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STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

RESORT PROPERTIES COOPERATIVE, Inc.
Petitioner-Appellant,

-v-

WATERLOO TOWNSHIP,
Respondent-Appellee.

MSC No. 166642
COA No. 364744
Tax Tribunal no. 22-001985

/

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/

PETOTIONER – APPELLANT'S

APPENDIX

VOLUME 1

Tax Tribunal and Court of Appeals

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Tax Docket Lookup Details

Docket Number: 22-001985-TT

Status: Disposed

Petitioner: Resort Properties Co-Operative

Respondent: Township Of Waterloo

Case Type: SC Property

Division: Small Claims Division

County: Jackson

Full Title: Resort Properties Co-Operative,Petitioner v Township Of Waterloo,Respondent

Judge: Abood, Marcus L.

Parcels
Parcel
000-10-01-126-011-00

- Clicking "Document" will download the document.
- Mousing over "Document" will display the name of the document.

Action Information

Line #	Subject	Filer	Line Ref	Enter Date/Post Mark	Fee	Related Item
21	Proof of Service of Misc Documents was received.	PET		02/27/2023		Document
20	Filing Fee Received			02/06/2023	$100.00	Document
19	Transcript			02/10/2023		Document
18	Letter Received			02/08/2023		Document
17	Refund Issued		16	02/09/2023	($100.00)	Document
16	Refund Request	PET		02/03/2023		Document
15	Filing Fee Received	PET		02/03/2023	$100.00	Document
14	Filing Fee Received	PET	12	02/03/2023	$100.00	Document
13	No Action Taken		12	02/02/2023		Document
12	Claim of Appeal was filed	PET		01/30/2023	$0.00	Document
11	Denied	PET	9	01/11/2023		Document
10	Order Denying Motion		9	01/11/2023		Document
9	Motion for Reconsideration was received	PET		12/29/2022	$25.00	Document

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8	Final Opinion and Judgment		12/09/2022		Document
7	Hearing Completed		10/03/2022		
6	Notice of Hearing		08/05/2022		Document
5	A hearing has been scheduled		08/05/2022		
4	Answer was received	RESP	07/11/2022		Document
3	Petition has been verified	PET 1	06/16/2022		Document
2	Notice of Docket Number SC		06/16/2022		Document
1	A petition was received	PET	05/23/2022	$200.00	Document

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GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Resort Properties Co-Operative,
Petitioner,

v

Waterloo Township,
Respondent.

MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

MOAHR Docket No. 22-001985

Case Type: Taxable Value/
Uncapping

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

Location of Hearing: Telephonic
Hearing Held on: October 3, 2022
Appearances on Behalf of Petitioner: Dorothy & William Babbage and J. Thomas Franco
Appearances on Behalf of Respondent: Heidi Roenicke

SUMMARY OF JUDGMENT

The subject property's taxable value was properly adjusted under MCL 211.27a.

The subject property's taxable value (TV), for the tax year(s) at issue, shall be as follows:

Parcel Number: 000-10-01-126-011-00

Tax Year	TV
2022	$161,800

PROCEDURAL HISTORY

Respondent sent out a notice of assessment to Petitioner for the subject property's taxable value which was uncapped for the tax year 2022 under MCL 211.27a.

Petitioner filed its Petition with the Tribunal on May 23, 2022, and Respondent filed its Answer on July 11, 2022.

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The amount of the taxable value in dispute, as set forth in the pleadings, for all tax years at issue, is within the jurisdictional limits of the Small Claims Division.[1]

ISSUES AND APPLICABLE LAW

The issue in this matter is:

> Whether Petitioner has proven by a preponderance of the evidence that the subject property's taxable value was improperly uncapped under MCL 211.27a [and MCL 211.27b].

Under the General Property Tax Act, property taxes are based on the property's taxable value for the tax year(s) at issue.

MCL 211.27a provides that a property's taxable value is the lesser of the property's state equalized or capped taxable value, and a property's capped taxable value is, absent a transfer of ownership, determined mathematically by taking into consideration the prior tax year's taxable value, physical losses to the property, the lesser of the rate of inflation or 5%, and physical additions to the property, including omitted property (i.e., property not previously assessed).

MCL 211.27a(6) defines "transfer of ownership," in relevant part, as follows:

> 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:
>
> (a) A conveyance by deed.

MCL 211.27a(7) states Transfer of ownership does not include the following:

> (a) The transfer of property from 1 spouse to the other spouse or from a decedent to a surviving spouse.
> (b) A transfer from a husband, a wife, or a married couple creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.
> (c) Subject to subdivision (d), a transfer of that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease. That portion of property transferred that is not subject to a life lease shall be adjusted under subsection (3).
> (d) Beginning December 31, 2014, a transfer of that portion of residential real property that had been subject to a life estate or life lease retained by the transferor resulting from expiration or termination of that life estate or life lease, if

[1] See MCL 205.762(1)

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the transferee is the transferor's or transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the transfer. Upon request by the department of treasury or the assessor, the transferee shall furnish proof within 30 days that the transferee meets the requirements of this subdivision. If a transferee fails to comply with a request by the department of treasury or assessor under this subdivision, that transferee is subject to a fine of $200.00.

211.34d Definitions; tabulation of tentative taxable value; computation of amounts; calculation of millage reduction fraction; transmittal of computations; delivery of signed statement; certification; tax levy; limitation on number of mills; application of millage reduction fraction or limitation; voter approval of tax levy; incorrect millage reduction fraction; recalculation and rounding of fractions; publication of inflation rate; permanent reduction in maximum rates.

(v) Replacement construction. As used in this subparagraph, "replacement construction" means construction that replaced property damaged or destroyed by accident or act of God and that occurred after the immediately preceding tax day to the extent the construction's true cash value does not exceed the true cash value of property that was damaged or destroyed by accident or act of God in the immediately preceding 3 years. Except as otherwise provided in this subparagraph, for purposes of determining the taxable value of property under section 27a, the value of the replacement construction is the true cash value of the replacement construction multiplied by a fraction, the numerator of which is the taxable value of the property to which the construction was added in the immediately preceding year and the denominator of which is the true cash value of the property to which the construction was added in the immediately preceding year, and then multiplied by the lesser of 1.05 or the inflation rate. However, after December 31, 2011, for purposes of determining the taxable value of property under section 27a, if the property's replacement construction is of substantially the same materials as determined by the state tax commission, if the square footage is not more than 5% greater than the property that was damaged or destroyed, and if the replacement construction is completed not later than December 31 in the year 3 years after the accident or act of God occurred, the replacement construction's taxable value shall be equal to the taxable value of the property in the year immediately preceding the year in which the property was damaged or destroyed, adjusted annually as provided in section 27a(2). Any construction materials required to bring the property into compliance with any applicable health, sanitary, zoning, safety, fire, or construction codes or ordinances shall be considered to be substantially the same materials by the state tax commission for the sake of replacement construction under this section.

SUMMARY OF EVIDENCE

A. *Petitioner's Evidence*

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STATE OF MICHIGAN

IN THE COURT OF APPEALS

RESORT PROPERTIES COOPERATIVE, Inc.
Appellant,

-v-

No. 364744

WATERLOO TOWNSHIP,
Appellee.

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STIPULATION TO CORRECT
APPARENT TYPOGRAHICAL ERROR

NOW COME the Appellant and Appellee, through their respective counsel, and stipulate as follows:

At page 4 of the **Final Opinion and Judgment** entered December 9, 2022, there appears to be a typographical error:

"Petitioner asserts that 525 of the original shares were held by the original owners." Should read: "Petitioner asserts that 52% of the original shares were held by the original owners."

J. THOMAS FRANCO
Attorney for Appellant
April 23, 2023

STEPHEN J. RHODES by JTF w/permission
Attorney for Appellee
April 23, 2023

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Petitioner's contentions of TV:

Parcel Number: 000-10-01-126-011-00

Tax Year	TV
2022	$90,458

Petitioners offered the following exhibits:

1. Evidence, filed on May 23, 2022
   a. Explanatory Narrative.
   b. 2022 Board of Review Decision.
   c. Petition to Board of Review.
   d. 2022 Taxable Value Calculations Worksheet.
   e. Email Correspondence dated March 4, 2022.
   f. 2022 Notice of Assessment.

No exhibits were excluded from evidence.

Based on the pleadings, admitted exhibits, and sworn testimony, Petitioner has owned the family cottage for 44 years. In 2021, 2 partners exited; their shares were transferred to remaining partners. Petitioner notified Respondent about the transfer of shares. Subsequent to the transfer of shares, more family members came on board. The township then sent notice of uncapping because more than 50% of the shares were transferred. Petitioner went to the BOR and argued that the transfers do not amount to an uncapping event. Petitioner argues that Respondent has added shares of more than 50%. However, only 48% transferred and 24% of the same shares were transferred. Petitioner asserts that 525 of the original shares were held by the original owners.

On rebuttal, Petitioner agrees that shares were added but contends 52% of those shares remained with the original owners. Petitioner's attorney has memo to submit to the parties showing the transfers of stock should be terminated as 48% as joint tenants, but 84% shares are held by persons as original shareholders. The transfers (PTAs) should be exempt and stay as 100% capped. Again, Petitioner's counsel is prepared to offer his memo for details for Petitioner's position.

Petitioner's counsel argues that the guidelines and statute talk about joint tenants with and without survivorship. There is no mention of tenants in common for a transfer of ownership. Petitioner has affidavits for the noted PTAs. Again, Petitioner believes 48% of shares transferred while 52% remained with the original owners.

B. *Respondent's Evidence*

The property's TV, for the tax year(s) at issue, is:

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Parcel Number: 000-10-01-126-011-00

Tax Year	TV
2022	$161,800

Respondent offered the following exhibits:

1. Evidence, filed on July 11, 2022
   a. 2022 Subject Property Record Card.
   b. Property Transfer Affidavit signed June 3, 2021.
   c. Property Transfer Affidavit signed June 17, 2021.
   d. Property Transfer Affidavit signed June 18, 2021.
   e. Property Transfer Affidavit signed July 2, 2021.
   f. STC Q&A Excerpt (page 11).

No exhibits were excluded from evidence.

Based on the pleadings, admitted exhibits, and sworn testimony, Respondent refers to the acknowledgement of corporations within MCL 211.27(a)(6)(h) for the conveyance of ownership interests relative to cottages. Respondent agrees with Petitioner's timeline of transfers; 60 shares were transferred in 2021. The BOR believed that this was a co-op at 68%

On rebuttal, Respondent objects to Petitioner's offered memo in the midst of this hearing. Respondent argues that the first PTA, dated May 26, 2021, shows ownership in the form of percentages as tenants in common. With reference and guidance to the STC, 50% ownership transfer triggers an uncapping.

Respondent questions section H of the statute and joint tenancy.

FINDINGS OF FACT

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

1. The subject property is located at 4770 Clear Lake Shores, within Waterloo Township and in the County of Jackson.
2. The property is classified as Residential and has a Principal Residence Exemption of 0% for the tax year(s) at issue.
3. Petitioner's petition denoted an appeal for "Taxable Value Only (calculation)". Petitioner did not file an appeal on the basis of any "clerical errors" or "mutual mistakes of fact".
4. Petitioner, Resort Properties Co-Operative, Inc. (hereinafter, RCPI) is a Michigan non-profit corporation.
5. Petitioner asserts that the subject property's TV should not have been uncapped because there was not a transfer of greater than 50% of the ownership interests in RCPI, and thus no transfer of ownership occurred under MCL 211.27a(6)(h).

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6. The facts pertaining to the alleged transfer of ownership of the subject property are as follows:
   a) In May 2021, 48% of the shares for RCPI were conveyed to William and Dorothy Babbage for a purchase price of $163,200.
   b) In June 2021, 4% of the shares for RCPI were conveyed to Mary Duffey for a purchase price of $13,600.
   c) In June 2021, 8% of the shares for RCPI were conveyed to Mary and Matthew Clemons for a purchase price of $27,200.
   d) In July 2021, 8% of the shares for RCPI were conveyed to Martha and James Dey for a purchase price of $27,200.
   e) A property transfer affidavit was filed after each of the transfers.

CONCLUSIONS OF LAW

The following authority and reasoned opinion support the Tribunal's determination:

At issue in this case is whether Respondent properly uncapped the subject property's 2022 TV following the conveyance of ownership interests in Petitioner, RCPI. Pursuant to MCL 211.27a(3), when there has been a transfer of ownership, "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) provides a non-exhaustive list of transactions that constitute a transfer of ownership.[2] Respondent contends that the subject property was properly uncapped pursuant to MCL 211.27a(6)(h). In relevant part, MCL 211.27a(6)(h) includes in a transfer of ownership:

> "a conveyance of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than 50% of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity."

Here there is no dispute regarding the transfers that occurred in the 2021 calendar year. In June 2021, 48% of the shares of RCPI were transferred to William and Dorothy Babbage. Thereafter, 4% of the shares were transferred to Mary Duffey; 8% of the shares were transferred to Mary and Matthew Clemons; and 8% of the shares were transferred to Martha and James Dey. In total, 68% of the shares of RCPI were transferred during the 2021 calendar year. Relying on the language of MCL 211.27a(6)(h), as well as guidance from the State Tax Commission (STC), Respondent asserts that the uncapping was proper.

[2] Under MCL 211.27a(6), transfer of ownership means "the conveyance of title to or a present interest in property, including beneficial use of the property the value of which is substantially equal to the value of the fee interest."

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Reviewing the statutory language of MCL 211.27a(6)(h), the Tribunal finds that the Legislature intended that if more than 50% of the ownership interests in a corporation are conveyed, the transaction qualifies as "the conveyance of title to or a present interest in the property, including beneficial use of the property, the value of which is substantially equal to the value of the fee interest."[3] In the Transfer of Ownership Guidelines issued by the STC on October 30, 2017, the STC provides several examples of ownership changes of legal entities, to include corporations. One such example outlines that in the instance of multiple transfers of ownership interests, even when not occurring simultaneously, once the total transfers exceed 50% of the ownership interests being conveyed, a property's TV is properly uncapped. Although not statutorily binding, "agency interpretations are granted 'respectful consideration,' and if persuasive, should not be overruled without 'cogent reasons.'"[4] Here, the Tribunal finds the guidelines provided by the STC to be persuasive, as they are supported by the relevant case law. In *Moorings of Leelanau, LLC v Traverse City*, the Court of Appeals affirmed the Tribunal's determination that two separate transfers of 29% of the ownership interests in an LLC, resulting in a collective transfer of 58% of the ownership interests, constituted in a transfer of ownership for uncapping purposes.[5] Given the foregoing, the Tribunal finds that there was a transfer of ownership in the present case under MCL 211.27a(6)(h) for the subject property in the 2021 calendar year.

Further, both parties raised concerns about the determinations made by the 2022 March BOR. The March BOR incorrectly determined that the subject property was a Cooperative Housing Corporation, and as such found that a partial uncapping at 68% (i.e., the percentage of ownership interests transferred in 2021) under MCL 211.27a(6)(j) was appropriate.[6] Here, both parties agree that RCPI is a Michigan non-profit corporation, not a Cooperative Housing Corporation, and as such transfers of ownership in the present case are properly determined under MCL 211.27a(6)(h). As MCL 211.27a(6)(h) does not provide for partial uncapping in the event of a transfer of more than 50% but less than 100% of a business interest, the Tribunal finds that the TV of the subject property is properly completely uncapped for the 2022 tax year.

Based upon the findings of fact and conclusions of law, the property's taxable value for the tax year(s) at issue are as listed in the Summary of Judgment section of this Final Opinion and Judgment.

---

[3] MCL 211.27a(6).
[4] *CMS Energy Corp v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued October 15, 2013 (Docket No. 309172) at 4. See also *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 117-118; 754 NW2d 259 (2008).
[5] *Moorings of Leelanau, LLC v Traverse City*, unpublished per curiam opinion of the Court of Appeals, issued July 29, 2021 (Docket No. 353911).
[6] Under MCL 211.27a(6)(j) a transfer of ownership includes "[a] conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed."

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JUDGMENT

IT IS ORDERED that the property's taxable value for the tax year(s) at issue shall be as set forth in the Summary of Judgment section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's taxable values within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[7] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, and (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

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[7] See MCL 205.755.

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A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[8] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[9] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[10] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[11] A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[12] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[13] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[14]

By _____

Date Entered: December 9, 2022

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk

[8] See TTR 261 and 257.
[9] See TTR 217 and 267.
[10] See TTR 261 and 225.
[11] See TTR 261 and 257.
[12] See MCL 205.753 and MCR 7.204.
[13] See TTR 213.
[14] See TTR 217 and 267.

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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN TAX TRIBUNAL, SMALL CLAIMS DIVISION

Resort Properties Co-operative.
Petitioner,
-v-
Township of Waterloo,
Respondent.

MOAHR Docket No. 22-001985

TranInfo:4604 2526788E-1 01/03/23
Chk#: 4754 Amt: $25.00
ID: WILLIAM BABBAGE

MOTION FOR RECONSIDERATION

Petitioner submits this Motion for Reconsideration of the Final Opinion and Judgment (hereinafter "the Judgment") entered on December 9, 2022 and, in support thereof, states as follows:

1. Petitioner believes that this Motion is timely filed but, if there is any question regarding timeliness, Petitioner submits that Petitioner was never served as stated in the Proof of Service attached to the Judgment. Indeed, Petitioner had to go to www.michigan.gov/taxtrib to find the Judgment.

2. The Judgment relies upon an erroneous conclusion of fact in concluding that: "In total, 68% of the shares of RCPI were transferred in the 2021 calendar year."

FACTUAL BACKGROUND

We begin with defining "Original" shares as those which never changed ownership during the entire sequence of events herein and "Transferred" as those shares which did change ownership during the sequence. Further, we assert that transfers do not create additional shares or the percentage involved; so, that, at all times during the sequence: Original + Transferred = 100%.

Prior to the subject share transfers, the ownership of the shares was as follows:

Patricia Fournier (husband, Ray, deceased)	24% ("Fournier")
Nancy Erb, with husband, John	24% ("Erb")
James Flynn, surviving spouse of Jane	24% ("Flynn")
Dorothy Babbage, with husband, William	24% ("Babbage")
Mary Duffey	4% ("Duffey")

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As time passed, it became clear that Erb and Flynn were no longer interested in retaining their shares. The price of the shares was determined in accord with an appraisal and Babbage acted as the intermediary to facilitate the transfer of the shares. Accordingly, Erb (24%) and Flynn (24%) transferred their shares, for a total of 48% to Babbage, who offered 20% of the shares in total to the children of the original shareholders. In order to preserve majority position, Babbage retained 28%. Babbage timely filed a Property Transfer Affidavit.

Dey and Clemons each decided to obtain an 8% interest. Duffey decided to raise her interest to 8%. All filed timely filed Property Transfer Affidavits to reflect their interests. Thus, with the transfer to Babbage, the interests of Erb and Flynn both went from 24% to 0%, leaving ownership as follows:

Fournier	24% no change
Babbage	72% (original 24% + 48%)
Duffey	4% no change
	100%

Total original: 24% (Fournier) + 24% (Babbage) + 4% (Duffey) = 52%
Total transferred: 48% (Babbage)
Original + Transferred = 100%

Upon completion of the transfers to Duffey, Dey and Clemons, ownership became:

Fournier	24% no change
Babbage	52% (original 24% + 48%)
Duffey	8% (original 4% + 4%)
Dey	8% (transferred)
Clemons	8% (transferred)

Total original: 24% (Fournier) + 24% (Babbage) + 4% (Duffey) = 52%
Total transferred: 28% (Babbage) + 4% (Duffey)+ 8% (Dey)+ 8%(Clemons) = 48%
Original + Transferred = 100%

As a result, the combined original majority 52% interest of Fournier (24%), Babbage (24%) and Duffey (4%) was increased to 84%: Fournier (24%), Babbage (52%) and Duffey (8%).

ARGUMENT

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The fact that 52% of the shares never changed hands should be sufficient to demonstrate that the 50% threshold set forth in **MCL 211.27a(6)(h)** cannot be met. But, it is apparent that Respondent simply added all of the Property Transfer Affidavits together to arrive at 68%. That is clearly double counting resulting in Original (52%) + Transferred (68%) = 120%. By that same reasoning, a 30% shareholder selling out to another who resells to a third person within the year would result in a 60% transfer and uncapping, even though the owners of the other 70% were not involved at all. Clearly, any holding even countenancing such an extremely absurd result should not stand.

WHEREFORE, it is respectfully prayed that the Michigan Tax Tribunal will determine the taxable value of the subject parcel for 2022 without any uncapping.

Respectfully submitted,

RESORT PROPERTIES CO-OPERATIVE

By: Dorothy Babbage
Dorothy Babbage
December 29, 2022

PROOF OF SERVICE

I, Dorothy Babbage, certify that the foregoing Hearing Memorandum was sent to Respondent both by e-mail at assessor@waterlootwpmi.com and by first class mail to: Assessor, Waterloo Township, 9773 Mt. Hope Road, Munith, MI 49289, on December 29, 2022.

Dorothy Babbage
Dorothy Babbage
December 29, 2022

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Resort Properties Co-Operative,
Petitioner,

v

Waterloo Township,
Respondent.

MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

MOAHR Docket No. 22-001985

Presiding Judge
Steven M. Bieda

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

On December 29, 2022, Petitioner filed a Motion requesting that the Tribunal reconsider the Final Opinion and Judgment (FOJ) entered in the above-captioned case on December 9, 2022. In the Motion, Petitioner states the FOJ erred in concluding that 68% of Petitioner's ownership shares were transferred in 2021. Petitioner contends that prior owners Nancy and John Erb transferred their shares, constituting 24%, to Dorothy and William Babbage. Further, James Flynn transferred their shares, constituting 24%, to the Babbages. Of the 48% shares acquired by the Babbages, Petitioner contends that the Babbages retained 28% and transferred 20%. Petitioner contends that the Tribunal erred in treating the 48% share transfer to the Babbages and 20% share transfer from the Babbages as transfers of different ownership interests. Petitioner contends that 52% of the shares never transferred and that uncapping under MCL 211.27a(6)(h) is therefore not appropriate.

The Tribunal has considered the Motion and the case file and finds that Petitioner has not met the burden of proof to grant its Motion. There was no evidence or testimony entered into the record to indicate whether the 20% shares transferred from the Babbages were treated as first-in, first-out or first-in, last-out in recognizing basis for income-tax purposes. In the absence of a specific designation to the contrary, basis in stock shall be determined using the first-in, first-out rule.[1] As a result, the 20% shares transferred from the Babbages to other parties cannot be presumed to be the same shares as the 48% shares acquired by the Babbages during the same tax year, as the Babbages held other shares which must be assumed were used to identify basis for income-tax purposes.

[1] See Internal Revenue Service, Frequently Asked Questions. Stocks (Options, Splits, Traders), available at http://www.irs.gov/faqs/capitalgains-losses-and-sale-of-home/ stocks-options-splits-traders (last accessed January 11, 2023).

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Given the above, Petitioner has failed to demonstrate a palpable error relative to the FOJ that misled the Tribunal and the parties and that would have resulted in a different disposition if the error was corrected.[2] Therefore,

IT IS ORDERED that Petitioner's Motion for Reconsideration is DENIED.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a claim of appeal with the Michigan Court of Appeals.

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal. The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

Entered: January 11, 2023
bw

By _____

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk

[2] See MCR 2.119

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

RESORT PROPERTIES CO-OPERATIVE,

Petitioner-Appellant,

v

TOWNSHIP OF WATERLOO,

Respondent-Appellee.

FOR PUBLICATION
November 21, 2023
9:30 a.m.

No. 364744
Tax Tribunal
LC No. 22-001985-TT

Before: GLEICHER, C.J., and SWARTZLE and YATES, JJ.

SWARTZLE, J.

Petitioner is a corporation that owns a "family cottage" for its shareholders' use. Respondent uncapped the taxable value of petitioner's cottage because a threshold of petitioner's shares had been cumulatively transferred in the same calendar year, and the Tax Tribunal upheld that uncapping. We affirm.

I. BACKGROUND

The facts are undisputed. Dorothy and William Babbage owned 24% of petitioner's shares before they bought an additional 48% of the shares. After their purchase, and in the same calendar year, the Babbages sold 20% of petitioner's shares to other individuals. Respondent sent petitioner a notice of assessment because it determined that 68% of petitioner's ownership had been conveyed in the same calendar year, and, under MCL 211.27a(6)(h), an uncapping was triggered because more than 50% of petitioner's ownership interest had been conveyed.

Petitioner appealed the uncapping to the Tax Tribunal after an unsuccessful appeal to the Board of Review. Petitioner argued that the Babbages bought 48% of petitioner's shares, sold a fraction of those same shares in the same year, and, thus, only 48% of petitioner's shares were ever conveyed even though some of those shares were conveyed twice. According to petitioner, 52% of its shares remained with the original shareholders throughout the year, and, thus, it was incorrect for respondent to consider the transfers cumulatively because that cumulative consideration resulted in an ownership interest in excess of 100% when the amount that was not transferred was combined with the amount that respondent claimed was transferred. Respondent submitted

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property transfer affidavits signed by petitioner's shareholders in its response, and those affidavits indicated the number of shares that had been conveyed in each transaction.

The Tax Tribunal held a hearing concerning petitioner's appeal, and Dorothy Babbage testified that there were multiple conveyances, one of "48%" and one at an additional "24%." (It appears that Dorothy misspoke, as there appears to be no question that the second conveyance was for 20% of the shares.) The Tax Tribunal held that respondent had properly adjusted the taxable value of petitioner's property because the ownership interest that was conveyed was more than 50% when considering the cumulative amount that was transferred.

Petitioner moved for reconsideration, and the Tax Tribunal denied petitioner's motion after it held that there was no evidence to substantiate that the 20% of petitioner's shares that the Babbages sold were the same shares that the Babbages bought earlier in the year. For this proposition, the Tax Tribunal cited to Internal Revenue Service (IRS) guidance that defined cost-basis as the "first in, first out" method for calculating share-value for tax purposes, and, thus, petitioner had not demonstrated palpable error.

Petitioner now appeals.

II. ANALYSIS

This Court is limited in its review of a Tax Tribunal's decision. *Campbell v Dep't of Treasury*, 509 Mich 230, 237; 984 NW2d 13 (2022). Unless there is a claim of fraud, this Court reviews Tax Tribunal decisions to determine whether that tribunal misapplied the law or adopted a wrong legal principle. *Wilson v City of Grand Rapids*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 358657); slip op. at 3. This Court will not disturb the tribunal's factual findings so long as they are supported by competent, material, and substantial evidence on the whole record. *Id.* Additionally, this Court reviews questions of law de novo. *Id.*

The capping and uncapping of a property's taxable value is established in Michigan's Constitution, which provides in relevant part:

> For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33[1] of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. [Const 1963, art. 9, § 3.]

This provision is implemented by the General Property Tax Act, MCL 211.1 *et seq.* Specifically, MCL 211.27a provides the method for calculating a property's taxable value:

> (2) 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:

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(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 . . .

(b) The property's current state equalized valuation.

(3) 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.

Relevant to this case, MCL 211.27a(6) provides the definition for a "transfer of ownership," and section (h) governs the transfer of corporate shares. MCL 211.27a(6)(h) reads in full:

(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:

* * *

(h) Except as otherwise provided in this subdivision, a conveyance of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than 50% of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. Unless notification is provided under subsection (10), the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the assessing officer on a form provided by the state tax commission not more than 45 days after a conveyance of an ownership interest that constitutes a transfer of ownership under this subdivision. Both of the following apply to a corporation subject to 1897 PA 230, MCL 455.1 to 455.24:

(i) A transfer of stock of the corporation is a transfer of ownership only with respect to the real property that is assessed to the transferor lessee stockholder.

(ii) A cumulative conveyance of more than 50% of the corporation's stock does not constitute a transfer of ownership of the corporation's real property.

"When interpreting a statute, we must ascertain the Legislature's intent," which is accomplished "by giving the words selected by the Legislature their plain and ordinary meanings, and by enforcing the statute as written." *Griffin v Griffin*, 323 Mich App 110, 120; 916 NW2d 292 (2018) (cleaned up). A statute must be read as a whole, *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009), and we "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory," *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002).

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Petitioner first argues that the Tax Tribunal erred by interpreting MCL 211.27a(6)(h) to consider conveyances cumulatively when discerning whether 50% of the ownership interest of the corporation had been conveyed. Even though the plain language of MCL 211.27a(6)(h) does not discuss whether conveyances may be considered cumulatively, MCL 211.27a(6)(h)(ii) does state that a cumulative conveyance does not constitute a transfer of ownership for the purpose of uncapping the taxable value of property owned by a qualifying corporation. There is no dispute that petitioner is not a qualifying corporation as defined under MCL 455.1 to MCL 455.24.

Thus, when reading the statute as a whole, petitioner's argument is misplaced because MCL 211.27a(6)(h)(ii) would be rendered surplusage if MCL 211.27a(6)(h) prohibited a cumulative accounting of the conveyances for all corporations. Put another way, our Legislature explicitly excluded certain corporations from having their conveyances considered cumulatively in MCL 211.27a(6)(h)(ii) because MCL 211.27a(6)(h) does not prohibit considering conveyances cumulatively toward its uncapping threshold. Thus, the Tax Tribunal did not err when it held that respondent correctly considered the conveyances cumulatively when uncapping petitioner's cottage under MCL 211.27a(6)(h).

Petitioner next argues that the Tax Tribunal relied on evidence that was not substantial, material, or competent because the Tax Tribunal concluded that 68% of the corporation was transferred. As stated, however, MCL 211.27a(6)(h), when read as a whole, does not prohibit counting conveyances cumulatively. Furthermore, petitioner ignores that the Tax Tribunal was presented with affidavits of transfer that were signed by petitioner's shareholders, and those affidavits indicated the amount of petitioner's shares that had been transferred. Additionally, there is no dispute on this record that there was one conveyance for 48% of petitioner's shares and one for an additional 20% within a single year, which indicated that more than 50% of the shares were transferred.

Lastly, petitioner argues that the Tax Tribunal erred in denying its motion for reconsideration because the Tax Tribunal incorrectly relied on IRS guidance concerning the cost-basis of the shares that were transferred. We review for abuse of discretion a trial court's decision on a motion for reconsideration. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009).

The IRS guidance states in relevant part, "If you can't adequately identify the shares you sold and you bought shares at various times for different prices," then the basis of the shares sold will be the basis of the shares you acquired first on a "first-in first-out" basis. Relevant here, this means that the second conveyance of 20% is presumed to be from the original holdings of the Babbages, not the new 48% that they received.

The Tax Tribunal was not relying on the IRS guidance to state that the shareholders must have structured their conveyances in a particular way, but rather that petitioner had not provided any evidence for its proposition that the shares that were subsequently sold were the same shares that were first purchased that same year. If shareholders intend a specific conveyance to be from a specific source for tax purposes, then they need to specify and justify it. Further, as stated above, the Tax Tribunal did not err in determining that MCL 211.27a(6)(h) allowed for the conveyances to be treated cumulatively and, thus, petitioner could not present any argument that the Tax

Tribunal had palpably erred in that finding. Therefore, the Tax Tribunal did not abuse its discretion in denying petitioner's motion for reconsideration.

III. CONCLUSION

Petitioner's shareholders engaged in two separate conveyances of petitioner's shares within the same calendar year. There is no dispute that those conveyances amounted to over 50% of petitioner's ownership cumulatively. MCL 211.27a(6)(h) allows for separate conveyances to be considered cumulatively if they occur within the same calendar year, and, accordingly, the Tax Tribunal did not err in upholding the uncapping of the taxable value of petitioner's property.

Affirmed.

/s/ Brock A. Swartzle
/s/ Elizabeth L. Gleicher
/s/ Christopher P. Yates

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STATE OF MICHIGAN

IN THE COURT OF APPEALS

RESORT PROPERTIES COOPERATIVE, Inc.
Petitioner-Appellant,

-v-

WATERLOO TOWNSHIP,
Respondent-Appellee.

No. 364744
Tax Tribunal no. 22-001985

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PETITIONER – APPELLANT'S

MOTION FOR RECONSIDERATION

Petitioner-Appellant (hereinafter "Resort Properties"), by and through counsel and in accord with ***MCR 7.215(I)***, submits its **Motion for Reconsideration** as follows:

1. For the purposes of this Motion, the facts include those set forth in "I. Background" in the November 21, 2023 Opinion of the Court. Nonetheless, testimony of Dorothy Babbage regarding the 48% of the shares transferred to Babbage warrants further detail and context:

> "It was 48 percent of the total number of shares that were transferred to us, and we notified Waterloo Township of that transfer.

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After the shares were transferred, we had additional family members that were interested in continuing the family cottage, so we in turn transferred **those shares** to one, an original owner, and we had 4% of the shares go to the original owner (Duffey), and then we had 8% go to a daughter and son-in-law (Dey) of one of our original owners (Fournier), and another 8% going to another daughter and son-in-law (Clemons) of our original owner (Fournier)." **Tr p 6, at Appndx p 10.** Emphasis and names in parentheses added.

2. Beyond that, however, there are also the following undisputed facts. For all of 2022, Babbage held a minimum of 24% of the shares (concluding the year with 52%); Fournier held 24% for the entire year, and; Duffey held a minimum of 4% (concluding the year with 8%). Thus, these three shareholders combined held a minimum of 52% for the whole year and held a combined total of 84% at the end of 2022. In other words, the majority ownership was simply enlarged. It was not transferred. **See attached chart.**

USE OF IRS GUIDANCE TO INTERPRET "MORE THAN 50%"

The Tribunal Order Denying Petitioner's Motion for Reconsideration was based upon an error of law. There is no discretion. De novo review is necessary.

3. Whether or not the Tribunal can turn to the Internal Revenue Code to interpret ***MCL 211.27(a)(6)*** is a question of law and requires review *de novo*. *Hairston -v- Lku, ___Mich App___(November 21, 2023), citing Slis -v- Michigan, 332 Mich App 312, 335:*

> "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. Additionally, a trial court necessarily abuses its discretion when it premises its decision on an error of law. *Citation omitted.* This Court reviews *de novo* whether the trial court properly interpreted and applied the relevant statutes and court rules." *Citation omitted.*

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4. Resort Properties has constantly maintained that the meaning of "percent" in ***MCL 211.27a(6)(h)*** is clear. **Aplant Br p 10, Apndx p 58, 59, 61.**
5. That meaning is one part per hundred, 100 being the whole. Accordingly, the inquiry of the Tax Tribunal should have been concluded once it was shown that 52% of the shares were never transferred.
6. The plain language of the statute provides is the most reliable evidence of legislative intent. If the language is not ambiguous, judicial interpretation is neither required nor permitted. *State -v- McQueen, 493 Mich 135, 147 (2013); People -v- Bylsma 493 Mich 17, 26 (2012).* The legislative purpose of ***MCL 211.27a(6)(h)*** is clear: to uncap the property taxes of a corporation once the majority of the shares at the end of the calendar year ceases to be held by the same persons holding a majority at the beginning of the calendar year. Apparently, the Tribunal incorrectly believes that the transfers herein frustrate that purpose; they simply do not. The end result here is the same as if Flynn had transferred 24% to Babbage and Erb had transferred 4% to Babbage, 4% to Duffey, 8 % to Dey and 8% to Clemons. According to the Tribunal, there would have been no uncapping in that case. There is a distinction in the paperwork but no difference terms of percent transferred and there should be no uncapping in either case.
7. In derogation of the clear language of ***MCL 211.27(a)(6),*** the Tax Tribunal ruled that 68% of the shares had been transferred because Babbage first purchased 48% from shareholders wishing to sell their shares and then resold 20% to other family members. Thus, percent never transferred (52%) plus percent transferred (68%) equals 120% disregards the meaning of percent.
8. The Tribunal **Order Denying Petitioner's Motion for Reconsideration** by Judge Bieda constituted a tacit admission that, but for Babbage's failure to identify the actual shares in the 20% sold by Babbage, the percent transferred would have been only 48% and not 68%. That reasoning was based upon an Internal Revenue Publication, **Internal Revenue Service, Frequently Asked Questions: Stocks (Options, Splits, Traders),** excerpt at **Apndx, pp 53-54.**

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Internal Revenue Service, Frequently Asked Questions: Stocks (Options, Splits, Traders), excerpt at **Apndx, pp 53-54**.

9. A Michigan court may examine federal case law in interpreting a Michigan statute which has a federal counterpart. *State Employees Assoc -v- Dept of Management and Budget, 428 Mich 104, 428 Mich 104. (hereinafter "State Employees")* In that case, the Court found that the Michigan FOIA, ***MCL 15.231, et seq*** was similar to the federal FOIA, ***5 USC 552,*** in that both statutes required disclosure of requested information unless the public entity successfully met its burden of proof in asserting one of the exemptions in the act. Further, both statutes contained a similar exemption:

> "Sec. 13. (1) A public body may exempt from disclosure as a public record under this act:
>
> Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." ***MCL 15.243(1)(a)***; *State Employees, supra, p 110.*
>
> and
>
> "personnel and medical files and similar files the disclosure of which would a clearly unwarranted invasion of personal privacy." ***5 USC 552(b)(6)*** *State Employees, supra, pp* 116-117

Several labor organizations had requested names and home addresses of all classified civil service employees. The defendant indicated that it would provide all requested information except the home addresses. The organizations filed an action asserting that the addresses were not exempt under the Michigan FOIA. Several employees, relying upon the exemption, filed suit to block the request. In finding the exemption inapplicable, the Court extensively discussed *Dep't of the Air Force -v- Rose, 425 US 352; 96 S Ct 1592; 48 L Ed 2d 11 (1976), State Employees, supra, pp 112, 117-120,* although it ultimately rejected the balancing test enunciated in *Rose*:

> The internal revenue code would be the federal counterpart to the Michigan Income Tax Act of 1967, ***MCL 206.1, et seq.,*** and not a federal counterpart to the Michigan General Property Tax Act, ***MCL 211.1 et seq.*** That there simply is no

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the taxation of capital gains and needs the cost basis of the shares sold to determine the amount of those gains. The percentage of the shares owned before and after is not relevant. Under ***MCL 211.27a(6)***, percentage is the relevant criterion and cost basis has absolutely nothing to do with that. Each single percent represents the same property value regardless of its cost basis. A case much closer to the point here is *The Clarke-Gravely Corporation -v- Department of Treasury, 89 Mich App 732 (1979)* at least involves the interplay between Michigan and federal income tax law. In that case, subsidiaries of the plaintiff filed separate Michigan returns for 1971, 1972 and 1973. When it became apparent that they could gain considerable advantage by filing a combined Michigan return, the plaintiff did so in 1975. The focus here is on the calculation of the interest on the resulting refund. Due to its untimeliness, the Department denied the claim for 1971. Those for 1972 and 1973 were allowed but without interest. Based upon federal **Treasury Regulation 301.661-1(a)(1),** which provided for the payment of interest on the overpayment from the date that it was made, the plaintiff sought interest from the date of filing the separate returns. The Department contended that interest was payable from the time of filing the combined return. In holding for the Department, the Court stated:

> "In the case before us, the alleged 'overpayment' occurred only because the taxpayers elected to use a non-federal-type provision. Filing a combined Michigan return was not necessarily related to any of its Federal rights. ***We decline to give similar terms in the Federal and state statutes similar meanings when those terms are applied to dissimilar situations.***' Emphasis added. *Clarke-Gravely, supra at 745.*

But Appellee seeks to go well beyond what the court would not do even when there is a federal counterpart to the Michigan statute. The present case is simply way off the federal counterpart rails and into the woods.

10. Did Appellee find any support for its position in the property tax statutes of any sister state? Is there any case law on any tax for the proposition that 100% is not the whole, no more than the whole and no less than the whole? Is there any case law, federal or from any state, supporting the proposition that the summation of two

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mutually exclusive categories, as here transferred and not transferred, can come to more than 100%? Either Appellee failed to make these inquiries, or the answer is in the negative. That the Tribunal may have been including noncumulative transfers in the total transferred for almost thirty years does not constitute precedent. More likely, it stands for the proposition that none had the resources to mount an effective challenge to that practice.

11. Reasoning based upon identification of the particular shares transferred was never discussed at the hearing and is not mentioned in the **Final Opinion and Judgment** by Judge Abood. This fact, plus the fact that that the **Order Denying Petitioner's Motion for Reconsideration** was authored by Judge Bieda suggests that the reasoning is pure afterthought. Further, such reasoning does not appear in any rule or even the **Guidelines**. **Apndx, p 42.**
12. The Michigan legislature knows when and how to incorporate the internal revenue code by reference in Michigan statutes. There are 504 such references to the Internal Revenue Code in the Michigan Compiled Laws, **Apndx, pp 55-57,** six of which are in the Michigan General Property Tax Act, and one of which is in ***MCL 211.27(a)***, specifically at ***MCL 211.27(a)(7)(n)*** which excludes from transfer "a tax-free reorganization under section 368 of the internal revenue code." The Tax Tribunal has, without authority, basically amended the statute to include an additional reference to the internal revenue code.
13. Reasoning based upon an IRS publication is a matter of first impression in the **Order Denying Petitioner's Motion for Reconsideration** and, as a result, obviously immune from objection at the hearing. This Court should not extend that immunity. In that regard, this case can also be distinguished from IRS in the fact that IRS at least asks the question and provides the guidance. The Tribunal here has done neither.
14. Imagining, *arguendo*, that there is any merit in the reliance upon IRS guidance, its application here involves the presumption that Babbage cannot identify which shares that they sold. Of course, that presumption totally ignores the explicit testimony of Dorothy Babbage, as set forth in Paragraph 1, above, which is in the

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context of the following additional facts. Initially, only two of the shareholders, Flynn and Erb, sold 24% each to Babbage, who was not interested in selling. The shares sold to Babbage then became available for sale at the same price at which they were bought. In other words, there would be no gain or loss to Babbage. Common sense should not be abandoned. *Kalamazoo Twp, Kalamazoo County -v- Stamm, 339 Mich 619 (1954)* But it would take exactly that not only to presume, but conclude, that Babbage would be unable to identify the shares sold and would also choose in a manner resulting in significant income tax liabilities. The order of events, particularly in light of the testimony of Dorothy Babbage, is sufficient evidence to show which percents Babbage transferred. **See attached chart.**

CUMULATIVE AND NON-CUMULATIVE PERCENTAGES

Petitioner's argument renders no portion of MCL 211.27a(6)(h) suplusage or nugatory.

15. Appellant has never argued that it qualifies under ***MCL 455.1 to 24*** either expressly or by implication and does not do so here.
16. Appellant's argument regarding the meaning of "cumulative" does not render "cumulative" to be mere surplusage in ***MCL 211.27a(6)(h).*** The modifier, itself, stands for the proposition that there is another type of transfer such as "noncumulative" or, as Appellant has maintained, "redundant." Nor does ***MCL 211.27a(6)(h)*** or ***MCL 455.1 to 455.24*** confer upon the Tribunal the authority to deem transfers "cumulative" when, indeed, they are not.
17. Some examples showing coexistence of cumulative and noncumulative (redundant) transfers throughout ***MCL 211.27a(6)(h)*** are offered below. The minimum number of shareholders as a summer resort and park association is five, ***MCL 455.1;*** the property cannot be more than 700 acres, ***MCL 455.3;*** if the parcels are platted pursuant to ***MCL 455.20*** taxes may be allocated to the parcels, and that allocation must total 100%. ***MCL 455.16*** These examples will be based on five shareholders each assessed for 20% of the total:

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Example 1:

A (20%) transfers to F.

B (20%) transfers to G.

C (20%) no transfer.

D (20%) no transfer.

E (20%) no transfer.

If ***MCL 455.1, et seq*** applies: Cumulative transfers amount to 40%. 60% is not transferred, and the total is 100%. All parcels are separately assessed; those now assessed to F and G are uncapped; those assessed to C, D and E are capped. *Without the application of MCL 455.1, et seq, all corporation property would remain capped*.

Example 2:

A (20%) transfers to F.

B (20%) transfers to G, who then transfers to H.

C (20%) no transfer.

D (20%) no transfer.

E (20%) no transfer.

If ***MCL 455.1, et seq*** applies: The transfer to H is noncumulative, or redundant. Cumulative transfers amount to 40% but the parcels assessed to F and H are uncapped; other parcels remain capped. 60% is not transferred; the total is 100%, not 120%. *Without the application of **MCL 455.1 to 455.24**, all corporation property would remain capped*.

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Example 3:

A (20%) transfers to F.

B (20%) transfers to G, who then transfers to H.

C (20%) transfers to I.

D (20%) no transfer.

E (20%) no transfer.

If ***MCL 455.1, et seq*** applies: The transfer to H is noncumulative, or redundant. Cumulative transfers amount to 60%, but the uncapping only applies to parcels assessed to F, H and I. D and E remain capped. 40% is not transferred, and the total (transferred + not transferred) is 100%. *Without the application of MCL 455.1, et seq, the entire corporation property would be uncapped and the property would be assessed as a whole.*

Example 4:

A (20%) transfers to F.

B (20%) transfers to G, who then transfers to H.

C (20%) transfers to I.

D (20%) transfers to J.

E (20%) transfers to K.

If ***MCL 455.1, et seq*** applies: The transfer to H is noncumulative, or redundant Cumulative transfers amount to 100%, not 120%. The uncapping applies to all parcels because they are separately assessed. *Without the application of MCL 455.1, et seq, all corporation property would be uncapped and the property would be assessed as a whole.*

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Example 5:

A (20%) transfers to F, who then transfers to L.

B (20%) transfers to G, who then transfers to H.

C (20%) transfers to I, who then transfers to M

D (20%) transfers to J, who then transfers to N

E (20%) transfers to K, who then transfers to O.

If ***MCL 455.1, et seq*** applies: The transfers to H, L, M, N and O are noncumulative, or redundant. Accordingly, cumulative transfers amount to 100%, not 200%. The uncapping applies to all parcels because they are separately assessed. *Without the application of MCL 455.1, et seq, all corporation property would be uncapped and the property would be assessed as a whole.*

Example 6:

A (20%) transfers to F, who then transfers to L; then transfers to M.

B (20%) no transfer.

C (20%) no transfer.

D (20%) no transfer.

E (20%) no transfer.

If ***MCL 455.1, et seq*** applies: The transfers to L and M are noncumulative, or redundant. Accordingly, cumulative transfers amount to 20%, not 60%, and the total is 100%.. The parcel assessed to M is uncapped. *Without the application of MCL 455.1, et seq, all corporation property remains capped.*

18. The fact that "cumulative conveyance" is mentioned only in reference to corporations subject to ***MCL 455.1 to 455.24*** does not confine the distinction between cumulative and noncumulative transfers to that situation. All it does say is that some cumulative transfers, which would justify uncapping with other

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corporations, do not justify uncapping of all corporation property for corporations subject to ***MCL 455.1 to 455.24.*** Noncumulative or redundant transactions are not counted in either case. In some cases, defined in ***MCL 455.1 to 455.24***, that cumulative total, even if over 50%, does not justify uncapping all corporate property. Indeed, it is the very definition of percent that compels that reading. In no instance can transfers accumulate to more than 100%. Accordingly, there is nothing nugatory about Appellant's position.

19. Put perhaps more succinctly, throughout ***MCL 211.27a(6)(h),*** only cumulative transfers are counted and in no instance within ***MCL 211.27a(6)(h)*** are noncumulative, or redundant, transfers counted. That, indeed, is reading the statute as a whole, in conformity with the definition of percent.
20. The absurdity of Appellee's position is further made clear by the following example: A, a 100% owner, transfers 40% to B who, in turn, with or without the knowledge of A, transfers 15% to C and 15% to D. Appellee would hold this sequence to be a transfer of 70% (40% + 15% + 15%) while A retained 60% throughout. Can that possibly be the law? Appellant answers emphatically "NO."

Wherefore, it is respectfully requested that the Court Appeals will (1) find that reliance of the Tribunal on IRS guidance, particularly but without limitation **Internal Revenue Service, Frequently Asked Questions: Stocks (Options, Splits, Traders),** constitutes error of law, (2) find that the distinction between cumulative and noncumulative, or redundant, transfers has vitality throughout ***MCL 211.27(a)(6),*** (3) order that the subject property shall be capped with a taxable value of **$90,458.00** for **2022,** and remain capped for subsequent years until such time as uncapping may be warranted due to subsequent transfers, (4) order Appellee to refund all overpayment of taxes, including interest and penalties, paid on account of 2022, with interest on the total so determined, and (5) order Appellee to refund overpayments of taxes, with interest thereon, for years subsequent to 2022 with interest.-

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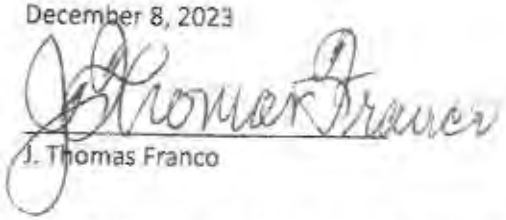
December 8, 2023



J. Thomas Franco

I certify that this Motion contains 3,117 words.

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Original Shareholders' Percentages	Transferred Percentages and affidavits filed	Total Percentage of RPCI shares
Fournier 24% + Babbage 24% +Duffey 4% + Erb 24% + Flynn 24%		=100%
Fournier 24% + Babbage 24% +Duffey 4%	+Babbage 48%	=100%
Fournier 24% + Babbage 24% +Duffey 4 %	+Babbage 28% + Duffey 4% + Dey 8% +Clemons 8%	=100%

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Court of Appeals, State of Michigan

ORDER

RESORT PROPERTIES CO-OPERATIVE V WATERLOO TOWNSHIP

Docket No. 364744

LC No. 22-001985-TT

Elizabeth L. Gleicher
Presiding Judge

Brock A. Swartzle

Christopher P. Yates

Judges

The motion for reconsideration is DENIED.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

December 27, 2023
Date

Chief Clerk

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STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

RESORT PROPERTIES COOPERATIVE, Inc.
Petitioner-Appellant,

-v-

WATERLOO TOWNSHIP,
Respondent-Appellee.

MSC No. 166642
COA No. 364744
Tax Tribunal no. 22-001985

/

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PETOTIONER – APPELLANT'S

APPENDIX

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MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

RESORT PROPERTIES COOPERATIVE,

MOAHR Docket No. 22-001985

Petitioner,

v.

WATERLOO TOWNSHIP,

Respondent.
_____./

TAXABLE VALUE/UNCAPPING HELD TELEPHONICALLY

BEFORE THE HONORABLE MARCUS L. ABOOD

Lansing, Michigan - Monday, October 3, 2022

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WILLIAM BABBAGE

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Lansing, Michigan

Monday, October 3, 2022 - Time Unknown

JUDGE ABOOD: Good afternoon, everyone. This is Judge Abood coming into the conference line. If you would be kind enough to introduce yourselves to me, please? First, Petitioner.

MS. BABBAGE: Okay. This is Dorothy Babbage.

JUDGE ABOOD: Good afternoon.

MS. BABBAGE: And my husband William is here.

JUDGE ABOOD: Okay.

MS. BABBAGE: Good afternoon.

MR. BABBAGE: And William Babbage. I'm Dorothy's husband.

JUDGE ABOOD: Yes. Very good.

And for Respondent?

MR. FRANCO: J. Thomas Franco. I am an attorney assisting them with this appeal.

JUDGE ABOOD: For Petitioner you're saying?

MR. FRANCO: Yes.

MS. BABBAGE: Yes.

JUDGE ABOOD: And your name again, sir?

MR. FRANCO: J. Thomas Franco. F-r-a-n-c-o.

JUDGE ABOOD: Very good.

Okay, and then for Respondent?

MS. ROENICKE: Heidi Roenicke, township

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assessor.

JUDGE ABOOD: Good afternoon.

Okay, let's start off this way. Have Petitioners and/or counsel been involved in a small claims hearing through the Michigan Tax Tribunal before?

MS. BABBAGE: No.

MR. BABBAGE: No.

JUDGE ABOOD: Okay. All right. Well, then this will give me opportunity in a very few quick introductory statements to extend a base of knowledge regarding the process and the proceeding. They'll be fairly quick and tameless (sic), and I'm sure Respondent, Ms. Roenicke, has heard this song and dance before, so that's all the more reason for me to be quick.

First off, obviously amply labeled as small claims, small claims by virtue of a very important fact is that it will fall on my shoulders as the Tribunal Judge, to take notes, listen to testimony, review documentary evidence, then to render a decision.

As we sit here today, I am precluded from any verbal decisions. My decision must be in writing, otherwise known as a final opinion and judgment. You might then be wondering when would you receive such a written decision. That will be sooner rather than later. If I try to give you a specific date, I'd be sure to miss

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it, and then I wouldn't feel very good about myself. Silliness aside, I say this to all parties before me is that everyone deserves a timely, efficient, properly analyzed, reasoned decision, and that's exactly what will take place here.

Next, the hearing itself will last roughly 30 minutes. That'll mean 10 to 15 minutes for each party to present their case. As time permits, we will try to accommodate some limited response or rebuttal.

And, because we have multiple individuals on this telephonic hearing, it is extremely important, please do not interrupt or talk over one another. No interruptions, cross-conversations. What each party is doing is giving me singularly, solely their testimony and presentation. That'll help move things along smoothly and efficiently.

And believe it or not, those are my quick, introductory statements. I will formalize the commencement of this hearing by swearing in the parties. I will ask do you swear or affirm to tell the truth in regards to this tribunal matter? Mrs. Babbage?

MS. BABBAGE: Yes.

JUDGE ABOOD: Mr. Babbage?

MS. BABBAGE: Yes.

JUDGE ABOOD: And Ms. Roenicke?

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MR. BABBAGE: Yes.

MS. ROENICKE: I do.

(At this time, parties duly sworn.)

JUDGE ABOOD: Very good. So with that all out of the way, now I look to Petitioner to give me testimony and their case.

STATEMENTS BY DOROTHY BABBAGE

MS. BABBAGE: I am presenting this and representing Resort Properties Incorporated, and we own a family cottage that has been owned by us for 44 years. In 2021, two of our partners in this corporation needed to leave, and so shares were transferred. They were originally transferred to my husband and I as president and secretary of the corporation. And we in turn notified the Township of that transfer of shares. It was 48 percent of the total number of shares were transferred to us, and we notified Waterloo Township of that transfer.

After the shares were transferred, we had additional family members that were interested in continuing the family cottage, so we in turn transferred those shares to one, an original owner, and we had 4 percent of the shares go to the original owner, and then we had 8 percent go to a daughter and son-in-law of one of our original owners, and another 8 percent going to another daughter and son-in-law of our original owner.

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When the county sent out -- sent the -- or when the Township sent us the tax uncapping, it was because, their statement was more than 50 percent of the shares had transferred. When we went before the Board of Review to argue that or to disagree with that, they had already decided that was what happened because each party then sent a form in saying that they had transferred shares. So instead of looking at the share transfer as part of the 48 percent, the Township added those share transfers, so it brought the transfer of shares up to 68 percent of shares were transfer, rather than the 48. And they uncapped our taxes because it was more, according to the Township, it was more than 50 percent of the shares had transferred.

We tried to communicate with the Township, and they continued to say that was their decision, that it's more than 50 percent of the shares that transferred. In trying to explain that to them, that it was 48 percent of the shares transferred, and of that 48 another 24 percent were transferred to other people, with, of the 48 it was the same shares were transferred. And one of the ways that I tried to explain it was that if you looked at the original shareholders, 52 percent of the shares were still held by the original shareholders, but really only 48 percent of the shares had been transferred.

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Okay. Can we add Tom's legal take on that then? Is it okay?

JUDGE ABOOD: Yeah, that's -- go -- yeah, that's fine.

MS. BABBAGE: So that's what we present is that -- that that was what we petitioned for. But Tom has a different part that maybe comes later.

JUDGE ABOOD: Fine.

MS. BABBAGE: Do we have an agreement that he can speak now, or should we let Heidi speak?

JUDGE ABOOD: Well, it's not "we" that's going to allow anything to happen; it's myself that's going to allow that to happen.

Why don't we let Mr. Franco come in as a response or as a rebuttal. If you'll take a pause, I'll look to Ms. Roenicke for testimony at this time. So take a pause, Ms. Babbage.

MS. BABBAGE: Yes.

JUDGE ABOOD: Okay, good.

Ms. Roenicke?

STATEMENTS BY MS. ROENICKE

MS. ROENICKE: Okay. What I did was, because this is held in a corporation, is I looked to the MCL 211.27a(6) and then section (h) where it talks about the corporation, and it says a conveyance of an ownership

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interest in a legal entity, such as a corporation, which owns property, transfers of ownership of the property, provided that the ownership interest conveyed is more than 50 percent of the total ownership interest. And then it also references some other acts. So I looked those up, and it talks -- and that was -- what was it talking about? It was talking about things like family cottages and, I think it was -- (unintelligible) there were references. It was 455.1, for ownership of summer resort, recreational purposes. And then 455.24, association members or stockholders.

And so I agree with her on, you know, I have the transfer affidavits attached. You can see that on 5/6 (sic) of '21, for a 163,200, 48 shares were transferred to the Babbages. And then that was only 48 percent, so no uncapping occurred.

Then on 6/18 of '21, 8 shares were transferred. And then on 7/2 of '21, 8 shares were transferred. I don't have a transfer affidavit for the 4 shares that went to Duffy. They didn't file a transfer affidavit. But I do agree that that was another 20 shares transferring, which equals 68 shares transferring in the year of 2021. And I don't see in the law where it refers to a person holding just the share, especially when there's money transferred in all of these transactions. I don't -- I

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don't see where that would account for them to just hold the shares.

So that's -- then they came to the Board of Review. I uncapped the property 100 percent. The Board of Review, based on the name of the corporation, thought it was a cooperative, and the cooperative is an uncapping of 68 percent, because 68 shares out of the 100 transfers. So they re-capped it and only uncapped 68 percent. So I think the Board of Review acted in error, and it should be 100 percent uncapping.

And that's all I have. I mean, I pretty much agree with the timeline of what happened, and I -- I believe it was Mr. Babbage who put together the sheets that are attached to the transfer affidavit that explained who the owners were and how the transfers occurred.

JUDGE ABOOD: Okay.

MS. ROENICKE: And that's all I have.

JUDGE ABOOD: All right. Then I'll send it back to you, Ms. Babbage, and/or Mr. Franco.

FURTHER STATEMENTS BY DOROTHY BABBAGE

MS. BABBAGE: Well, I agree. I mean, Heidi -- well, Heidi said essentially what I had said, that they ended up adding the shares of transfer, rather than looking at it as 48 percent transferred, and of those 48 an additional 24 transfers. I mean, it wasn't additional.

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It was, those were the shares that transferred. And that 52 percent remain with the original owners. Have always -- those people have always held those shares.

Okay. Now, I'll turn it over to Mr. Franco.

JUDGE ABOOD: Okay.

STATEMENTS BY MR. FRANCO

MR. FRANCO: Okay. I'm an attorney, but I swear I'll tell the truth, too.

JUDGE ABOOD: Very good.

MR. FRANCO: Okay.

JUDGE ABOOD: Okay.

MR. FRANCO: I have here a memo, which I'm willing to supply to you and the Township. Basically I think the concept here is that the transfers were not exempt. The transfer affidavit doesn't talk specifically and only about deeds. It talks globally about transfers. Now, the 48 percent that was transferred ended the joint tenancy of those folks. All right. So if we're going to use transfers of stock to trigger the obligation to file the affidavit in the first place, then the same kind of transfer ought to qualify for the exemptions. So the 48 terminated the tenancy of Nancy Erb (phonetic), and her husband John, and James Flynn (phonetic) the surviving spouse of Jane. So they're out. Their 48 percent, their tenancies were joint, and they were ended. And that, at

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that point the -- we have really 84 percent of the shares held by people who have always held shares. Patricia Fournier (phonetic) held before 24 percent, and after 24 percent. Nancy Erb, her husband, zero. So 24 before, zero after. James Flynn, 24 percent; zero after. Dorothy and William Babbage, they held 52 percent. Okay. So that's 76 percent held by people who are already shareholders. Mary Duffy went from holding 4 percent before, to 8 percent after. So now we're at 84 percent of the shares held by parties who had been shareholders throughout this series of transactions.

The other two new people, Marty Day and Mary Clemens (phonetic), are descendants of Pat Fournier. Okay. And those tenancies are exempt because they were done by transfers creating the joint tenancy.

So we feel that these transfers not only should be treated as transfers per the affidavit's definition of transfers, which is right at the top there, but should be exempt on the same terms. And that being the case, then the property should be 100 percent exempt -- no, not exempt -- 100 percent capped. I'm sorry.

So maybe I'm not making this point very clear, but I, like I say, if you're willing for me to send this to you in written form, that it'd be laid out right straight in front of everybody, I have an email address

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for the assessor, it's assessor@waterlootwpmi.com. And if you would like me to do that or allow, I should say allow me to do that, I will send it to you as well.

JUDGE ABOOD: I --

MR. FRANCO: Maybe that will, in writing, be clear what our position is on that.

JUDGE ABOOD: I appreciate that, Mr. Franco; however, per our rules of practice and procedure, documentation evidence must be filed, submitted 21 days in advance of hearing. And so now at this hour to offer such information or evidence, while sincerely offering it, is -- is not proper. If -- if the shoe was on the other foot, so to speak, and the opposing party was to offer evidence at this hour without giving the party the opportunity to digest or weigh that evidence in preparation of hearing, you can understood where I'm going with this.

So while you've offered it, it's not proper at this time, and I'll take your testimony to that effect.

MR. FRANCO: Okay, well, I -- I respect that ruling, but I -- I don't think that this is new evidence. This is just a presentation of existing evidence. I'm not introducing any new documents here or any new transactions. So it's not really evidence. In fact, I've labeled it hearing memorandum, as we would, you know, submit a memorandum for consideration, you know, at trial.

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JUDGE ABOOD: I appreciate that. Again, and once again, because we are in a small claims arena that I don't -- I don't know that Respondent would receive it with the viewpoint as you've characterized, and I certainly do not want to speak for Respondent in this regard. And maybe what I'll do is then turn it over, Ms. Roenicke, do you have a response to this offered memo?

MS. ROENICKE: I haven't had a chance to look at it, so I -- I don't want to comment on it, so. I'd prefer it not added into evidence.

JUDGE ABOOD: Okay.

MR. FRANCO: Okay, well I'll accept that, but you could, you know, I suppose you could allow you to respond, but I will maintain our position that it's not new evidence, okay, it's a memorandum.

JUDGE ABOOD: Understood.

Okay, then further testimony, Ms. Roenicke?

FURTHER STATEMENTS BY MS. ROENICKE

MS. ROENICKE: Okay. If you go to that fist transfer affidavit from May twenty -- 6, 2021, they did mark off for creating or ending a joint tenancy if at least one person is an original owner. What they own is percentages, so it's more like tenants in common to me. I mean, if these people pass away, their share is not going to go back to the family; it's going to pass on to their

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heirs. More like tenants in common. So, plus it's in a corporation. So what -- just like these sisters who passed away or no longer own, their shares didn't go to their children; they were sold back to people who were in this owning shares. So I look at it as more like tenants in common than joint tenancy with rights of survivorship.

So, and, I guess my example, too, when I read the question and answers from the State Tax Commission, when you get to 50 percent that's what triggers an uncapping. So it seems that they, the people who bought the last 20 percent didn't come along until two years from now, that would be an uncapping the year following the transfer.

So I just track when is a share transferred, not is it the same share keeps moving down the road, and it's never going to uncap. I'm looking at did shares transfer, and when you get, trigger that 50 percent, that triggers the uncapping. So I'm not sure if I'm looking at that wrong, but that, from based on the law when I read it, and based on the State's Tax Commission questions and answers, that's the way I interpret it.

And that's all I have.

MR. FRANCO: Do we get to talk again?

MS. BABBAGE: I don't know.

JUDGE ABOOD: Go ahead, Mr. Franco.

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FURTHER STATEMENTS BY MR. FRANCO

MR. FRANCO: Yeah, I looked at the statute. The statute actually talks about joint tenants, and it talks about joint tenants with rights of survivorship. Okay. And when you create a joint tenancy with rights of survivorship, you say that in the deed, okay, or the instrument. And if you don't do that, you create a joint tenancy without survivorship, which is a tenancy in common. Okay. And I -- I scoured that statute, and I might have missed it, I did a word search for tenant in common, or common tenancy, and I didn't see it.

What I did see is I saw joint tenants, and joint tenants with rights of survivorship. Okay. So I -- I think that when they, when the form uses joint tenancy, they are talking about joint tenancy with survivorship, joint tenancy without survivorship, and by default also including tenants in common.

JUDGE ABOOD: Okay.

Ms. Roenicke?

FURTHER STATEMENTS BY MS. ROENICKE

MS. ROENICKE: I guess I'm not sure where in the act he's specifically talking about under that section (h) about corporations, or where is he talking about tenants in -- joint tenancy, just in the act itself?

MR. FRANCO: I don't have the statute right in

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front of my unfortunately, but I will be happy to supply that. It was -- it was in the taxing statute, 4 -- 524 or something like that, whatever -- I forget; I'm not good with numbers of statutes, okay, unless I have them in front of me.

JUDGE ABOOD: Okay. Well, if the parties decide to have further conversation outside of this hearing, sharing information, that's fine. But for the sake of the hearing, Respondent's question will have to go unanswered, and it's not my position as a trier of fact to answer that question, as I'm sure the parties understand that, so.

MR. FRANCO: Yeah.

JUDGE ABOOD: So further testimonial evidence from Petitioner, as we are nearing the top of the hour? We are under a time constraint.

FURTHER STATEMENTS BY MS. BABBAGE

MS. BABBAGE: My only addition would be that there are affidavits for all of the transfers. I have the copy that the Township sent us. And yes, Mary Duffy did send an affidavit in. It was part of their evidence that they -- and it was dated July 16, 2021.

JUDGE ABOOD: Okay.

MS. BABBAGE: Heidi had said she hasn't received Mary Duffy's --

MS. ROENICKE: Oh.

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MS. BABBAGE: -- but yes.

MS. ROENICKE: I'm looking for it. Oh, I -- June 17th. Yep, I do got it. Yeah. They're all here.

MS. BABBAGE: Okay. I -- I do believe that our statement of 48 percent of the shares transferred, and 52 percent of the shares remain with the original owners. I know there were a number of steps to the transfers, but it's still less than 50 percent of the shares were transferred.

JUDGE ABOOD: Okay. Very well, then.

And then lastly, to cap this, anything, Ms. Roenicke?

MS. ROENICKE: No, I have nothing.

JUDGE ABOOD: Okay. All right then.

As we are nearing the top of the hour, I'll circle back to my introductory statements as to what will be my timely, efficient, final opinion and judgment. Again, properly weighed based on the parties' testimonial and documentary evidence in a timely fashion.

So with that, I will conclude this hearing. I thank you all for your appearance, and I hope you all have a good rest of the day.

MS. BABBAGE: Thank you.

MS. ROENICKE: Thank you.

MR. FRANCO: Thank you.

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MR. BABBAGE: Thank you.

(At this time, hearing concludes; off the record.)

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STATE OF MICHIGAN

COUNTY OF WASHTENAW)ss.

I certify that this transcript is a complete, true, and correct transcript to the best of my ability of the digital proceedings in the case of RESORT PROPERTIES COOPERATIVE v. WATERLOO TOWNSHIP held October 3, 2022.

Digital proceedings were recorded and provided to this transcriptionist by J. Thomas Franco, and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any unintelligible, inaudible, and/or indiscernible response by any person or party involved in the proceeding or for the content of the digital media provided.

I also certify that I am not a relative or employee of the parties involved and have no financial interest in this case.

DATED: February 7, 2023

s/ Kristen Shankleton

Transcription provided by:

Kristen Shankleton (CER6785)

Modern Court Reporting & Video, L.L.C.

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STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

RESORT PROPERTIES COOPERATIVE, Inc.
Petitioner-Appellant,

-v-

WATERLOO TOWNSHIP,
Respondent-Appellee.

MSC No. 166642
COA No. 364744
Tax Tribunal no. 22-001985

/

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Attorneys for Appellee
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(517) 381-0100

/

PETOTIONER – APPELLANT'S

APPENDIX

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Michigan Department of Treasury
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L-4260

Property Transfer Affidavit

This form is issued under authority of P.A. 415 of 1994. Filing is mandatory.

This form must be filed whenever real estate or some types of personal property are transferred (even if you are not recording a deed). The completed Affidavit must be filed by the new owner with the assessor for the city or township where the property is located within 45 days of the transfer. The information on this form is NOT CONFIDENTIAL.

1. Street Address of Property	2. County	3. Date of Transfer (or land contract signed)
4770 CLEAR LAKE SHORES DRIVE	JACKSON	MAY 26, 2021

4. Location of Real Estate (Check appropriate field and enter name in the space below.)
☐ City ☒ Township ☐ Village
WATERLOO

5. Purchase Price of Real Estate
$163,200

6. Seller's (Transferor) Name
JAMES FLYNN; JOHN & NANCY ERB

7. Property Identification Number (PIN). If you don't have a PIN, attach legal description.
PIN. This number ranges from 10 to 25 digits. It usually includes hyphens and sometimes includes letters. It is on the property tax bill and on the assessment notice.
000-10-01-~~146~~120-011-00

8. Buyer's (Transferee) Name and Mailing Address
WILLIAM AND DOROTHY BABBAGE
959 LARKMOOR BLVD., BERKLEY, MI 48072

9. Buyer's (Transferee) Telephone Number
(248)-761-6332

Items 10 - 15 are optional. However, by completing them you may avoid further correspondence.

10. Type of Transfer. Transfers include, but are not limited to, deeds, land contracts, transfers involving trusts or wills, certain long-term leases and business interest. See page 2 for list.
☐ Land Contract ☐ Lease ☐ Deed ☒ Other (specify) SEE ATTACHED

11. Was property purchased from a financial institution?	12. Is the transfer between related persons?	13. Amount of Down Payment
☐ Yes ☒ No	☒ Yes ☐ No	$163,200

14. If you financed the purchase, did you pay market rate of interest?	15. Amount Financed (Borrowed)
☐ Yes ☐ No	NONE

EXEMPTIONS

Certain types of transfers are exempt from uncapping. If you believe this transfer is exempt, indicate below the type of exemption you are claiming. If you claim an exemption, your assessor may request more information to support your claim.

- ☐ Transfer from one spouse to the other spouse
- ☐ Change in ownership solely to exclude or include a spouse
- ☐ Transfer between certain family members *(see page 2)
- ☐ Transfer of that portion of a property subject to a life lease or life estate (until the life lease or life estate expires)
- ☒ Transfer between certain family members of that portion of a property after the expiration or termination of a life estate or life lease retained by transferor ** (see page 2)
- ☐ Transfer to effect the foreclosure or forfeiture of real property
- ☐ Transfer by redemption from a tax sale
- ☐ Transfer into a trust where the settlor or the settlor's spouse conveys property to the trust and is also the sole beneficiary of the trust
- ☐ Transfer resulting from a court order unless the order specifies a monetary payment
- ☒ Transfer creating or ending a joint tenancy if at least one person is an original owner of the property (or his/her spouse) NO, CORP.
- ☐ Transfer to establish or release a security interest (collateral)
- ☐ Transfer of real estate through normal public trading of stock
- ☐ Transfer between entities under common control or among members of an affiliated group
- ☐ Transfer resulting from transactions that qualify as a tax-free reorganization under Section 368 of the Internal Revenue Code.
- ☐ Transfer of qualified agricultural property when the property remains qualified agricultural property and affidavit has been filed
- ☐ Transfer of qualified forest property when the property remains qualified forest property and affidavit has been filed.
- ☐ Transfer of land with qualified conservation easement (land only - not improvements)
- ☐ Other, specify:

No uncap
48% trans, not 50%

CERTIFICATION

I certify that the information above is true and complete to the best of my knowledge.

Printed Name		
WILLIAM BABBAGE		
Signature		Date
William C. Babbage		JUNE 3, 2021
Name and title, if signer is other than the owner	Daytime Phone Number	E-mail Address
	248-761-6332	bbabbage@ix.netcom.com

57

[redacted]

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1. Street Address of Property	2. County	3. Date of Transfer (or land contract signed)
4770 CLEAR LAKE SHORES DRIVE	JACKSON	JUNE 17, 2021

4. Location of Real Estate (Check appropriate field and enter name in the space below.)
☐ City ☒ Township ☐ Village
WATERLOO

5. Purchase Price of Real Estate
$13,600.00

6. Seller's (Transferor) Name
DOROTHY W and WILLIAM C BABBAGE

7. Property Identification Number (PIN). If you don't have a PIN, attach legal description.
PIN. This number ranges from 10 to 25 digits. It usually includes hyphens and sometimes includes letters. It is on the property tax bill and on the assessment notice.
000-10-01-116-011-00

8. Buyer's (Transferee) Name and Mailing Address
MARY L DUFFEY
2102 WOOD RUSH, SAN ANTONIO, TX 78232

9. Buyer's (Transferee) Telephone Number
210-325-7390

Items 10 - 15 are optional. However, by completing them you may avoid further correspondence.

10. Type of Transfer. **Transfers** include, but are not limited to, deeds, land contracts, transfers involving trusts or wills, certain long-term leases and business interest. See page 2 for list.
☐ Land Contract ☐ Lease ☐ Deed ☒ Other (specify) SEE ATTACHED

11. Was property purchased from a financial institution?	12. Is the transfer between related persons?	13. Amount of Down Payment
☐ Yes ☒ No	☒ Yes ☐ No	$13,600.00

14. If you financed the purchase, did you pay market rate of interest?	15. Amount Financed (Borrowed)
☐ Yes ☐ No	NONE

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- ☐ Transfer of qualified forest property when the property remains qualified forest property and affidavit has been filed.
- ☐ Transfer of land with qualified conservation easement (land only - not improvements)
- ☐ Other, specify: _____

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CERTIFICATION

I certify that the information above is true and complete to the best of my knowledge.

Printed Name
MARY L DUFFEY

Signature
Mary L Duffey

Date
JUNE 17, 2021

Name and title, if signer is other than the owner

Daytime Phone Number
210-325-7390

E-mail Address
MLDUFFEY@ATT.NET

58

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1. Street Address of Property	2. County	3. Date of Transfer (or land contract signed)
4770 CLEAR LAKE SHORES DRIVE	JACKSON	JUNE 18, 2021

4. Location of Real Estate (Check appropriate field and enter name in the space below.)
☐ City ☒ Township ☐ Village
WATERLOO

5. Purchase Price of Real Estate
$27,200.00

6. Seller's (Transferor) Name
DOROTHY W and WILLIAM C BABBAGE

7. Property Identification Number (PIN). If you don't have a PIN, attach legal description.
PIN. This number ranges from 10 to 25 digits. It usually includes hyphens and sometimes includes letters. It is on the property tax bill and on the assessment notice.
000-10-01-116-011-00

8. Buyer's (Transferee) Name and Mailing Address
Mary K. and Matthew T. Clemons
1111 Donald, Royal Oak, MI 48073

9. Buyer's (Transferee) Telephone Number
248-229-8832

Items 10 - 15 are optional. However, by completing them you may avoid further correspondence.

10. Type of Transfer. Transfers include, but are not limited to, deeds, land contracts, transfers involving trusts or wills, certain long-term leases and business interest. See page 2 for list.
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11. Was property purchased from a financial institution?	12. Is the transfer between related persons?	13. Amount of Down Payment
☐ Yes ☒ No	☒ Yes ☐ No	$27,200.00

14. If you financed the purchase, did you pay market rate of interest?	15. Amount Financed (Borrowed)
☐ Yes ☐ No	NONE

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- ☐ Transfer into a trust where the settlor or the settlor's spouse conveys property to the trust and is also the sole beneficiary of the trust
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- ☒ Transfer creating or ending a joint tenancy if at least one person is an original owner of the property (or his/her spouse) NO CORP
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- ☐ Transfer of qualified forest property when the property remains qualified forest property and affidavit has been filed.
- ☐ Transfer of land with qualified conservation easement (land only - not improvements)
- ☐ Other, specify: _____

CERTIFICATION

I certify that the information above is true and complete to the best of my knowledge.

Printed Name
MARY K CLEMONS

Signature
Mary K Clemons

Date
JUNE 18, 2021

Name and title, if signer is other than the owner	Daytime Phone Number	E-mail Address
	248-229-8832	mkclemons@gmail.com

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Michigan Department of Treasury
2766 (Rev. 05-18)

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1. Street Address of Property	2. County	3. Date of Transfer (or land contract signed)
4770 CLEAR LAKE SHORES DRIVE	JACKSON	JULY 2, 2021

4. Location of Real Estate (Check appropriate field and enter name in the space below.)
☐ City ☒ Township ☐ Village
WATERLOO

5. Purchase Price of Real Estate
$27,200.00

6. Seller's (Transferor) Name
DOROTHY W and WILLIAM C BABBAGE

7. Property Identification Number (PIN). If you don't have a PIN, attach legal description.
PIN. This number ranges from 10 to 25 digits. It usually includes hyphens and sometimes includes letters. It is on the property tax bill and on the assessment notice.
000-10-01-116-011-00

8. Buyer's (Transferee) Name and Mailing Address
Martha J. and James M. Dey
3859 Summerset Cir, Rochester Hills, MI, 48309
Somerset MI 22

9. Buyer's (Transferee) Telephone Number
248-765-5889

10. Type of Transfer. Transfers include, but are not limited to, deeds, land contracts, transfers involving trusts or wills, certain long-term leases and business interest. See page 2 for list.
☐ Land Contract ☐ Lease ☐ Deed ☒ Other (specify) SEE ATTACHED

11. Was property purchased from a financial institution?	12. Is the transfer between related persons?	13. Amount of Down Payment
☐ Yes ☒ No	☒ Yes ☐ No	$27,200.00

14. If you financed the purchase, did you pay market rate of interest?	15. Amount Financed (Borrowed)
☐ Yes ☐ No	NONE

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- ☐ Transfer of real estate through normal public trading of stock
- ☐ Transfer between entities under common control or among members of an affiliated group
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- ☐ Transfer of qualified forest property when the property remains qualified forest property and affidavit has been filed.
- ☐ Transfer of land with qualified conservation easement (land only - not improvements)
- ☐ Other, specify: _____

RECEIVED
JUL 16 2021
BY:

I certify that the information above is true and complete to the best of my knowledge.

Printed Name		
MARTHA J. DEY		
Signature Martha J Dey		**Date** JULY 2, 2021
Name and title, if signer is other than the owner	Daytime Phone Number 248-765-5889	E-mail Address JIMMART1996@COMCAST.NET

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Parcel Number: 000-10-01-126-011-00 Jurisdiction: WATERLOO TWP County: JACKSON Printed on 07/11/2022

Grantor	Grantee	Sale Price	Sale Date	Inst. Type	Terms of Sale	Liber & Page	Verified By	Prcnt. Trans.
BABBAGE	CLEMONS MARY K & MATTHEW	27,200	06/18/2021	WD	09-FAMILY		PROPERTY TRANSFER	100.0
RESORT PROPERTIES CO-OPER	RESORT PROPERTIES CO-OPER	***,***	05/26/2021	WD	03-ARM'S LENGTH		PROPERTY TRANSFER	0.0
ANSLEY	RESORT PROPERTIES CO-OPER	0	08/05/1978	WD	03-ARM'S LENGTH		DEED	0.0

Property Address
4070 CLEAR LAKE SHORES

Class: RESIDENTIAL-IMPRO Zoning: R-3
School: CHELSEA SCHOOL DISTRICT
P.R.E. 0%
MAP #: J-1

Building Permit(s)	Date	Number	Status
OTHER	04/12/2017	2019-017	CLOSED
ROOF/WINDOWS	04/01/2013	13-0008	CLOSED

Owner's Name/Address
RESORT PROPERTIES CO-OPERATIVE INC
959 LARKMOOR BLVD
BERKLEY MI 48072-1907

2022 Est TCV 323,591 TCV/TFA: 234.49

X Improved | Vacant

Land Value Estimates for Land Table 111.CLEAR LAKE

Description	Frontage	Depth	* Factors * Front	Depth	Rate	%Adj.	Reason	Value
LAKE FRONTAGE	96.00	276.00	1.0000	1.1747	1680	100		189,461
96 Actual Front Feet, 0.61 Total Acres					Total Est. Land Value =			189,461

Land Improvement Cost Estimates

Description	Rate	Size	% Good	Cash Value
D/W/P: Crushed Rock	1.95	300	24	141
Total Estimated Land Improvements True Cash Value =				141

Work Description for Permit 2019-017, Issued 04/12/2017: REROOF
Work Description for Permit 13-0008, Issued 04/01/2013: RE-ROOF

Tax Description
BEG AT NW COR OF SEC 1 TH E ALG N SEC LN 1756 FT TH S 18°30'W 848 FT THS 88°30'E 200 FT TH S 31°24'E 645.85 FT TO A PT WH IS THE PL OF BEG OF THIS DESCN TH S 53°41'W 289.72 FT TO SHORE LN OF CLEAR LAKE TH N 11° 39'W ALG SD SHORE LN 89 FT TH N 46°51'E 263.85 FT TH S 31°24'E 110 FT TO BEG. SEC 1 T2S R2E

Public Improvements
- Dirt Road
- X Gravel Road
- Paved Road
- Storm Sewer
- Sidewalk
- Water
- Sewer
- X Electric
- X Gas
- Curb
- Street Lights
- Standard Utilities
- Underground Utils

Topography of Site
- X Level
- Rolling
- Low
- High
- Landscaped
- Swamp
- Wooded
- Pond
- X Waterfront
- Ravine
- Wetland
- Flood Plain

Comments/Influences
WILLIAM BABBAGE BOUGHT SHARES FROM TWO OWNERS (2021) WAS NOT 48% SO NO UNCAPPING UNTIL ANOTHER 2% TRANSFERS.
CURRENT OWNERSHIP:
WILLIAM & DOROTHY BABBAGE 72%
PATRICIA FOURNIER 24%
MARY DUFFY 4%
20% OF BABBAGE SOLD TO:
MARY & MATTHEW CLEMONS 8% 7/21/2021
MARY DUFFY 4% 6/21/2021
MARTHA & JAMES DEY 8% 7/2/2021
NEW %'S
7/16/2021
WILLIAM & DOROTHY BABBAGE 52%
PATRICIA FOURNIER 24%
MARY DUFFY 8%
MARY & JAMES CLEMONS 8% (MARY FOURNIER DAUGHTER)
MARTHA & JAMES DEY 8% (MARY FOURNIER DAUGHTER)

Who	When	What
JEC	09/25/2020	INSPECTED
STV	06/04/2010	NOH - EXT

ROTATED ON PG. 30

Year	Land Value	Building Value	Assessed Value	Board of Review	Tribunal/ Other	Taxable Value
2022	94,750	67,050	161,800	161,800M		139,925C
2021	90,200	62,050	152,250			90,458C
2020	87,400	56,050	143,450			89,210C
2019	93,050	52,200	145,250			87,547C

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*** Information herein deemed reliable but not guaranteed***

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Parcel Number: 000-10-01-126-011-00 Jurisdiction: WATERLOO TWP County: JACKSON

Grantor	Grantee	Sale Price	Sale Date	Inst. Type	Terms of Sale	Liber & Page
BABBAGE	CLEMONS MARY K & MATTHEW	27,200	06/18/2021	WD	29-FAMILY	
RESORT PROPERTIES CO-OPER	RESORT PROPERTIES CO-OPER	***,***	05/26/2021	WD	03-ARM'S LENGTH	
ANSLEY	RESORT PROPERTIES CO-OPER	0	08/05/1978	WD	03-ARM'S LENGTH	

Property Address
4770 CLEAR LAKE SHORES

Owner's Name/Address
RESORT PROPERTIES CO-OPERATIVE INC
959 LARKMOOR BLVD
BERKLEY MI 48072-1903

Tax Description
BEG AT NW COR OF SEC 1 TH E ALG N SEC LN 1756 FT TH S 1°30'W 848 FT THS 88°30'E 200 FT TH S 31°24'E 445.85 FT TO A PT WH IS THE PL OF BEG OF THIS DESCN TH S 53°11'W 289.72 FT TO SHORE LN OF CLEAR LAKE TH N 11° 39'W ALG SD SHORE LN 69 FT TH N 46°51'E 263.85 FT TH S 31°24'E 110 FT TO BEG. SEC 1 T2S R2E

Comments/Influences
WILLIAM BABBAGE BOUGHT SHARES FROM TWO OWNERS (2021) WAS NOT 48% SO NO UNCAPPING UNTIL ANOTHER 2% TRANSFERS.
CURRENT OWNERSHIP:
WILLIAM & DOROTHY BABBAGE 72%
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20% OF BABBAGE SOLD TO:
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MARY DUFFY 4% 8/21/2021
MARTHA & JAMES DEY 8% 7/2/2021
NEW %'S
7/16/2021
WILLIAM & DOROTHY BABBAGE 52%
PATRICIA FOURNIER 24%
MARY DUFFY 8%
MARY & JAMES CLEMONS 8% (MARY FOURNIER DAUGHTERR)
MARTHA & JAMES DEY 8% (MARY FOURNIER DAUGHTER)

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Class: RESIDENTIAL-IMPRC Zoning: R-3
School: CHELSEA SCHOOL DISTRICT
P.R.E. 0%
MAP #: J-1

Building Permit(s)	Date
OTHER	04/12/2
ROOF/WINDOWS	04/01/2

2022 Est TCV 323,591 TCV/IFA: 234.49

X Improved Vacant

Land Value Estimates for Land Table 111.CLEAR LAKE

Description	Frontage	Depth	* Factors * Front	Depth	Rate
LAKE FRONTAGE	96.00	276.00	1.0000	1.1747	1680
96 Actual Front Feet, 0.61 Total Acres					Total

Land Improvement Cost Estimates

Description	Rate
D/W/P: Crushed Rock	
Total Estimated Land Improvements	

Work Description for Permit 2019-017, Issued 03/1
Work Description for Permit 13-0008, Issued 04/01

Public Improvements
- Dirt Road
- X Gravel Road
- Paved Road
- Storm Sewer
- Sidewalk
- Water
- Sewer
- X Electric
- X Gas
- Curb
- Street Lights
- Standard Utilities
- Underground Utils.

Topography of Site
- X Level
- Rolling
- Low
- High
- Landscaped
- Swamp
- Wooded
- Pond
- X Waterfront
- Ravine
- Wetland
- Flood Plain

Who	When	What
JBC	05/25/2020	INSPECTED
STV	06/04/2010	NOH - ESY

Year	Land Value	Building Value	Assessed Value
2022	94,750	67,050	161,800
2021	90,200	62,050	152,250
2020	87,400	56,050	143,450
2019	93,050	52,200	145,250

*** Information herein deemed reliable but not guaranteed***

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Transfer of Ownership Guidelines

PREPARED BY THE MICHIGAN STATE TAX COMMISSION

Issued October 30, 2017

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No, since the remaining term of the lease is not more than 35 years.

Ownership Changes of Legal Entities (Corporations, Partnerships, Limited Liability Companies, etc.)

Can the conveyance of an ownership interest of a legal entity (such as a corporation, a partnership, etc.) which owns property be a transfer of ownership—even though title to the property remains unchanged?

Yes, a conveyance of an ownership interest in a legal entity (such as a corporation, a partnership, etc.) which owns property is a transfer of ownership of that property provided that the ownership interest conveyed is more than 50 percent of the total ownership interest. *See MCL 211.27a(6)(h).* However, this is not applicable to cooperative housing corporations (discussed separately).

A limited liability company owns real property and conveys of 25.0 percent of the ownership interest in 2011. In January of 2012, a conveyance of 25.1 percent of the ownership interest of the limited liability company occurred. Did a transfer of ownership of the real property occur? If so, when?

A transfer of ownership of the property owned by the limited liability company occurred in January of 2012 since at that point, more than 50.0 percent of the ownership interest in the limited liability company had been conveyed. The property's taxable value is to be 100% uncapped for 2013.

As of January of 2011, 50.1 percent of the ownership interest of a limited liability company was been conveyed and the taxable value of the property was uncapped for 2012. If, in March of 2013, 50.0 percent of the ownership interest in the limited liability company is conveyed, does another transfer of ownership occur?

No. The percentage of ownership interest conveyed is cumulative from the date of the last transfer of ownership. Between January of 2011 and March of 2013, not more than 50.0 percent of the ownership interest is conveyed. Therefore, no transfer of ownership occurs as of March of 2013.

Company A owns all the membership interest in a limited liability company. The limited liability company owns a piece of real property. In 2011, Company A sells and conveys its ownership interest in the limited liability company to Company B. Did a transfer of ownership of the property occur?

A transfer occurred when Company A sold and transferred its membership interest in the limited liability company to Company B. Therefore, the property's taxable value shall be uncapped for 2012. *See Signature Villas, LLC v. City of Ann Arbor, 269 Mich App 694; 714 NW2d 392 (2006).*

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

MOORINGS OF LEELANAU, LLC,

Petitioner-Appellant,

v

CITY OF TRAVERSE CITY,

Respondent-Appellee.

UNPUBLISHED
July 29, 2021

No. 353911
Tax Tribunal
LC No. 19-001535-TT

Before: FORT HOOD, P.J., and MARKEY and GLEICHER, JJ.

PER CURIAM.

Petitioner appeals as of right the order of the Michigan Tax Tribunal holding that respondent was entitled to uncap the taxable value of petitioner's real property, which included 92 parcels of land adjoining Traverse City. Petitioner, a limited-liability company, argues that no transfer of ownership occurred when two of its three members relinquished their membership in the company, and that uncapping was therefore impermissible. We affirm.

I. BACKGROUND

MI Moorings, LLC (MIM) was established by Mark Johnson and Jason Warren in 2014 for the purpose of purchasing, managing, and selling real estate. The Moorings of Leelanau, LLC (TML) was subsequently established by MIM, Robert Brick, and Edward W. Lockwood for the purpose of purchasing, developing, and selling the subject property. MIM owned a 42% interest in TML, and Brick and Lockwood each owned a 29% interest in TML. The subject property was at all relevant times owned entirely by TML.

A dispute arose between the members of MIM and the members of TML, resulting in litigation. This litigation was resolved when the parties executed a settlement agreement under which Brick and Lockwood agreed to relinquish their ownership rights in TML in exchange for payments totaling $2,575,000. As a result of this agreement, MIM became the sole owner of TML. Following this transaction, respondent uncapped the taxable value of the subject property, and petitioner challenged this decision before the Tax Tribunal.

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The tribunal granted summary disposition under MCR 2.116(C)(10) in favor of respondent and ordered a partial uncapping of the property's taxable value. Subsequently, the tribunal granted respondent's motion for reconsideration and held that respondent was entitled to uncap the entire taxable value of the property. This appeal followed.

II. DISCUSSION

Petitioner argues that the tribunal erred by granting summary disposition in favor of respondent because no transfer of ownership occurred. We disagree.

"Review of a decision by the [Tax Tribunal] is very limited." *Drew v Cass Co*, 299 Mich App 495, 498; 830 NW2d 832 (2013). "Absent fraud, our review of [the tribunal's] decisions is limited to determining whether the [tribunal] erred in applying the law or adopted a wrong legal principle." *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 627; 752 NW2d 624 (2008). We review de novo the tribunal's interpretation and application of statutes. *Id.* See also *Stirling v Leelanau Co*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 353117); slip op at 2 (" '[R]espectful consideration' is given to the [tribunal's] construction of a statute, but ultimately the meaning of a statute is a legal question to which we owe no deference.").

We review de novo a trial court's decision to grant or deny a motion for summary disposition, and the evidence is viewed in a light most favorable to the nonmoving party. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Summary disposition should be granted under MCR 2.116(C)(10) when the evidence reveals no genuine issue of material fact. *West*, 469 Mich at 183. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*

This Court's "primary task in construing a statute . . . is to discern and give effect to the intent of the Legislature." *In re AGD*, 327 Mich App 332, 343; 933 NW2d 751 (2019). "The words used by the Legislature in writing a statute provide us with the most reliable evidence of the Legislature's intent." *Drew v Cass Co*, 299 Mich App 495, 499; 830 NW2d 832 (2013). "When statutory language is unambiguous, judicial construction is not required or permitted because the Legislature is presumed to have intended the meaning it plainly expressed." *People v Campbell*, 329 Mich App 185, 193-194; 942 NW2d 51 (2019).

The capping and uncapping of a property's taxable value is established by Article IX of the Michigan Constitution, which provides in relevant part:

> For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33[1] of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When

[1] "'General Price Level' means the Consumer Price Index for the United States as defined and officially reported by the United States Department of Labor or its successor agency." Const 1963, art 9, § 33.

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> ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. [Const 1963, art 9, § 3.]

This provision of the Constitution is implemented by section 27a of the General Property Tax Act (GPTA), MCL 211.1 *et seq*. MCL 211.27a provides the method for calculating a property's taxable value:

> (2) 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. . . .
>
> (b) The property's current state equalized valuation.
>
> (3) 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) contains a definition of "transfer of ownership" and provides in relevant part:

> 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:
>
> * * *
>
> (h) Except as otherwise provided in this subdivision, a conveyance of an ownership interest in a corporation, partnership, sole proprietorship, *limited liability company*, limited liability partnership, or other legal entity *if the ownership interest conveyed is more than 50%* of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. . . . [Emphasis added.]

In *Signature Villas, LLC v Ann Arbor*, 269 Mich App 694, 696; 714 NW2d 392 (2006), this Court considered "whether the sale of all the membership interests in a limited liability corporation (LLC) that owns all the membership interests in another LLC that owns real property constitutes a 'transfer of ownership' of the property" for the purposes of the uncapping provisions of the GPTA. This Court held that "[b]y the plain language of the statute, the transaction that occurred was unambiguously a 'transfer of ownership' because it transferred ownership of the property at issue from buyer to seller, by transferring ownership of the membership interests in the LLC." *Id.* at 70.

Here, it is undisputed that, at all relevant times, the subject property belonged to TML. Prior to the settlement agreement, Brick and Lockwood had a combined 58% ownership interest in TML. Pursuant to the settlement agreement, they relinquished their interests in TML in exchange for payments totaling $2,575,000, and MIM became the sole owner of TML. In other words, Brick and Lockwood transferred their 58% collective ownership interest in TML to MIM. This exceeded the 50% threshold that is set out in MCL 211.27a(6)(h). Under this Court's holding in *Signature Villas*, 269 Mich App at 700-701, by transferring a 58% ownership interest in TML to MIM, Brick and Lockwood also transferred a 58% ownership interest in the subject property to MIM. Thus, the uncapping of the subject property for tax purposes was permissible.

Petitioner suggests that application of MCL 211.27a(6)(h) in this context runs afoul of the Michigan Constitution. However, petitioner's argument is based on the fact that the Constitution allows uncapping only if there has been a "transfer" of ownership, 1963 Const, art 9, § 3, and petitioner simply reasserts its argument that no transfer of ownership occurred when Brick and Lockwood withdrew from TML. For the same reasons we reject this argument in the context of the GPTA, we also reject this argument in the context of the Constitution. See Const 1963, art 9, § 3 ("When ownership of the parcel of property is transferred *as defined by law*, the parcel shall be assessed at the applicable proportion of current true cash value."). Again, by withdrawing from TML, Brick and Lockwood transferred their collective 58% ownership interest to MIM. Accordingly, we can discern no error of law on the part of the tribunal.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Jane E. Markey
/s/ Elizabeth L. Gleicher

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IRS

Stocks (Options, Splits, Traders)

⊕ How do I figure the cost basis of stock that split, which gave me more of the same stock, so I can figure my capital gain (or loss) on the sale of the stock?

⊖ How do I figure the cost basis when the shares I'm selling were purchased at various times and at different prices?

Answer:

The basis of stocks or bonds you own generally is the purchase price plus the costs of purchase, such as commissions and recording or transfer fees. When selling securities, you should be able to identify the specific shares you are selling.

If you **can identify** which shares of stock you sold, your basis generally is:

- What you paid for the shares sold plus any costs of purchase.

If you **can't adequately identify** the shares you sold and you bought the shares at various times for different prices, the basis of the stock sold is:

- The basis of the shares you acquired first, then the basis of the stock later acquired, and so forth (first-in first-out). Except for certain mutual fund shares and certain dividend reinvestment plans, you can't use the average basis per share to figure gain or loss on the sale of stock.

Each security you buy is considered a **covered security**. The broker is required to provide you basis information on the Form 1099-B, Proceeds From Broker and Barter Exchange Transactions. For each sale of a covered security for which you receive a Form 1099-B, the broker will provide you the following information: the date of acquisition (box 1b), whether the gain or loss is short-term or long-term (box 2), cost or other basis (box 1e), and the loss disallowed due to a wash sale (box 1g) or the amount of accrued market discount (box 1f).

The law requires you to keep and maintain records that identify the basis of all capital assets.

Additional Information:

- Topic 409 - Capital Gains and Losses
- Publication 550, Investment Income and Expenses (Including Capital Gains and Losses)

Subcategory:

Stocks (Options, Splits, Traders)

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Category:

Capital Gains, Losses, and Sale of Home

⊕ **How are reinvested dividends reported on my tax return?**

⊕ **I sold stock I received over several years through a dividend reinvestment plan. How do I compute the basis for this stock?**

⊕ **How do I report participation in a § 423 employee stock purchase plan on my tax return?**

⊕ **I purchased stock from my employer under a § 423 employee stock purchase plan and received a Form 1099-B for selling it. How do I report this?**

⊕ **Should I advise the IRS why amounts reported on Form 1099-B don't agree with my Form 8949 for proceeds from short sales of stock not closed by the end of year?**

⊕ **Do I need to pay taxes on the additional stock that I received as the result of a stock split?**

Back to Frequently Asked Questions

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MICHIGAN LEGISLATURE

Michigan Compiled Laws Complete Through PA 10 of 2023
House: Adjourned until Tuesday, April 11, 2023 1:30:00 PM
Senate: Adjourned until Tuesday, April 11, 2023 10:00:00 AM

Search Results

printer friendly

(504 found)

Search Criteria: Full Text (MCL Only) = "internal" AND "revenue" AND "code"

Search within these documents for Search

For bills, the 'search within' feature only searches the description (bill digest). It does not search bill documents. Use the full text search on the bills page to search through bill documents.

Document	Type	Description
Section 12.112	Section	Definitions.
Section 12.120	Section	Order for carryforward allocation; request for carryforward allocation; form; amount; priorities; election.
Section 12.123	Section	Allocations to which act applicable; ratification of allocation; revocation of allocation; formula for allocating state ceiling.
Section 12.192	Section	Creation of Michigan public educational facilities authority as public body corporate and politic; location in department of treasury; transfer of certain powers and duties from Michigan strategic fund and Michigan strategic fund board of directors to Michigan public educational facilities authority and Michigan public educational facilities authority board of trustees; transfer of certain powers and duties from Michigan municipal bond authority and Michigan municipal bond authority board of trustees to Michigan public educational facilities authority and Michigan public educational facilities authority board of trustees; rescission of executive order no. 2001-11.
Section 12.194	Section	Creation of Michigan finance authority within department of treasury; transfer of certain powers and duties of Michigan forest finance authority, Michigan higher education assistance authority, Michigan higher education facilities authority, Michigan higher education student loan authority, Michigan municipal bond authority, Michigan public educational facilities authority, Michigan strategic fund, Michigan tobacco settlement finance authority, Michigan underground storage tank financial assurance authority; state higher education facilities commission, state hospital finance authority, and state land bank fast track authority to Michigan finance authority; transfer of certain

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Section 208.1261	Section	Definitions.
Section 208.1305	Section	Taxpayer; determination of sales.
Section 208.1307	Section	Spun off corporation; calculation of sales factor; election; definitions.
Section 208.1403	Section	Allowable total combined credit; limitation; tax credit; payments by professional employer organization; calculation; tax year in which negative credit is calculated; credit claimed under MCL 208.1405; taxpayer engaged in furnishing electric and gas utility service.
Section 208.1405	Section	Taxpayer's research and development expenses; tax credit; limitation; definition.
Section 208.1415	Section	Qualified start-up business without business income for 2 consecutive years; tax credit; total number of years tax credit allowed; taxpayer without business activity in this state; compensation, directors' fees, or distributive shares; limitation; definitions.
Section 208.1425	Section	Contribution to endowment fund of community foundation or education foundation; tax credit.
Section 208.1427	Section	Contribution to shelter for homeless persons, food kitchen, food bank, or other entity; tax credit.
Section 208.1430	Section	Facility developing and manufacturing photovoltaic technology; tax credit.
Section 208.1434	Section	Tax credits or voucher certificates to stimulate domestic commercialization and affordability of high-power energy batteries; authority for Michigan economic growth authority to enter agreements; limitations; allowable credit; review board; specifications; issuance of certificate to taxpayer; definitions.
Section 208.1435	Section	Rehabilitation of historic resource; tax credit; definitions.
Section 208.1450	Section	Research and development of qualified technology; tax credit; definitions.
Section 208.1457	Section	Qualified film and digital media infrastructure project; tax credit.
Section 208.1461	Section	Tax credit by taxpayer other than regulated utility.
Section 208.1471	Section	Dealer, distributor, manufacturer, or seller of cigarettes or tobacco products; tax credit.
Section 208.1501	Section	Estimated return and payment.
Section 208.1507	Section	Return; filing; true and correct copy; amended return.
Section 208.1509	Section	Information return required by internal revenue code; filing required.
Section 208.1512	Section	Disregarded entity; classification; filing amended return; treatment as person separate from owner.
Section 211.7o	Section	Nonprofit charitable institution; exemption; definitions.
Section 211.7mm	Section	Charitable nonprofit housing organization; real and personal property used for retail store; exemption; definitions.
Section 211.9c	Section	Exemption of personal property from tax collection; "heavy earth moving equipment" and "inventory" defined.

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Section 211.9f	Section	Personal property of business; resolution; tax exemption; duration; continuation; determination by state tax commission; adoption of resolution by Next Michigan development corporation; written agreement; exemption for eligible manufacturing personal property; delivery of combined document; definitions.
Section 211.27a	Section	Property tax assessment; determining taxable value; adjustment; exception; "transfer of ownership" defined; qualified agricultural property; notice of transfer of property; notification of recorded transaction; definitions.
Section 211.663	Section	Notices of liens, certificates, and other notices affecting federal liens; filing requirements.
Section 224.10a	Section	Employees and retirees of board of county road commissioners; insurance; annuities or benefits; participation; purchase; participation for members of collective bargaining unit; report; credit for previous service.
Section 257.207a	Section	Electronic driver license status check; request by approved agency; maintenance of written permission by organization; compliance with safeguards; fee.
Section 257.676b	Section	Interference with normal flow of vehicular, streetcar, or pedestrian traffic prohibited; public utility facilities; solicitation of contributions on behalf of charitable or civic organization; violation as civil infraction; local regulations; "charitable or civic organization" defined.
Section 257.811d	Section	Definitions; fund-raising registration plate; requirements; design or logo by university or other person; written agreement.
Section 257.811cc	Section	Fund-raising plate recognizing Detroit Red Wings.
Section 257.811dd	Section	Fund-raising plate recognizing Detroit Tigers.
Section 257.811ee	Section	Fund-raising plate recognizing Detroit Lions.
Section 257.811ff	Section	Fund-raising plate recognizing Detroit Pistons.
Section 285.252	Section	Definitions; rules.
Section 287.995	Section	Grants proposals; solicitation; entities receiving grants; purposes; limitations.
Section 289.3119	Section	Required fees; additional license fee; collection; exemptions; forwarding applications.
Section 324.503	Section	Duties of department; powers and jurisdiction; purchase of surface rights; limitations; record; strategic plan; managed public land strategy; volunteers; granting concessions; lease and sale of land; reservation of mineral rights; sale of economic share of royalty interests; definitions.
Section 324.1902	Section	Michigan natural resources trust fund; establishment; contents; receipts; investment; report on accounting of revenues and expenditures.
Section 324.8802	Section	Nonpoint source pollution prevention and control grants; wellhead protection grants.

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percent

noun [S] · MEASURES

UK /pəˈsent/ US

one part of every 100, or the specified amount of something divided by 100:

- *Business customers account for about 70 percent of the computing company's revenue.*
- **by 3/50/100, etc. percent** *The bank needed to reduce its workforce by 20 percent.*

→ **percentage** :

- **as a percent of sth** *Operating income as a percent of sales increased slightly from the previous year.*

percent

adverb (UK also **per cent**)

UK /pəˈsent/ US

for or out of every 100, often shown by the symbol %:

- *Shares fell 6 percent after the group warned profits would be lower than expected.*

percent

adjective

- *Unions urged workers to reject the 1.5 percent pay offer.*

(Definition of **percent** from the **Cambridge Business English Dictionary** © Cambridge University Press)

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Merriam-Webster

<

percent

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percent

1 of 3

noun

per·cent par-'sent
1
US percent or chiefly British per cent plural percent
a
: one part in a hundred
We provided 100 percent [=100%] of the labor.
I spend about 50 percent of my workday in meetings.
b
: percentage
A large percent of their income is used to pay rent.
2
percents plural, British : securities bearing a specified rate of interest
We invested in 3 percents.

percent

2 of 3

adjective

1
: reckoned on the basis of a whole divided into 100 parts
There was a 20 percent [=20%] increase in orders.
The manufacturer hopes to achieve a 10 percent decrease in carbon dioxide emissions.

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Definition of **percentage** noun from the Oxford Advanced American Dictionary

percentage *noun*

/pərˈsɛntɪdʒ/

PERCENT

1 the number, amount, or rate of something, expressed as if it is part of a total which is 100; a part or share of a whole

What percentage of the population is overweight?

A high percentage of the female staff works part-time.

Interest rates are expected to rise by one ***percentage point*** (= one percent).

The figure is ***expressed as a percentage.***

The results were analyzed ***in percentage terms.***

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