (58.4%), Hawaii (59.7%), Nevada (60.7%) and Rhode Island (62.7%), Exhibit 7] have among the highest median mortgage costs [D.C. (6<sup>th</sup> highest cost), New York (7<sup>th</sup> highest), California (2<sup>nd</sup> highest), Hawaii (4<sup>th</sup> highest), Nevada (14<sup>th</sup> highest) and Rhode Island (8<sup>th</sup> highest)]. Exhibit 8. However, higher home ownership costs (such as higher transfer taxes) puts home ownership at risk in Michigan and causes a near certain resulting drag on the economy.

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<sup>3</sup> United States Bureau of the Census, R 2512, Percent of Occupied Housing Units that are Owner-Occupied, attached at Exhibit 7 (available at <http://www.factfinder.census.gov>, accessed October 18, 2006).

<sup>4</sup> United States Bureau of the Census, R 2511, Median Monthly Housing Costs for Owner-Occupied Housing Units with a Mortgage, attached at Exhibit 8 (available at <http://www.factfinder.census.gov>).

In 2002, the Joint Center for Housing Studies at Harvard University released a comprehensive report: The State of the Nation's Housing (the "Harvard Report").<sup>5</sup> The Harvard Report notes that the housing sector consistently contributes nearly one-fifth, or 20%, of the U.S. Gross Domestic Product. Harvard Report, Exhibit 9, p 4. Accordingly, busy builders and busy REALTORS® are good for the economy.

Favorable new home start figures are important to the U.S. and Michigan economy, as made clear by the Harvard Report. *Id.* at 6-7. Citing National Association of Home Builders' ("NAHB") figures, the Harvard Report estimates that "production of 1,000 typical single family homes generates 2,448 jobs in construction and construction-related industries, approximately \$79.4 million in wages, and \$42.5 million in . . . tax revenues and fees." Exhibit 9, p 7. Moreover, as the Harvard Report indicates, "[h]ousing's economic impact does not end there. In the first 12 months after purchasing a new home, NAHB estimates indicate that the typical owner spends \$8,900 on furnishings and improvements."

The Harvard Report concludes that "housing wealth has emerged as a critical determinant of consumer spending." Exhibit 9, p 8. The Harvard Report also qualifies this conclusion by warning that: "[a]t the same time, rising home prices of course undermine affordability. Fully realizing the contribution of the housing sector to the overall economy therefore requires efforts to keep interest rates low, as well as initiatives to promote production of affordable housing." *Id.* Such "initiatives" include not imposing a transfer tax on the cost of constructing a

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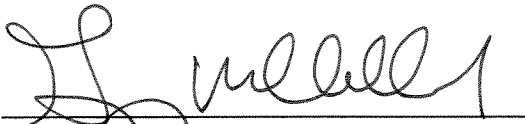
<sup>5</sup> An excerpt of the Harvard Report is attached at Exhibit 9. The complete Harvard Report is available at <http://www.jchs.harvard.edu/publications/markets/Son2002.pdf>.

home – particularly where that “cost” is already taxed in the form of a sales tax on the components of the home.

#### IV. CONCLUSION AND RELIEF REQUESTED

For all the foregoing reasons, the Application for Leave to Appeal of the Department of Treasury should be denied.

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