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STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Murray, C.J., M. J. Kelly and Rick JJ

MACK C. STIRLING,

Petitioner-Appellant,

v

COUNTY OF LEELANAU,

Respondent-Appellee.

SC: 162961

COA: 353117

MOAHR: 19-003870-TT

PETITIONER-APPELLANT MACK STIRLING'S SUPPLEMENTAL BRIEF IN SUPPORT OF HIS APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT IDENTIFYING ORDER APPEALED FROM AND RELIEF SOUGHT

Petitioner-Appellant Mack C. Stirling ("Stirling") appeals the March 25, 2021 published opinion of the Court of Appeals in *Stirling v County of Leelanau*, 336 Mich App 575; 970 NW2d 910 (2021) (Docket No. 353117) (the "Opinion"). The Opinion is Appendix Number 1 ("Appx 1").

The Michigan Tax Tribunal granted Stirling's motion for summary disposition and ruled that the property at issue qualifies for Michigan's personal residence exemption. The Court of Appeals reversed the Tribunal's judgment. The lynchpin of the Court's ruling was that Michigan's personal residence exemption is substantially similar to the statutory framework of the exemption Stirling's wife claimed in Utah, which led the Court to conclude that Stirling cannot avail himself of the Michigan exemption.

Stirling timely filed an application for leave to appeal. On February 4, 2022, the Court ordered the parties to submit supplemental briefs addressing whether the Court of Appeals erred by holding that the primary exemption claimed by Stirling's wife for a residence in Utah was based upon a "substantially similar" exemption as the Michigan principal residence exemption, MCL 211.7cc.

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred by holding that the primary exemption claimed by the Stirling's wife for a residence in Utah was based upon a "substantially similar" exemption as the Michigan principal residence exemption, MCL 211.7cc?

Stirling answers:	Yes
The County would answer:	No.
The Tax Tribunal answered:	Yes.
The Court of Appeals answered:	No.
This Court should answer:	Yes.

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I. INTRODUCTION

For decades, Appellant Mack Stirling ("Stirling") and his wife, Dixie Stirling have had the same principal residence in Leelanau County. That residence was subject to Michigan's principal residence exemption ("PRE") for purposes of property taxes. The Stirlings claimed a separate exemption for rental properties they owned in Utah, based on those properties being occupied by third-party tenants. Leelanau County upended this routine practice and denied Stirling the PRE for his primary residence, claiming that Stirling could not avail himself of the Utah exemption and the PRE at the same time. The Tax Tribunal correctly applied MCL 211.7cc and reinstated the PRE for Stirling's primary residence because the exemption claimed for Utah rental units is not substantially similar to the PRE.

The Court of Appeals reversed, wrongly concluding that the Utah rental property exemption is substantially similar to Michigan's PRE. Yet, under MCL 211.7cc and MCL 211.7dd, which are part of the General Property Tax Act (the "Act"), the PRE is for an owner-occupied residence and exempts local school millage. The PRE may only be claimed for owner-occupied residences. A landlord cannot claim the PRE based on a rental property being a tenant's residence. Thus, the PRE is not substantially to the Utah exemption Dixie Stirling claimed.[1]

As of July 1, 2019, Michigan had over 4,629,000 housing units, and over seventy percent were owner-occupied. United States Census Bureau, https://www.census.gov/quickfacts/MI https://www.census.gov/quickfacts/MI(accessed April 18, 2022). These many homeowners can obtain a PRE, unless disqualified, as can occur if a PRE claimant, or "his or her spouse owns

[1] By precluding rental properties from qualifying for the PRE, the Legislature made abundantly clear that for purposes of the PRE, rental properties are substantially different from owner-occupied properties.

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property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section," MCL 211.7cc(3)(b) ("Section 7cc(3)(b)"). In short, the PRE can be lost by claiming "an **exemption**…substantially similar to the (PRE)." Per this unambiguous language, the legal standard is whether the other state's **exemption** is substantially similar to Michigan's PRE, **not** whether the other state's statute, statutory framework or statutory scheme is substantially similar to the PRE.

In its holding, the Court of Appeals disregarded Section 7cc(3)(b)'s unambiguous language. Section 7cc(3)(b) precludes Stirling's PRE ***only*** if Dixie Stirling claimed "**an exemption …substantially similar to the (PRE).**" MCL 211.7cc(3)(b). Dixie Stirling claimed an exemption for rental properties, not an owner-occupied residence. The Utah rental properties could not qualify for the PRE, which is limited to owner-occupied residences.

The Legislature limited the PRE so that the many Michigan residents with second residences in Florida, and elsewhere, could not obtain the PRE and a substantially similar tax benefit on another property that they owned and occupied. The Legislature's decision as to this makes sense.

The Legislature, however, was **not** concerned about Michigan residents who both had a PRE for their owner-occupied Michigan residence and obtained a tax benefit for non-Michigan rental properties that are the residences of the tenants. This result also is sensible, and the unambiguous statutory language makes this legislative intent clear. What the Legislature did not do, is penalize Michiganders who have a PRE for their owner-occupied Michigan residence because they receive a tax benefit for a rental property based on that property being the residence of the tenant. Nor would that be a sensible result.

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Because the Court of Appeals violated the plain meaning of a statute that applies to millions of Michigan homeowners, the Court should reverse its judgment, reinstate the Tax Tribunal's ruling in favor of Stirling, and order that the County's denial of PRE be vacated.

II. FACTUAL BACKGROUND

A. The Undisputed Material Facts That Led To A Tax Tribunal Appeal.

The material facts of this case are undisputed. Indeed, the County's Answer to Petitioner's Motion for Summary Disposition, p 1, stated: "Leelanau County also stipulates to all material facts put forth by petitioner(s) in their Motion for Summary Disposition." Tax Trib Dkt 16.

Mack and Dixie Stirling have been residents of Michigan since 1979 and have resided exclusively at their home in Traverse City, Michigan, since purchasing it in 1990. Tax Trib Dkt 13, Petitioners' Motion for Summary Disposition, Ex A – Affidavit of Mack C. Stirling (statement #1) and Affidavit of Dixie M. Stirling (statement #1), Appendix Number 3 ("Appx 3"). For over 25 years, Dixie Stirling has held an active nursing license in Michigan. *Id* at Ex A – Affidavit of Dixie M. Stirling (statement #2). For over 30 years, Mack C. Stirling has held an active medical license in Michigan. Further, he founded the cardiac surgery program at Munson Medical Center in Traverse City in 1990, where he practiced cardiothoracic surgery full time until his retirement in 2017. *Id* at Ex A – Affidavit of Mack C. Stirling (statement #3). Besides working and raising a family in Traverse City, the Stirlings have been very active in their local Traverse City church congregation, serving in volunteer positions in their local congregation for many years. *Id* at Ex A – Affidavit of Mack C. Stirling (statement #4) and Affidavit of Dixie M. Stirling (statement #3). In 1994, the Stirlings originally claimed the PRE for their Traverse City

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residence. Tax Trib Dkt 16, Respondent Answer to Petitioners' Motion for Summary Disposition, p 2.

During the subject years, 2016-2019, Dixie Stirling owned two rental properties in Utah, one in Provo and one in Bountiful, and the Stirlings never resided at, nor claimed to have resided at, either of them. Appx 3 at Ex A – Affidavit of Mack C. Stirling (statement #5) and Affidavit of Dixie M. Stirling (statement #4); and Appx 3 at Ex B & Ex C (Provo and Bountiful Materials). Since the purchase of the two Utah properties, and at all times relevant herein, the Stirlings have: i) declared to the State of Utah that the Utah properties are tenant-occupied residential rental properties; and ii) paid the property taxes for tenant-occupied residential rental properties pursuant to Utah law, and as calculated by the relevant Utah taxing authorities. *Id* at Ex A – Affidavit of Mack C. Stirling (statement #6) and Affidavit of Dixie M. Stirling (statement #5). Under Utah law, Utah rental properties qualify for a property tax exemption if they are the tenants' residence. Utah Code Ann § 59-2-103(6)(b)(ii). Dixie Stirling claimed this exemption.

During 2019, the County revoked the Stirlings' PRE for the 2016-2019 tax years based on the fact that Dixie Stirling had claimed Utah's exemption for rental properties.[2] Section 7cc(3)(b), MCL 211.7cc(3)(b), provides:

> (3) Except as otherwise provided in subsection (5), a married couple who are required to file or who do file a joint Michigan income tax return are entitled to not more than 1 exemption under this section. For taxes levied after December 31,

[2] Under Section 7cc(2), MCL 211.7cc(2), the affidavit claiming the PRE, "shall state that the property is owned and occupied as a principal residence by that owner of the property on the date that the affidavit is signed and shall state that the owner has not claimed a substantially similar exemption, deduction, or credit on property in another state." Michigan's PRE cannot be claimed based on a property being a tenant's residence. It also is undisputed that the Stirlings had lawfully filed the affidavit claiming the PRE, and that this case does not involve the situation where: i) one spouse claims a PRE for a Michigan residence; and ii) the other spouse receives another State's similar exemption for property that has been reported to be the other spouse's principal residence.

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> 2002, a person is not entitled to an exemption under this section in any calendar year in which any of the following conditions occur:
>
> (a) That person has claimed a substantially similar exemption, deduction, or credit, regardless of amount, on property in another state. Upon request by the department of treasury, the assessor of the local tax collecting unit, the county treasurer or his or her designee, or the county equalization director or his or her designee, a person who claims an exemption under this section shall, within 30 days, file an affidavit on a form prescribed by the department of treasury stating that the person has not claimed a substantially similar exemption, deduction, or credit on property in another state. A claim for a substantially similar exemption, deduction, or credit in another state occurs at the time of the filing or granting of a substantially similar exemption, deduction, or credit in another state. If the assessor of the local tax collecting unit, the department of treasury, or the county denies an existing claim for exemption under this section, an owner of the property subject to that denial cannot rescind a substantially similar exemption, deduction, or credit claimed in another state in order to qualify for the exemption under this section for any of the years denied. If a person claims an exemption under this section and a substantially similar exemption, deduction, or credit in another state, that person is subject to a penalty of $500.00. The penalty shall be distributed in the same manner as interest is distributed under subsection (25).
>
> (b) Subject to subdivision (a), that person or his or her spouse owns property in a state other than this state for which that person or his or her spouse **claims an exemption, deduction, or credit substantially similar to the exemption provided under this section**, unless that person and his or her spouse file separate income tax returns. [Emphasis added].

On October 14, 2019, the Stirlings timely appealed the County's decision to the Michigan Tax Tribunal. Tax Trib Dkt 1, Petition.[3]

B. The Tax Tribunal Granted the Stirlings' Motion for Summary Disposition.

[3] On October 14, 2019, as co-owners of the subject property, Mack and Dixie Stirling together filed the Tax Tribunal Petition in this case. Despite Dixie Stirling also being included as Petitioner on the filing documents, the Tax Tribunal treated Mack Stirling as the sole "Petitioner" throughout the proceeding and adjudicated the Stirlings' motion for summary disposition solely in his name. Stirling has taken that approach as a single appellant in this appeal.

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This case presented the Tax Tribunal with a purely legal issue. On December 23, 2019, the Stirlings filed their Motion for Summary Disposition, and on January 7, 2020, the County filed its Answer to the Motion. Tax Trib Dkt 13, Petitioners' Motion for Summary Disposition and Tax Trib Dkt 16, Answer to Motion. As noted above, the County's Answer accepted the facts stated in the Stirlings' Motion. Tax Trib Dkt 16, Answer to Motion, p 1. Essentially, the Stirlings argued that the exemption claimed for Utah rental properties was not substantially similar to the PRE, and the County argued that it was substantially similar.

The Tribunal accurately framed the dispositive issue in this case:

> The parties dispute the applicability of a disqualifying factor for a PRE under MCL 211.7cc(3)(b), which provides that a person may not receive a PRE in any calendar year under certain conditions:
>
> [T]hat person or his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section, unless that person and his or her spouse file separate income tax returns.

Tax Trib Dkt 19, Final Opinion and Judgment, p 2, Appendix Number 2 ("Appx 2"). The Tribunal also correctly analyzed the issue and ruled that the Utah property tax exemption for rental properties was not substantially similar to Michigan's PRE:

> **Here, it is undisputed that Petitioner's spouse receives the Utah exemption for "the primary residence of a tenant." In contrast, the PRE exemption in Michigan is for a property "owned and occupied as a principal residence by that owner of the property...."** The Court in *Levenfeld* agreed with the Tribunal's reading of MCL 211.7cc(3)(b)…"that the Legislature was concerned with the 'type' of exemption, as in a 'homestead' exemption, when mandating a comparison of statutory schemes…." The exemption in Utah applies as long as it is a primary residence and there is no requirement that the same person both own and occupy the property. **Thus, the Tribunal concludes that the Utah exemption received by Petitioner's spouse is not substantially similar to the Michigan PRE because it is not for**

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> **property occupied by the owner, i.e., a homestead**. Though Michigan law allows for a person that does not hold a property in fee simple to obtain a PRE, this is accomplished by defining those persons as "owners." Accordingly, there being no material facts in dispute, summary disposition is warranted in Petitioner's favor.

Id., p 3 (emphasis added; citations omitted). The Tribunal recognized that the Utah exemption claimed for tenant-occupied rentals was not substantially similar to the PRE, which is only for an owner-occupied residence.

C. The Court of Appeals Reversed the Tax Tribunal.

The County appealed. The Parties' arguments in the Court of Appeals were essentially the same as those presented in the Tax Tribunal.

In its published opinion, the Court incorrectly reported a fact even though it acknowledged that the facts were not disputed. The Court stated that "the Utah tenants (petitioner's family members) used the properties as their principal residences." The Opinion at *1, Appx 1. From 2016-2018, Dixie Stirling leased the Bountiful property to her daughter and son-in law, who were in their late thirties and had three children. Tax Trib Dkt 13, Petitioners' Motion for Summary Disposition, at Ex A – Affidavit of Mack C. Stirling (statement #5) and Affidavit of Dixie M. Stirling (statement #4); and at Ex C, Appx 3. From 2016-2019, she leased the Provo property to individuals entirely unrelated to the Stirlings.[4]

The Court accurately identified the legal standard applicable to this case: "**Our focus in conducting the comparison is between the PRE and the exemption "claimed" by the taxpayer**. MCL 211.7cc(3)(b)." *Id* at *5 (Emphasis added). Thus, the Court recognized that under Section 7cc(3)(b)'s unambiguous language, the question is whether the Utah exemption

[4] While the record does not include all of these details, these facts could be easily confirmed, and may even be matters of public records. But these facts are not material in any event because it is undisputed that Dixie Stirling claimed a Utah exemption for rental properties, not owner-occupied residences.

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claimed for rental properties is substantially similar to the PRE, which is for an owner-occupied residence.

Despite the foregoing, the Court embarked on an analysis comparing Utah and Michigan statutory frameworks and characteristics divorced from the critical dispositive language:

> Our focus in conducting the comparison is between the PRE and the exemption "claimed" by the taxpayer. MCL 211.7cc(3)(b). Here, that is the residential property exemption contained in Utah Code § 59-2-103(3), which is limited to one primary residence per household, Utah Code § 59-2-103(6)(a), but which can be claimed for residences occupied in two different ways. Utah Code § 59-2-103(6)(b)(*ii*) and (*iii*).[5] **This framework for our analysis steers us to the conclusion that the Utah exemption claimed by petitioner was substantially similar to the PRE.** This conclusion is based on several considerations. First, the "substantial similarity" standard is not so demanding that it requires exactness. The meaning of the common but statutorily undefined word "substantial" is "being largely but not wholly that which is specified," while "similar" is defined as "having characteristics in common" and "alike in substance or essentials." *Merriam-Webster's Collegiate Dictionary* (11th ed.). Taken together, we conclude that the Legislature's requirement that the other state exemption claimed by the homeowner be "substantially similar" to Michigan's means that the Sister State's exemption must be largely but not wholly alike in its characteristics and substance to the PRE.
>
> **Second, applying that definition here, there is no dispute that the main characteristic of the Utah statute, like the PRE, is to grant an exemption to a person who owns a primary residence in that state. It in fact seems clear that the primary purpose and characteristic of both statutes is to grant property tax relief to a person for a home that is used as a primary residence. Third, when looking at the substance of the two exemptions, the Utah exemption claimed by petitioner goes further than the PRE by granting the exemption to a homeowner who does not occupy the home, but that is occupied by a tenant as a primary residence**. Utah Code § 59-2-103(6)(b)(*ii*). Although Michigan's PRE is more limited by applying only to the owner of the property who uses the property as a primary residence, MCL 211.7cc(2), the primary character and

[5] As Utah Code § 59-2-103(6)(b)(iii) had not been previously discussed, it is possible that the Court of Appeals intended to cite Utah Code § 59-2-103(6)(b)(i) and (ii), rather than (ii) and (iii).

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> substance of both statutes is providing an exemption for a *homeowner's* primary residence that is *occupied as a primary residence.* **We hold that these overarching provisions make the Utah exemption claimed by petitioner substantially similar to the PRE.** [Emphasis added].

The Opinion at *5-6, Appx 1. The Court concluded that Utah's exemption for rental property was substantially similar to the PRE. *Id.* at *1.

Stirling timely sought leave to appeal the Court of Appeals' judgment. On February 4, 2022, this Court directed the parties to submit supplemental briefs addressing whether the Court of Appeals erred by holding that the primary exemption claimed by the appellant's wife for a residence in Utah was based upon a "substantially similar" exemption as the Michigan principal residence exemption, MCL 211.7cc.

III. STANDARD OF REVIEW

The Tax Tribunal granted Stirling's motion for summary disposition. This Court reviews that decision de novo. *TOMRA of North America, Inc v Dep't of Treasury*, 505 Mich 333, 338; 952 NW2d 384 (2020). This Court also reviews de novo questions of statutory interpretation. *Estes v Titus*, 481 Mich 573, 578-79; 751 NW2d 493 (2008). In *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 70-71; 894 NW2d 535 (2017) (citations omitted), the Court summarized the standard of review of the Tax Tribunal's statutory construction analysis:

> This Court reviews *de novo* the tribunal's interpretation of a tax statute. "When interpreting statutory language, our obligation is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." "This requires us to consider the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme." This Court, as with all other courts, must give effect to every word, phrase, and clause in a statute, to avoid rendering any part of the statute nugatory or surplusage. Though this Court will generally "defer to the Tax Tribunal's interpretation of a statute that it is delegated to administer," that deference will not extend to cases in which the tribunal makes a legal error. Thus, agency interpretations are entitled to "respectful

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> consideration" but cannot control in the face of contradictory statutory text.[6]

IV. ARGUMENT

A. The Court of Appeals Misapplied MCL 211.7cc.

1. *The bedrock principle of statutory construction is to enforce the plain language of the statute.*

"The principle goal of statutory interpretation is to give effect to the Legislature's intent." *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). The "most reliable evidence of that intent is the plain language of the statute." *Id*. If a statute's "language is clear and unambiguous," the Court will enforce the statute "as written." *People v Lewis*, 503 Mich 162, 165; 926 NW2d 796 (2018). This Court has repeatedly reaffirmed this. See, e.g., *Roberts v Mecosta Cty Gen Hosp*, 466 Mich 57, 64; 642 NW2d 663 (2002) ("Since the statute is clear and unambiguous, this Court is required to enforce [it] as written."); *Putkamer v Transamerica Ins Corp of Am*, 454 Mich 626, 631; 563 NW2d 683 (1997) ("Where the language of a statute is clear and unambiguous, the courts must apply the statute as written."). Recently, in *SBC Health Midwest*, 500 Mich 65, 70-73, this Court applied this paramount principle in enforcing an unambiguous statute and granting another property tax exemption. As described, *supra*, the Court of Appeals Opinion accurately described the statutory construction principles governing this case, including that unambiguous

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[6] *In re Complaint of Rovas*, 482 Mich 90, 103; 754 NW2d 259 (2008), described the respectful consideration given the statutory consideration of an agency, such as the Tax Tribunal, as follows:

> This standard requires "respectful consideration" and "cogent reasons" for overruling an agency's interpretation. Furthermore, when the law is "doubtful or obscure," the agency's interpretation is an aid for discerning the Legislature's intent. However, the agency's interpretation is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue.

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language should be enforced. The Opinion at *3, Appx 1.[7]

2. Section 7cc(3)(b)'s unambiguous test is whether the other state's exemption—not its statutory framework—is substantially similar to the PRE.

Section 7cc3(b), quoted above at 4-5, unambiguously specifies that the PRE is lost by claiming "an exemption…substantially similar to the (PRE)." Therefore, the test here is simply whether the other state's exemption is substantially similar to the PRE, **not** whether the other state's statutory framework or scheme is substantially similar to the PRE.

Applying Section 7cc(3)(b)'s unambiguous language, the Utah exemption Dixie Stirling claimed for rental properties was not substantially similar to the PRE. The Utah exemption was for rental properties, not owner-occupied residences. Further, the Utah exemption was based on the rental being the full-time residence of the tenant (as opposed to being a short-term or vacation rental, which does not qualify for exemption in Utah). Those facts do not satisfy the requirements for the Michigan PRE. The PRE applies only to owner-occupied residences. The exemption Dixie Stirling claimed for rental properties is materially different from the PRE.

The County has argued, and the Court of Appeals agreed, that Utah's exemption is substantially similar to the PRE because Utah's statutory framework included exemption for owner-occupied residences. But the Court of Appeals recognized that per Section 7cc(3)(b)'s unambiguous language, the Court's focus was supposed to be a "comparison… between the PRE and the exemption 'claimed' by the taxpayer. MCL 211.7cc(3)(b)." Dixie Stirling did not claim

[7] The County may assert the cannon that exemption statutes are strictly construed. In *TOMRA of North America, Inc v Dep't of Treasury*, this Court recently clarified that this "is a canon of last resort" to be employed "only when an act's language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity." 505 Mich 333, 343; 952 NW2d 384 (2020) (internal quotation marks omitted). Similarly, in *Inter Co-op Council v Dep't of Treasury*, 257 Mich App 219, 223; 668 NW2d 181 (2003), the Court of Appeals held that, "[w]hile tax exemption statutes are strictly construed in favor of the government, they are to be interpreted according to ordinary rules of statutory construction." Given that Section 7cc(3)(b) is unambiguous, the cannon of strict construction does not apply here.

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Utah's exemption for an owner-occupied residence.[8]

The Utah exemption Dixie Stirling claimed under Utah Code Ann § 59-2-103(6)(b)(ii) was not substantially similar to the PRE. Utah Code Ann § 59-2-103(6) provides:

> (6)
>
> (a) Except as provided in Subsections (6)(b)(ii) and (iii), a residential exemption described in Subsection (3) is limited to one primary residence per household.
>
> (b) An owner of multiple primary residences located within the state is allowed a residential exemption under Subsection (3) for:
>
> (i) subject to Subsection (6)(a), the primary residence of the owner;
>
> (ii) each residential property that is the primary residence of a tenant; and
>
> (iii) subject to Subsection (7), each residential property described in Subsection 59-2-102(34)(b)(ii) [property under construction or vacant but that will be used for residential purposes].

While the exemptions allowed under Utah Code Ann § 59-2-103(6)(a) and (b)(i) are substantially similar to the PRE, Dixie Stirling did not claim exemption under those statutes, and it is clear that the exemptions allowed pursuant to Utah Code Ann § 59-2-103(6)(b)(ii) and (iii) are not substantially similar to the PRE because neither exemption requires owner occupancy**. In short, Dixie Stirling claimed and obtained exemption under Utah Code Ann § 59-2-**

[8] Below, the Court of Appeals disagreed with the Tax Tribunal's reading of two prior Tribunal decisions, *Whiting v Grand Traverse Co.*, unpublished opinion of the Michigan Tax Tribunal, issued March 1, 2018 (Docket No. 16-005482) (Appx 4), and *Boyd v Grand Traverse Co.*, unpublished opinion of the Michigan Tax Tribunal, issued March 20, 2018 (Docket No. 17-004340) (Appx 5). The Opinion at *5, 6, n 4 and n 6 (Appx 1). The Tax Tribunal's reading of those decisions was reasonable. More importantly, indeed most importantly, even if in those cases the taxpayers had claimed Utah's exemption for rental properties, Tribunal decisions holding that such claimed exemptions are substantially similar to the PRE would be unlawful for the same reason as the Court of Appeals decision. Such decisions violate unambiguous statutory language.

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103(6)(b)(ii) for rental properties that were tenant residences, and that exemption is not substantially similar to the PRE, which requires owner occupancy.

The Tax Tribunal correctly applied Section 7cc(3)(b)'s unambiguous language. The Court of Appeals disregarded it.[9]

3. The Legislature Established that Exemptions for an Owner-Occupied Residence and a Tenant's Rented Residence are Substantially Different

Per Act sections 7cc and 7dd, MCL 211.7cc and MCL 211.7dd, only an owner-occupied residence obtains the PRE. Act Section 7cc(3)(a) and (b), MCL 211.7cc(3)(a) and (b), state:

> (3) Except as otherwise provided in subsection (5), a married couple who are required to file or who do file a joint Michigan income tax return are entitled to not more than 1 exemption under this section. For taxes levied after December 31, 2002, a person is not entitled to an exemption under this section in any calendar year in which any of the following conditions occur:
>
> (a) That person has claimed a substantially similar exemption, deduction, or credit, regardless of amount, on property in another state. Upon request by the department of treasury…a person who claims an exemption under this section shall, within 30 days, file an affidavit on a form prescribed by the department of treasury stating that the person has not claimed a substantially similar exemption, deduction, or credit on property in another state. A claim for a substantially similar exemption, deduction, or credit in another state occurs at the time of the filing or granting of a substantially similar exemption, deduction, or credit in another state....
>
> (b) Subject to subdivision (a), **that person or his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section**, unless that person and his or her spouse file separate income tax returns. [Emphasis added].

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[9] Stirling is not disputing whether the Court of Appeals correctly decided the meaning of "substantially similar." That could be disputed, but it is unnecessary to do so. Even using the Court of Appeals' construction, or any reasonable construction of "substantially similar," the Utah exemption claimed for rentals was not substantially similar to the PRE. Indeed, the Utah exemption claimed for rental properties is substantially different from the PRE.

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The County has claimed that the exemption Dixie Stirling claimed for rental properties is substantially similar to the PRE.

The County's Brief, at 11-12, wrongly claims that the PRE and the Utah exemption that Dixie Stirling claimed, are substantially similar because both are for residences. Leelanau's Brief, at 7, also impugns this appeal based on Stirling's purportedly accepting the Court of Appeals definition of "substantially similar."

In construing "substantially similar," the Court of Appeals, at 5, stated:

> First, the "substantial similarity" standard is not so demanding that it requires exactness. The meaning of the common but statutorily undefined word "substantial" is "being largely but not wholly that which is specified," while "similar" is defined as "having characteristics in common" and "alike in substance or essentials." *Merriam-Webster's Collegiate Dictionary* (11th ed.).

Exemptions for owner-occupied residences and rental residences are both for residences. However, for purposes of the PRE they are different in a way that cannot be more important: rental properties cannot qualify for the PRE. **That rental properties cannot qualify for the PRE, proves that for purposes of the PRE, rental properties are substantially different from owner-occupied properties. By limiting the PRE to owner-occupied residences, the Legislature has made as clear as it could have, that owner-occupied properties and rental properties are polar opposites and substantially different.**[10]

The County's Brief, pp 12-13 asserts that Utah's exemption for primary residences is one exemption, not two, and that it simply is a broader exemption than Michigan's PRE. Critically,

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[10] Stirling's Application for Leave to Appeal, p 13, n 9, did not concede that the Court of Appeals properly defined "substantially similar." Instead, it stated that it was unnecessary to resolve that definition. The unambiguous statutory language is the best evidence that the exemptions are substantially different. Therefore, under any reasonable construction of "substantially similar," an exemption for the rented residence of a tenant was not substantially similar to the PRE's exemption for an owner-occupied residence.

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this ignores Section 7cc(3)(b)'s unambiguous language stating that Stirling loses the PRE **only** if Dixie Stirling had claimed "an exemption, deduction, or credit substantially similar to the exemption provided under this section…." MCL 211.7cc(3)(b). The exemption Dixie Stirling claimed was for rental properties that were the tenants' residences. As already shown, the Utah exemption claimed is not substantially similar to the PRE, which is for an owner-occupied property. Rather, Utah's exemption for rental property that could not qualify for the PRE, is an exemption that is substantially different from the PRE.[11]

Stirling also disagrees with the County's contention that the Utah statute has one exemption, and that, therefore, the Utah exemption is substantially similar to the PRE. Utah law has an exemption for rental properties, and another exemption for owner-occupied properties. Further, it would not have mattered if the Utah legislature had unambiguously specified that there is one Utah exemption that broadly includes owner-occupied properties and rentals. Utah law does not supersede Michigan law. The Michigan Legislature has unambiguously provided that the PRE is lost only if the exemption claimed in the other state is substantially similar to the PRE. It does not matter how the other state describes its exemption. What matters is whether the exemption claimed is in fact, substantially similar to the PRE. The exemption claimed for rental properties, which were tenant-occupied, is substantially different from the PRE; rental properties cannot qualify for the PRE.[12]

4. The Court of Appeals' decision added a new, improper test that is different from that which the Legislature enacted.

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[11] Utah's exemption for leased property that is the tenant's residence is found in Utah Code section 59-2-103(6)(b)(ii).

[12] The County's claim that Utah has one exemption for both owner-occupied and rental residences also is undermined by its contention that whether there is one or two exemptions is so obscure that Utah courts have not yet addressed this. Leelanau Brief, p 7.

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By ruling based on statutory standards that the Legislature never enacted, the Court of Appeals unlawfully injected new provisions into the Act. In relatively recent years, this Court has more than once needed to correct this mistake in property tax exemption cases. In *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 221; 713 NW2d 734 (2006), this Court held that the Tax Tribunal and Court of Appeals erred by reading into Section 7o, MCL 211.7o, a charity threshold that was not in the statute. Similarly, in *SBC Health Midwest, Inc*, 500 Mich at 72-73, this Court repudiated the Tax Tribunal's reading of Act Section 9(1)(a), MCL 211.9(1)(a), where the Tribunal unlawfully added "nonprofit" to the statute, and wrongly held that the personal property of for-profit educational institutions was taxable. Likewise, here, by determining an exemption for tenant-occupied rental property is "substantially similar" and thus disqualifying for the PRE, the Court of Appeals imposed standards into Section 7cc(3) that the Legislature never enacted. It remains important for this Court to intercede again and correct a decision that has improperly added provisions into a statute that the Legislature never enacted.

5. The Tax Tribunal's ruling effectuated the Legislature's intent.

The Legislature designed the PRE to limit the exemption to owner-occupied properties of Michigan residents, and to prevent individuals (and in some cases, married couples) from claiming more than one PRE exemption for an owner-occupied property at any given time. The provisions within Section 7cc(2) and (3) prohibit individuals from claiming more than one PRE in Michigan, limit claims to residents of Michigan, prohibit shifting PRE claims back and forth between properties in an attempt to keep multiple properties exempt, and prohibit a Michigan PRE for those who have claimed "a substantially similar exemption, deduction, or credit on property in another state…." Viewing Section 7cc(3) in context with the rest of the statute, the "substantially similar" provision clearly references an exemption/deduction/credit for an owner-occupied residential property.

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The Tribunal's decision effectuated the Legislature's intent, which was to establish that each person, or married couple filing joint tax returns, may have only one principal residence, and, accordingly, such Michigan homeowners can claim the PRE, or a substantially similar exemption in another state, but they cannot obtain both. Multiple states provide favorable property tax treatment for owner-occupied homestead properties. Utah has such a provision, as does Florida. Utah Code Ann § 59-2-103(6)(b)(i); Fla. Stat. § 196.031(1). In Sections 7cc and 7dd, the legislature made clear that Michigan residents, and such residents who were married and filed joint tax returns, should not be receiving the PRE and favorable property tax treatment for an owner-occupied residence in another state.

Legislators did not need to confer with creative tax professionals to recognize that some taxpayers might, for example, have one spouse claim a Michigan residence and PRE, while the other spouse claimed a Florida residence with Florida's favorable property tax treatment for an owner-occupied residence. With all the Michigan snowbirds who winter in Florida, Michigan legislators surely recognized the likelihood of such abuses occurring. Sections 7cc and 7dd prevent that abuse, and by the legislature's using "substantially similar," it does not matter whether Florida, Utah, or another state label the tax treatment as applying to a "principal residence," or a "homestead," nor does the amount of the tax savings matter.

That potential abuse, however, does not exist with the exemption that Dixie Stirling claimed for Utah rental properties that were the residences of tenants. The abuse just described, where Michigan homeowners claim exemptions in multiple states for owner-occupied residences, is quite different from the situation where a Michigan resident owns rental properties in other states, and those states provide favorable tax treatment based on such rental property being tenant-occupied. The unambiguous language of Section 7cc(3)(b), which makes the test

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the exemption claimed (and not the similarity of the other state's terminology or statutory framework), confirms that the legislature was concerned about a Michigan homeowner obtaining an exemption for multiple *owner-occupied* properties, not for rental properties in other states.

V. CONCLUSION AND REQUEST FOR RELIEF

For the reasons described above, Stirling asks the Court to reverse the Court of Appeals judgment, reinstate the Tax Tribunal's decision and order that the County's denial of PRE be vacated. In the alternative, Stirling requests that the Court grant his application for leave to appeal to more fully consider the issues presented.

Respectfully submitted,

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Dated: April 25, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2022, I electronically filed the foregoing using the MiFile/TrueFiling System which will send notification of such filing to all registered counsel of record.

Dated: April 25, 2022

Respectfully submitted,

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