

32nd Annual Tax Symposium

PULLING THE CAP OFF OF UNCAPPING EVENTS

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I. PROPOSAL A

A. Background

1. March, 1994 voter-approved change to Michigan's Constitution (meant to address school funding inequities).
2. Growth is limited to the lower of 5% or inflation. "*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.*" MCL 211.27a(2)(a).
3. When property is sold or transferred, it resets to State Equalized Value ("**SEV**").

B. Definitions & Examples

1. **Taxable Value ("TV"):** The value of real property considering the protections of Proposal A.
2. **SEV:** One half of a property's fair market value.
3. **Example #1:** Property purchased in 2022 and worth \$1,000,000. In 2023, the SEV and TV are likely to be the same. In 2023, valuation increases 10%, but inflation increases 3%, so SEV is \$550,000 but TV is only \$515,000. With a millage rate of 50 mills, Proposal A results in a tax savings of \$1,250 in 2024.
4. **Addition:** An increase in value caused by new construction, a physical addition of equipment or furnishings. Article 9, Section 3 of Michigan's Constitution.

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5. **Example #2:** If the same property increases by \$20,000 in 2023 due to an addition, the TV increases to \$535,000.

C. Transfer of Ownership Defined.

1. Upon a “transfer of ownership” the property’s TV for the calendar year following the year of the transfer is the property’s SEV for the calendar year. MCL 211.27a(3).
2. Transfer of ownership means the conveyance of title 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. MCL 211.27a(6).

II. UNCAPPING EVENTS

A. Conveyance to a Trust

1. Exception: When the sole beneficiary of the trust is the transferor or the transferor’s spouse. MCL 211.27a(6)(c)(i)
2. Exception: When the beneficiary is the settlor/transferor’s (or settlor/transferor’s spouse’s) mother, father, brother, sister, son, daughter, adopted son/daughter, grandson/granddaughter and the property is not used for a commercial purpose. MCL 211.27a(6)(c)(ii).

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B. Distribution from a Trust:

1. Exception: When the distributee is the sole beneficiary of the transferor or the transferor's spouse or both. MCL 211.27a(6)(d)(i).
2. Exception: The distribution of residential real property if the distributee is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter and the residential property is not used for commercial purposes. MCL 211.27a(6)(d)(ii).

C. Change in Trust Beneficiary.

1. Exception: A change that adds or substitutes the spouse as the present beneficiary. MCL 211.27a(6)(e)(i).
2. Exception: When the change is made which adds the settlor/transferor (or settlor/transferor's spouse's) mother, father, brother, sister, son, daughter, adopted son/daughter, grandson/granddaughter and the property is not used for a commercial purpose. MCL 211.27a(6)(e)(ii).

D. Business 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 entity. MCL 211.27a(6)(h).

E. Simple Transfer: A transfer from an individual to a business as part of an effort to shield the individual from liability is an uncapping event. Oftentimes, transfers from one business to another are also uncapping events.

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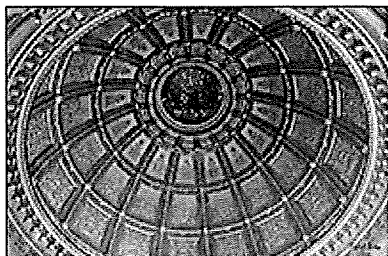
III. EVENTS WHICH ARE NOT TRANSFERS

- A. Transfers from one spouse to another or from a decedent to a surviving spouse. MCL 211.27a(7)(a).
- B. Since December 31, 2014, a transfer of residential property if the transferee is the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the property is not used for a commercial purpose. MCL 211.27a(7)(u).
- C. A transfer of real property or other ownership interests among members of an "affiliated group," 1 or more corporations connected by stock ownership to a common parent corporation. MCL 211.27a(7)(a).
- D. A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships or other legal entities if the entities are **commonly controlled**. MCL 211.27a(7)(m).

Attachments:

MCL 211.27a

TRJ & E Properties v City of Lansing



MICHIGAN LEGISLATURE

Michigan Compiled Laws Complete Through PA 176 of 2023

Senate: Adjourned until Thursday, November 9, 2023 10:00:00 AM

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Act 206 of 1893

206-1893-

ASSESSMENT-ROLL.

Section 211.27a

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Section 211.27a

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THE GENERAL PROPERTY TAX ACT (EXCERPT) Act 206 of 1893

211.27a 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.

Sec. 27a.

(1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.

(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. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.

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

(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.

(4) If the taxable value of property is adjusted under subsection (3), a subsequent increase in the property's taxable value is subject to the limitation set forth in subsection (2) until a subsequent transfer of ownership occurs. If the taxable value of property is adjusted under subsection (3) and the assessor determines that there had not been a transfer of ownership, the taxable value of the property shall be adjusted at the July or December board of review. Notwithstanding the limitation provided in section 53b(1) on the number of years for which a correction may be made, the July or December board of review may adjust the taxable value of property under this subsection for the current year and for the 3 immediately preceding calendar years. A corrected tax bill shall be issued for each tax year for which the taxable value is adjusted by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll. For purposes of section 53b, an adjustment under this subsection shall be considered the correction of a clerical error.

(5) Assessment of property, as required in this section and section 27, is inapplicable to the assessment of property subject to the levy of ad valorem taxes within voted tax limitation increases to pay principal and interest on limited tax bonds issued by any governmental unit, including a county, township, community college district, or school district, before January 1,

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1964, if the assessment required to be made under this act would be less than the assessment as state equalized prevailing on the property at the time of the issuance of the bonds. This inapplicability continues until levy of taxes to pay principal and interest on the bonds is no longer required. The assessment of property required by this act applies for all other purposes.

(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:

(a) A conveyance by deed.

(b) A conveyance by land contract. The taxable value of property conveyed by a land contract executed after December 31, 1994 shall be adjusted under subsection (3) for the calendar year following the year in which the contract is entered into and shall not be subsequently adjusted under subsection (3) when the deed conveying title to the property is recorded in the office of the register of deeds in the county in which the property is located.

(c) A conveyance to a trust after December 31, 1994, except under any of the following conditions:

(i) If the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both.

(ii) Beginning December 31, 2014, for residential real property, if the settlor or the settlor's spouse, or both, conveys the residential real property to the trust and the sole present beneficiary or beneficiaries are the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of \$200.00.

(d) A conveyance by distribution from a trust, except under any of the following conditions:

(i) If the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.

(ii) Beginning December 31, 2014, a distribution of residential real property if the distributee is the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of \$200.00.

(e) A change in the sole present beneficiary or beneficiaries of a trust, except under any of the following conditions:

(i) A change that adds or substitutes the spouse of the sole present beneficiary.

(ii) Beginning December 31, 2014, for residential real property, a change that adds or substitutes the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to

comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of \$200.00.

(f) A conveyance by distribution under a will or by intestate succession, except under any of the following conditions:

(i) If the distributee is the decedent's spouse.

(ii) Beginning December 31, 2014, for residential real property, if the distributee is the decedent's or the decedent'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of \$200.00.

(g) A conveyance by lease if the total duration of the lease, including the initial term and all options for renewal, is more than 35 years or the lease grants the lessee a bargain purchase option. As used in this subdivision, "bargain purchase option" means the right to purchase the property at the termination of the lease for not more than 80% of the property's projected true cash value at the termination of the lease. After December 31, 1994, the taxable value of property conveyed by a lease with a total duration of more than 35 years or with a bargain purchase option shall be adjusted under subsection (3) for the calendar year following the year in which the lease is entered into. This subdivision does not apply to personal property except buildings described in section 14(6) and personal property described in section 8(h), (i), and (j). This subdivision does not apply to that portion of the property not subject to the leasehold interest conveyed.

(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.

(i) A transfer of property held as a tenancy in common, except that portion of the property not subject to the ownership interest conveyed.

(j) A conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed.

(k) Notwithstanding the provisions of section 7ee(5), at the request of a property owner, an assessor's establishment of a separate tax parcel for a portion of a parcel that ceases to be qualified agricultural property but is not subject to a land division under the land division act, 1967 PA 288, MCL 560.101 to 560.293, or any local ordinance. For purposes of this subdivision, a transfer of ownership occurs only as to that portion of the parcel established as a separate tax parcel and only that portion shall have its taxable value adjusted under subsection (3) and shall be subject to the recapture tax provided for under the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007. The adjustment under subsection (3) shall be made as of the December 31 in the year that the portion of the parcel established as a

separate tax parcel ceases to be qualified agricultural property. A portion of a parcel subject to this subdivision is considered a separate tax parcel only for those purposes described in this subdivision.

(7) 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 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.

(e) A transfer through foreclosure or forfeiture of a recorded instrument under chapter 31, 32, or 57 of the revised judicature act of 1961, 1961 PA 236, MCL 600.3101 to 600.3285 and MCL 600.5701 to 600.5759, or through deed or conveyance in lieu of a foreclosure or forfeiture, until the mortgagee or land contract vendor subsequently transfers the property. If a mortgagee does not transfer the property within 1 year of the expiration of any applicable redemption period, the property shall be adjusted under subsection (3).

(f) A transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes.

(g) A conveyance to a trust if the settlor or the settlor's spouse, or both, conveys the property to the trust and any of the following conditions are satisfied:

(i) If the sole present beneficiary of the trust is the settlor or the settlor's spouse, or both.

(ii) Beginning December 31, 2014, for residential real property, if the sole present beneficiary of the trust is the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of \$200.00.

(h) A transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer.

(i) A transfer creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. For purposes of this subdivision, a person is an original owner of property owned by that person's spouse.

(j) A transfer for security or an assignment or discharge of a security interest.

(k) A transfer of real property or other ownership interests among members of an affiliated group. As used in this subsection, "affiliated group" means 1 or more corporations connected by stock ownership to a common parent corporation. Upon request by the state tax commission, a corporation shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A corporation that fails to comply with a request by the state tax commission under this subdivision is subject to a fine of \$200.00.

(l) Normal public trading of shares of stock or other ownership interests that, over any period of time, cumulatively represent more than 50% of the total ownership interest in a corporation or other legal entity and are traded in multiple transactions involving unrelated individuals, institutions, or other legal entities.

(m) A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the state tax commission, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A corporation, partnership, limited liability company, limited liability partnership, or other legal entity that fails to comply with a request by the state tax commission under this subdivision is subject to a fine of \$200.00.

(n) A direct or indirect transfer of real property or other ownership interests resulting from a transaction that qualifies as a tax-free reorganization under section 368 of the internal revenue code, 26 USC 368. Upon request by the state tax commission, a property owner shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A property owner who fails to comply with a request by the state tax commission under this subdivision is subject to a fine of \$200.00.

(o) Except as provided in subsection (6)(k), a transfer of qualified agricultural property, if the person to whom the qualified agricultural property is transferred files an affidavit with the assessor of the local tax collecting unit in which the qualified agricultural property is located and with the register of deeds for the county in which the qualified agricultural property is located attesting that the qualified agricultural property will remain qualified agricultural property. The affidavit under this subdivision shall be in a form prescribed by the department of treasury. An owner of qualified agricultural property shall inform a prospective buyer of that qualified agricultural property that the qualified agricultural property is subject to the recapture tax provided in the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007, if the qualified agricultural property is converted by a change in use, as that term is defined in section 2 of the agricultural property recapture act, 2000 PA 261, MCL 211.1002. If property ceases to be qualified agricultural property at any time after a transfer subject to this subdivision, all of the following shall occur:

(i) The taxable value of that property, or, if subsection (6)(k) applies, a portion of it established as a separate tax parcel, shall be adjusted under subsection (3) as of the December 31 in the year that the property, or, if subsection (6)(k) applies, a portion of it established as a separate tax parcel, ceases to be qualified agricultural property.

(ii) The property, or, if subsection (6)(k) applies, a portion of it established as a separate tax parcel, is subject to the recapture tax provided for under the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007.

(p) A transfer of qualified forest property, if the person to whom the qualified forest property is transferred files a qualified forest taxable value affidavit with the assessor of the local tax collecting unit in which the qualified forest property is located and with the register of deeds for the county in which the qualified forest property is located attesting that the qualified forest property will remain qualified forest property. The qualified forest taxable value affidavit

under this subdivision shall be in a form prescribed by the department of agriculture and rural development. The qualified forest taxable value affidavit shall include a legal description of the qualified forest property, the name of the new property owner, the year the transfer of the property occurred, a statement indicating that the property owner is attesting that the property for which the exemption is claimed is qualified forest property and will be managed according to the approved forest management plan, and any other information pertinent to the parcel and the property owner. The property owner shall provide a copy of the qualified forest taxable value affidavit to the department. The department shall provide 1 copy of the qualified forest taxable value affidavit to the local tax collecting unit, 1 copy to the conservation district, and 1 copy to the department of treasury. These copies may be sent electronically. The exception to the recognition of a transfer of ownership, as herein stated, extends to the land only of the qualified forest property. If qualified forest property is improved by buildings, structures, or land improvements, then those improvements shall be recognized as a transfer of ownership, in accordance with the provisions of section 7jj[1]. An owner of qualified forest property shall inform a prospective buyer of that qualified forest property that the qualified forest property is subject to the recapture tax provided in the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036, if the qualified forest property is converted by a change in use, as that term is defined in section 2 of the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1032. If property ceases to be qualified forest property at any time after being transferred, all of the following shall occur:

(i) The taxable value of that property shall be adjusted under subsection (3) as of the December 31 in the year that the property ceases to be qualified forest property, except to the extent that the transfer of the qualified forest property would not have been considered a transfer of ownership under this subsection.

(ii) Except as otherwise provided in subparagraph (iii), the property is subject to the recapture tax provided for under the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036.

(iii) Beginning June 1, 2013 and ending November 30, 2013, owners of property enrolled as qualified forest property before January 1, 2013 may execute a new qualified forest taxable value affidavit with the department of agriculture and rural development. If a landowner elects to execute a qualified forest taxable value affidavit, that owner is not required to pay the \$50.00 fee required under section 7jj[1](2). If a landowner elects not to execute a qualified forest taxable value affidavit, the existing affidavit shall be rescinded, without subjecting the property to the recapture tax provided for under the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036, and the taxable value of that property shall be adjusted under subsection (3).

(q) Beginning on December 8, 2006, a transfer of land, but not buildings or structures located on the land, which meets 1 or more of the following requirements:

(i) The land is subject to a conservation easement under subpart 11 of part 21 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140 to 324.2144. As used in this subparagraph, "conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.

(ii) A transfer of ownership of the land or a transfer of an interest in the land is eligible for a deduction as a qualified conservation contribution under section 170(h) of the internal revenue code, 26 USC 170.

(r) A transfer of real property or other ownership interests resulting from a consolidation or merger of a domestic nonprofit corporation that is a boy or girl scout or camp fire girls organization, a 4-H club or foundation, a young men's Christian association, or a young women's Christian association and at least 50% of the members of that organization or association are residents of this state.

(s) A change to the assessment roll or tax roll resulting from the application of section 16a of 1897 PA 230, MCL 455.16a.

(t) Beginning December 31, 2013 through December 30, 2014, a transfer of residential real property if the transferee is related to the transferor by blood or affinity to the first degree and the use of the residential real property does not change following the transfer.

(u) Beginning December 31, 2014, a transfer of residential real property if the transferee is the transferor's or the 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 conveyance. 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.

(v) Beginning December 31, 2014, for residential real property, a conveyance from a trust if the person to whom the residential real property is conveyed is the settlor's or the settlor'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 conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subdivision. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subdivision, that present beneficiary is subject to a fine of \$200.00.

(w) Beginning on March 31, 2015, a conveyance of land by distribution under a will or trust or by intestate succession, but not buildings or structures located on the land, which meets 1 or more of the following requirements:

(i) The land is made subject to a conservation easement under subpart 11 of part 21 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140 to 324.2144, prior to the conveyance by distribution under a will or trust or by intestate succession. As used in this subparagraph, "conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.

(ii) The land or an interest in the land is made eligible for a deduction as a qualified conservation contribution under section 170(h) of the internal revenue code, 26 USC 170, prior to the conveyance by distribution under a will or trust or by intestate succession.

(x) A conveyance of property under section 2120a(6) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2120a.

(8) If all of the following conditions are satisfied, the local tax collecting unit shall revise the taxable value of qualified agricultural property taxable on the tax roll in the possession of that local tax collecting unit to the taxable value that qualified agricultural property would have had if there had been no transfer of ownership of that qualified agricultural property since December 31, 1999 and there had been no adjustment of that qualified agricultural property's taxable value under subsection (3) since December 31, 1999:

(a) The qualified agricultural property was qualified agricultural property for taxes levied in 1999 and each year after 1999.

(b) The owner of the qualified agricultural property files an affidavit with the assessor of the local tax collecting unit under subsection (7)(o).

(9) If the taxable value of qualified agricultural property is adjusted under subsection (8), the owner of that qualified agricultural property is not entitled to a refund for any property taxes collected under this act on that qualified agricultural property before the adjustment under subsection (8).

(10) The register of deeds of the county where deeds or other title documents are recorded shall notify the assessing officer of the appropriate local taxing unit not less than once each month of any recorded transaction involving the ownership of property and shall make any recorded deeds or

other title documents available to that county's tax or equalization department. Unless notification is provided under subsection (6), the buyer, grantee, or other transferee of the property shall notify the appropriate assessing office in the local unit of government in which the property is located of the transfer of ownership of the property within 45 days of the transfer of ownership, on a form prescribed by the state tax commission that states the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description. Forms filed in the assessing office of a local unit of government under this subsection shall be made available to the county tax or equalization department for the county in which that local unit of government is located. This subsection does not apply to personal property except buildings described in section 14(6) and personal property described in section 8(h), (i), and (j).

(11) As used in this section:

- (a) "Additions" means that term as defined in section 34d.
- (b) "Beneficial use" means the right to possession, use, and enjoyment of property, limited only by encumbrances, easements, and restrictions of record.
- (c) "Commercial purpose" means used in connection with any business or other undertaking intended for profit, but does not include the rental of residential real property for a period of less than 15 days in a calendar year.
- (d) "Inflation rate" means that term as defined in section 34d.
- (e) "Losses" means that term as defined in section 34d.
- (f) "Qualified agricultural property" means that term as defined in section 7dd.
- (g) "Qualified forest property" means that term as defined in section 7jj[1].
- (h) "Residential real property" means real property classified as residential real property under section 34c.

History: Add. 1982, Act 539, Eff. Mar. 30, 1983 ;-- Am. 1993, Act 145, Imd. Eff. Aug. 19, 1993 ;-- Am. 1993, Act 313, Eff. Mar. 15, 1994 ;-- Am. 1994, Act 415, Imd. Eff. Dec. 29, 1994 ;-- Am. 1996, Act 476, Imd. Eff. Dec. 26, 1996 ;-- Am. 2000, Act 260, Eff. Mar. 28, 2001 ;-- Am. 2005, Act 23, Imd. Eff. May 23, 2005 ;-- Am. 2006, Act 378, Imd. Eff. Sept. 27, 2006 ;-- Am. 2006, Act 446, Imd. Eff. Dec. 8, 2006 ;-- Am. 2008, Act 506, Imd. Eff. Jan. 13, 2009 ;-- Am. 2012, Act 47, Imd. Eff. Mar. 13, 2012 ;-- Am. 2012, Act 497, Imd. Eff. Dec. 28, 2012 ;-- Am. 2013, Act 50, Imd. Eff. June 6, 2013 ;-- Am. 2014, Act 310, Imd. Eff. Oct. 10, 2014 ;-- Am. 2014, Act 535, Eff. Mar. 31, 2015 ;-- Am. 2015, Act 19, Imd. Eff. Apr. 29, 2015 ;-- Am. 2015, Act 243, Imd. Eff. Dec. 22, 2015 ;-- Am. 2016, Act 375, Imd. Eff. Dec. 22, 2016

Popular Name: Act 206

Compiler's Notes: Enacting section 1 of Act 243 of 2015 provides: "Enacting section 1. Section 27a(7)(d) of the general property tax act, 1893 PA 206, MCL 211.27a, as added by this amendatory act, is retroactive and is effective for taxes levied after December 31, 2014."

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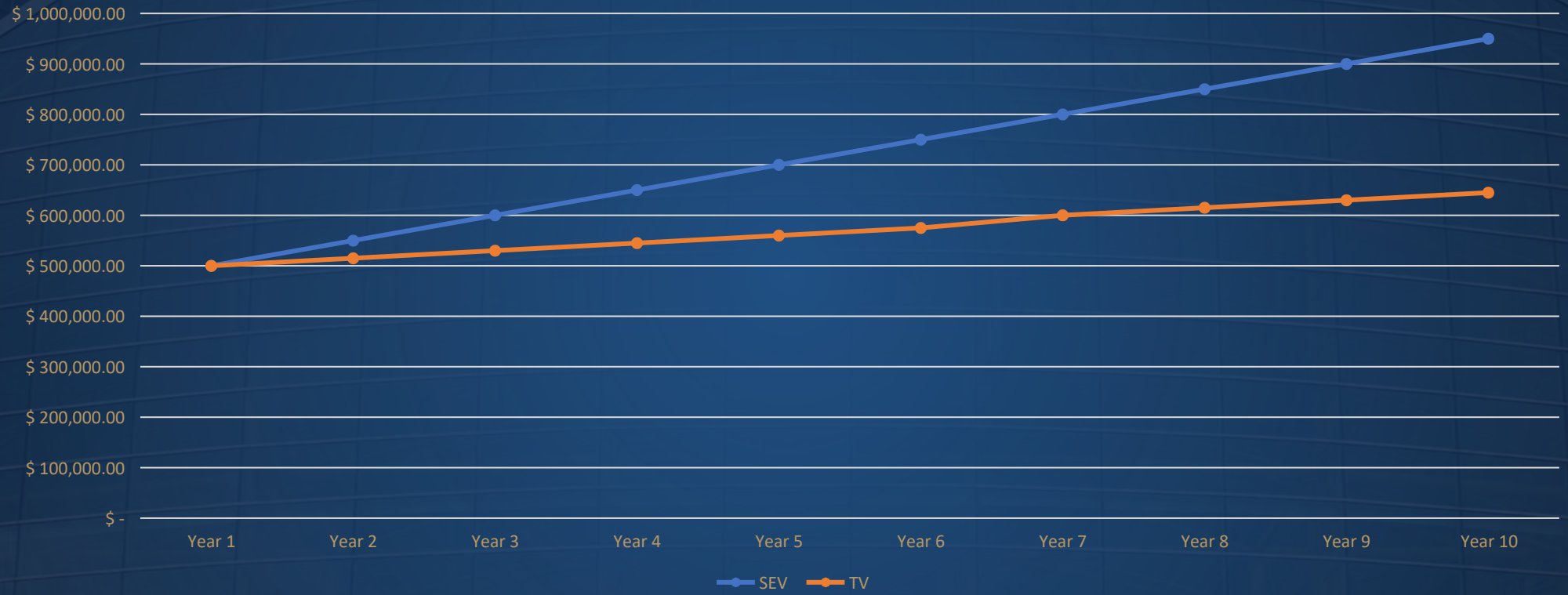
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SEV v TV



STATE OF MICHIGAN
COURT OF APPEALS

TRJ & E PROPERTIES, LLC,

Petitioner-Appellee,

v

CITY OF LANSING,

Respondent-Appellant.

FOR PUBLICATION

April 17, 2018

9:20 a.m.

No. 338992

Tax Tribunal

LC No. 16-000408-TT

Advance Sheets Version

Before: O'BRIEN, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Respondent, city of Lansing, appeals by right an order of the Michigan Tax Tribunal granting summary disposition in favor of petitioner, TRJ & E Properties, LLC, and concluding that respondent had erroneously uncapped the taxable value of property that had been transferred to petitioner by a commonly controlled entity, TRJ Properties, Inc. (TRJ Properties). We affirm.

In 2015, TRJ Properties owned an apartment building and transferred its interest in that property to petitioner. The ownership interests in petitioner are as follows: 25% by Tony Farida, 25% by Ricky Farida, 25% by Jeffrey Farida, and 25% by Eric Farida. TRJ Properties was owned as follows: 40% by Hamid Farida, 20% by Tony Farida, 20% by Ricky Farida, and 20% by Jeffrey Farida. Hamid is the father of Tony, Ricky, Jeffrey, and Eric. Petitioner's operating agreement provides that, subject to specific exceptions, "the affirmative vote of a majority of the Shares of all Members entitled to vote on such a matter is required."

Respondent determined that the property transfer was an uncapping event under MCL 211.27a(3) and increased the property's taxable value from \$468,746 to \$535,200. Petitioner petitioned the Tax Tribunal to reverse respondent's decision uncapping the property's taxable value, asserting that the transfer was between commonly controlled entities and thus exempt from uncapping under MCL 211.27a(7)(m).

Respondent moved for summary disposition, asserting that the facts were not in dispute and that respondent was entitled to judgment as a matter of law. Respondent argued that the State Tax Commission (STC) had issued Revenue Administrative Bulletin (RAB) 1989-48, which provides that common control only exists when ownership is identical or when the same five or fewer people have an 80% interest in both properties. Respondent argued that an

uncapping event occurred in this case because the same five or fewer people only had a 60% shared interest in the properties.

Petitioner also moved for summary disposition. Petitioner argued that TRJ Properties and petitioner were commonly controlled because the same siblings owned a controlling interest in each entity, where a controlling interest was 50% or more of the combined voting power in each entity. Petitioner alternatively argued that common control existed under RAB 2010-1 because a parent indirectly controlled, through his or her children, both entities. Because Hamid was the father of all the siblings who had an ownership interest in each entity, petitioner argued that Hamid constructively controlled 100% of both entities and that, accordingly, no uncapping event occurred.

The Tax Tribunal determined that the parties had effectively moved for summary disposition under MCR 2.116(C)(10). The Tax Tribunal noted that respondent was arguing that the common control rules of RAB 1989-48 applied, but not the constructive ownership rules in RAB 2010-1. It rejected respondent's argument that RAB 1989-48 applied and declined to adopt the requirements in RAB 1989-48 because "[t]o apply such a rule would be to add requirements not present in the statute, and thus exercising legislative power without authority, by creating law or changing the laws enacted by the Legislature." Instead, the Tax Tribunal applied the plain language of MCL 211.27a, which provides that a transfer of ownership uncaps a property's taxable value for the following tax year, MCL 211.27a(3), but that a transfer of ownership does not include "[a] transfer of real property . . . among . . . other legal entities if the entities involved are commonly controlled," MCL 211.27a(7)(m).

In this case, the Tax Tribunal noted that Tony, Ricky, and Jeffrey's 60% interest in TRJ Properties controlled that entity and that Tony, Ricky, and Jeffrey's 75% interest in petitioner also controlled that entity. Petitioner's articles of organization showed that "a mere majority of shares of all members is required to act." Accordingly, the Tax Tribunal concluded that both entities were controlled by three of the four Farida brothers and thus were commonly controlled. Therefore, the Tax Tribunal held that MCL 211.27a(7)(m) applied and that "the property's taxable value remains capped." This appeal followed.

Respondent argues that the Tax Tribunal erred when it determined that these two entities were commonly controlled for purposes of MCL 211.27a(7)(m) because RAB 1989-48 provides that common control requires 80% of the combined voting power be shared between two entities and, in this case, the combined voting power of the people who controlled the two entities was 60% and 75%, respectively. We disagree.

This Court reviews de novo a lower tribunal's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A party is entitled

to summary disposition under MCR 2.116(C)(10)¹ if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 120.

This Court's review of a decision by the Tax Tribunal is limited. *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012). When a party does not dispute the facts or allege fraud, this Court reviews whether the tribunal "made an error of law or adopted a wrong principle." *Id.* at 527-528. This Court reviews de novo the interpretation and application of tax statutes. *Id.* at 528. If the plain and ordinary meaning of a statute's language is clear, this Court will not engage in judicial construction. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 141; 783 NW2d 133 (2010). When interpreting a statute, this Court's goal is to give effect to the intent of the Legislature. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). The language of the statute itself is the primary indicator of the Legislature's intent. *Id.*

The General Property Tax Act (GPTA), MCL 211.1 *et seq.*, provides for the taxation of real and personal property. Generally, a property's taxable value is determined by the lesser of (1) the property's current state equalized value or (2) the property's taxable value in the previous year, minus losses, multiplied by 1.05 or the inflation rate, plus all additions. MCL 211.27a(2). This limitation, which is based on Const 1963, art 9, § 3, effectively caps increases on a property's taxable value so that "any yearly increase in taxable value is limited to either the rate of inflation or 5 percent, whichever is less." *Mich Props*, 491 Mich at 528-529. "[T]he property's taxable value is uncapped when the property is transferred." *Id.* at 529-530; see also MCL 211.27a(3).

However, there are several exceptions under which a transfer of ownership will not uncapped the property's taxable value. *Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676, 694; 840 NW2d 168 (2013). One of these exceptions is "[a] transfer of real property . . . among corporations . . . or other legal entities if the entities involved are commonly controlled." MCL 211.27a(7)(m). This is the exception that the parties dispute in this case—specifically, the meaning of the phrase "commonly controlled" and what percentage of common ownership renders two entities commonly controlled.

This Court has only addressed common control in two published decisions, and neither decision determined that a specific percentage of ownership constitutes common control. In *Sebastian J Mancuso Family Trust v City of Charlevoix*, 300 Mich App 1, 7-8; 831 NW2d 907 (2013), this Court held that two trusts were not commonly controlled when they had the same trustees. This Court reasoned that the common-control exception² did not apply because trustees

¹ Generally, the Tax Tribunal's rules of procedure govern the proceedings before the Tax Tribunal, but if no applicable rule exists, the Michigan Court Rules apply. *Signature Villas, LLC v City of Ann Arbor*, 269 Mich App 694, 705; 714 NW2d 392 (2006).

² At that time, the common-control exception was located at MCL 211.27a(7)(l), but the statutory language has not changed. See 2015 PA 243 (adding Subdivision (d) and relettering the subsequent subdivisions).

only manage the property, but the statute applies when there is a change in the ownership of the property. *Id.* at 7. Accordingly, the common-control exception does not apply to a transfer of property from one owner to a new owner even if the trustees of both owners are the same. *Id.* at 8. And in *Detroit Lions*, 302 Mich App at 694, this Court concluded that two entities—Ford Land and WCF Land—were not commonly controlled because, while William Clay Ford, Sr., owned WCF Land, “it is undisputed that Ford Land . . . is not under the control of Mr. Ford.” Neither case addressed what amount of control constitutes common control.

We turn to principles of statutory interpretation to determine the meaning of “commonly controlled.” This Court generally interprets statutes with consideration of “[t]he fair and natural import of the terms employed, in view of the subject matter of the law” *Hughes v Region VII Area Agency on Aging*, 277 Mich App 268, 274; 744 NW2d 10 (2007) (quotation marks and citation omitted). This Court should read phrases “in the context of the entire legislative scheme.” *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014). While the GPTA does not define “commonly controlled” in MCL 211.27a or elsewhere, it does define “under common control with” as it relates to personal property taxation exemptions. MCL 211.9o(7) provides, in pertinent part:

As used in this section:

* * *

(b) “Control”, “controlled by”, and “under common control with” mean the possession of the power to direct or cause the direction of the management and policies of a related entity, directly or indirectly, whether derived from a management position, official office, or corporate office held by an individual; by an ownership interest, beneficial interest, or equitable interest; or by contractual agreement or other similar arrangement.^[3]

While we recognize that this definition does not expressly or directly apply to MCL 211.27a(7)(m), it is a reliable and persuasive indication of the Legislature’s intent and allows consistency throughout the GPTA’s legislative scheme. See *Madugula*, 496 Mich at 696; *Sun Valley Foods Co*, 460 Mich at 236. And this definition is particularly appropriate because it recognizes that different percentages of control may be necessary to direct the management of

³ The remainder of MCL 211.9o(7)(b) contains additional language:

There is a rebuttable presumption that control exists if any person, directly or indirectly, owns, controls, or holds the power to vote, directly or by proxy, 10% or more of the ownership interest of any other person or has contributed more than 10% of the capital of the other person. Indirect ownership includes ownership through attribution or through 1 or more intermediary entities.

It is not necessary to address any rebuttable presumption of common control in this case because a mere majority of the shares of all members was required to act, and Tony, Ricky, and Jeffrey controlled more than that majority of shares in both entities.

different corporate entities. For instance, if an entity requires a supermajority to undertake any action, a mere majority of common shareholders would not be sufficient to constitute common control of the entities under this definition.

Further, this definition focuses on the actual control of the business on the basis of its corporate structure. Numerous federal decisions tie the meaning of “common control” to the actual control of the business. See, e.g., *Chao v A-One Med Servs, Inc*, 346 F3d 908, 915 (CA 9, 2003); *Vittoria North America, LLC v Euro-Asia Imports Inc*, 278 F3d 1076, 1084 (CA 10, 2001). This Court may consider foreign authority as persuasive authority when deciding issues of state law. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221 n 6; 761 NW2d 293 (2008). As a practical matter, no single percentage—whether the 80% that respondent suggests or the more than 50% that petitioner suggests—will apply universally to diverse corporate structures. For this reason, we decline to adopt any specific percentage as the definition of common control. Moreover, if the Legislature had intended such a particular requirement, it could have specifically defined the phrase “commonly controlled” accordingly.

In this case, the Tax Tribunal did not err when it determined that TRJ Properties and petitioner were commonly controlled. Tony, Ricky, and Jeffrey controlled 60% of TRJ Properties and 75% of petitioner. According to petitioner’s operating agreement, a mere majority is required for it to act. While petitioner did not provide an operating agreement for TRJ Properties, petitioner repeatedly asserted that only 50% of the combined voting power of TRJ Properties was required for it to act, and respondent never disputed this fact. Therefore, both entities were actually controlled by Tony, Ricky, and Jeffrey. Accordingly, the Tax Tribunal did not commit an error of law or adopt a wrong principle when it determined that TRJ Properties and petitioner were commonly controlled under MCL 211.27a(7)(m).

In reaching our conclusion, we also reject respondent’s argument that the Tax Tribunal was required to follow the STC’s transfer-of-ownership guidelines and related revenue administrative bulletins, including RAB 1989-48, to determine whether the transfer was excluded from uncapping under MCL 211.27a. As the Tax Tribunal held, it is not bound to follow STC guidelines that impose requirements not present within the statute’s plain language. Further, the STC guidelines did not provide any interpretation of MCL 211.27a(7)(m), and therefore the Tax Tribunal properly applied the general rules of statutory construction to the statute.

It is well established that “agency interpretations are entitled to respectful consideration, but they are not binding on courts and cannot conflict with the plain meaning of the statute.” *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 117-118; 754 NW2d 259 (2008). “[A]gencies cannot exercise legislative power by creating law or changing the laws enacted by the Legislature.” *Id.* at 98. An agency’s interpretation may be helpful “when the law is ‘doubtful or obscure’” *Id.* at 103 (citation omitted). However, agency interpretations of statutes are not entitled to deference when they conflict with the language of a statute. *Id.* at 108.

In *Rovas*, the Michigan Supreme Court considered the meaning of the word “false” in MCL 484.2502(1)(a). *Id.* at 111-112. The Public Service Commission (the PSC) had determined that the statute penalized factually inaccurate statements. *Id.* at 112. However, the PSC did not analyze the statutory language or provide a rationale for its conclusion that the word

“false” meant untrue or incorrect. *Id.* at 113. Accordingly, the PSC had not provided any construction of the statute, and there was no construction for a reviewing court to respectfully consider. *Id.* Because the PSC had failed to offer any construction, the Supreme Court had to provide “an interpretation of the plain language of the statute.” *Id.*

RAB 1989-48 stated that its purpose was “to define ‘entities under common control’ for single business tax purposes.” RAB 1989-48, p 1. In “Types of Controlled Groups,” RAB 1989-48 discusses both “Parent-Subsidiary Group of Entities” and “Brother-Sister Group of Entities” as types of entities under common control. RAB 1989-48, pp 1-2. For purposes of parent-subsubsidiary groups, RAB 1989-48 provides that groups are under common control if “[a] controlling interest in each of the organizations . . . is owned (directly and indirectly) by one or more of the other organizations,” with “controlling interest” defined as follows:

A controlling interest means:

1. Corporations: 80 percent of total combined voting power of all classes of stock entitled to vote, OR, at least 80 percent of the total value of the shares of all classes of stock of such corporation.
2. Trusts and estates: ownership of an actuarial interest of at least 80 percent of such trust or estate. [Actuarial interest defined: IRC #1.414(c)-2(b)(2)(ii)]
3. Partnerships: 80 percent of the profits or capital
4. Sole proprietorships: ownership of such proprietorship. [RAB 1989-48, pp 1-2 (bracketed information in original).]

For the purposes of brother-sister groups, RAB 1989-48 provides:

The term “brother-sister group of entities under common control” means two or more entities engaged in a business activity, providing the following exists:

1. The same five or fewer persons who are individuals, estates or trusts own (directly and indirectly) a controlling interest in each entity (see page 6 for constructive ownership rules), and
2. Taking into account the ownership of each such person only to the extent such ownership is identical with respect to each such entity, such persons are in effective control of each entity. The five or fewer persons, whose ownership is considered for purposes of the controlling interest requirement for each organization, must be the same persons whose ownership is considered for purposes of the effective control requirement. [RAB 1989-48, p 2.]

For brother-sister groups, the examples provide that common ownership exists when “combined identical ownership . . . is greater than 50%.” RAB 1989-48, Example 5, p 4.

In this case, like in *Rovas*, RAB 1989-48 provides no statutory construction; thus, there was nothing for the Tax Tribunal to respectfully consider. Therefore, the Tax Tribunal did not err by interpreting the plain language of MCL 211.27a(7)(m) and applying general rules of statutory construction to that subdivision. Accordingly, the Tax Tribunal properly granted summary disposition in favor of petitioner and concluded that respondent had erroneously uncapped the taxable value of petitioner's property under MCL 211.27a.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens