STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

TRJ&E Properties LLC,
Petitioner,

v

MTT Docket No. 16-000408

City of Lansing,
Respondent.

Tribunal Judge Presiding
David B. Marmon

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

The issue giving rise to this appeal is Respondent's uncapping of the taxable value of parcel no. 33 01 01 33 127 052, which contains an apartment building. On May 25, 2017, pursuant to the Tribunal's Prehearing Order, each party filed a motion for summary disposition in the above-captioned case. More specifically, Respondent contends that the subject property's taxable value was properly uncapped for 2016, when it was sold by TRJ Properties Inc to Petitioner in 2015. Petitioner contends that the uncapping was improper, as both TRJ Properties Inc and Petitioner are commonly controlled entities, and per MCL 211.27a(7)(m), the conveyance is not considered a transfer of ownership for uncapping purposes. The Tribunal holds that granting Petitioner's motion for summary disposition and denying Respondent's motion for summary disposition is warranted at this time.

RESPONDENT'S CONTENTIONS

Respondent contends that the subject's taxable value for 2016 is $535,200. In support of its motion, Respondent argues that the subject property was transferred to Petitioner by land

contract and quit claim deed in 2015, and that none of the definitions found in MCL 211.27a(7) excluding transactions as transfers of ownership are applicable. Specifically, as to MCL 211.27a(7)(m), Respondent argues that per the State Tax Commission's published guidelines, as well as STC Bulletin 16 of 1995, RAB 1989-48 should be used to determine whether entities are commonly controlled. Specifically, Respondent contends that the three individuals that were 20% owners each of TRJ Properties Inc., (the prior owner of the property) and 25% owners each of Petitioner do not meet the 80% control requirement of RAB 1989-48, and also fail to meet an additional requirement that each owner's interest be the same in each entity. Respondent contends that the constructive ownership rules which are incorporated into RAB 1989-48 do not apply to transfers of ownership, and thus even though all of the owners of TRJ Inc and Petitioner are either siblings, or the father of the siblings, they fail to meet the 80% control test. Adopting in part the STC position as articulated by Timothy Schnelle of the STC, an adoption of constructive ownership rules would assure that there would never be an uncapping of transfers between close relatives.

In support of its position, Respondent cites the following documents, either previously filed or contemporaneously filed with its motion:

- STC Transfer of Ownership Guidelines, dated December, 2014
- STC Bulletin 16 of 1995
- Email from Timothy Schnelle with his opinion
- RAB 1989-48
- Subject's record cards showing a state equalized value and taxable value of $535,200, Respondent's contention of taxable value

- Recorded copy of Memorandum of Land Contract dated January 27, 2015, signed by Rick Farida on behalf of both TRJ Properties Inc, vendor, and Petitioner as vendee
- Property Transfer Affidavit also dated January 27, 2015, claiming an exemption for entities under common control
- Quit claim deed, dated April 15, 2015.
- Assessor Affidavit Regarding Uncapping
- STC Bulletin 16 of 1995
- STC Bulletin 8 of 1996
- STC Bulletin 3 of 1997
- STC Bulletin 19 of 1997
- Reprint from STC Bulletin 13 of 1996
- STC Bulletin 15 of 2014
- STC Letter to assessors dated June 9, 2011 regarding *Klooster v Charlevoix*

PETITIONER'S CONTENTIONS

Petitioner contends that the subject's taxable value for 2016 is $476,246. In support of its motion, Petitioner argues that the transfer of the subject from TRJ Properties Inc. is not an uncapping event. Per MCL 211.27a(7)(m) a transfer of an asset between commonly controlled entities is not a transfer for uncapping purposes. Petitioner further argues that TRJ Inc. was owned 40% by Hamid Farida, and 20% each by his sons, Tony Farida, Ricky Farida, and Jeffrey Farida. The ownership of Petitioner is 25% each by Tony Farida, Ricky Farida and Jeffrey Farida, with the final 25% owned by a fourth sibling, Eric Farida. As Tony, Ricky and Jeffrey owned and controlled 60% of TRJ Inc, and 75% of Petitioner, the entities are commonly

controlled. Petitioner also contends if attribution rules are applied, there is 100% common control, as the owners of each entity are either father-son, or brother-brother, and each has the other's ownership interest attributed to him. Petitioner also states that RAB 2010-1 requires attribution rules to be considered, and states, "[a]n individual constructively owns the ownership interests owned directly or indirectly by any of the following . . . his or her children." Petitioner requests that the Tribunal reset the subject's taxable value by increasing the previous year's taxable value of $468,746 by the Consumer Price Index of 1.016 to $476,246.

Petitioner relies upon the following documents:

- 2015 Schedule K-1 of TRJ Properties Inc
- Operating Agreement of Petitioner
- RAB 1989-48
- RAB 2010-1

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[1] In this case, both parties move for summary disposition under MCR 2.116(C)(10).

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.[2] In the event, however, it is determined

[1] See TTR 215.
[2] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.[3]

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.[4] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[5] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[6] Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.[7] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[8]

JOINT STIPULATION OF FACTS

Pursuant to the Tribunal's prehearing summary scheduling order, the parties filed a joint stipulation facts, agreeing to the following:

1. The subject parcel is developed with an apartment building.

2. During calendar year 2015, the subject property was transferred from the ownership of TRJ Properties, Inc to TRJ&E Properties, LLC.

3. The Respondent determined the transfer to be an uncapping event.

4. The Respondent increased the taxable value from $468,746 to $535,200.

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[3] See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).
[4] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[5] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[6] *Id.*
[7] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[8] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

5. Petitioner challenged the uncapping as improper, and more specifically, that the transfer of the property between the entities TRJ Properties and TRJ&E Properties was not an "uncapping event" pursuant to MCL 211.27a.

6. The true cash value of the subject property is not at issue.

7. TRJ Properties Inc was owned by Hamid Farida (40%), Tony Farida (20%), Ricky Farida (20%) and Jeffrey Farida (20%).

8. Schedule K from TRJ's 2015 tax return, which sets forth the ownership interests, has been provided to the Tribunal.

9. TRJ&E Properties, LLC is owned by Tony Farida (25%), Ricky Farida (25%), Jeffrey Farida (25%) and Eric Farida (25%).

10. TRJ &E's Operating Agreement, which sets forth the ownership interests, has been provided to the Tribunal.

11. The two entities signed a Memorandum of Land Contract, dated January 27, 2015. A copy of this land contract has been provided to the Tribunal.

12. A Quit Claim Deed dated April 1, 2015, conveyed the subject property from TRJ Properties Inc to TRJ&E Properties LLC. A copy of this deed has been provided to the Tribunal.

13. Hamid Farida is the biological father of the four other relevant persons, Tony, Ricky, Jeffrey and Eric.

14. Rick Farida signed an affidavit indicating that Hamid is the father of the four other relevant persons. Rick's affidavit is submitted with this Stipulation of Facts.

CONCLUSIONS OF LAW

The Tribunal has carefully considered both parties' Motions and supporting documents under MCR 2.116 (C)(10) and finds that granting Petitioner's Motion and denying Respondent's Motion is warranted.

Increases in taxable value are capped, per Article 9 § 3 of Michigan's constitution. This section states 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 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.[9]

As part of the enacting legislation to effectuate this provision, MCL 211.27a was enacted. Per this section the general rule is found in MCL 211.27a(3):

> (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.

This statute sets forth in subsection (6) a non-exhaustive list of what constitutes a transfer of ownership. This subsection states in relevant part:

> (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.
>
> ***

Per the Joint Statement of Facts, the land contract, the Property Transfer Affidavit, and the quit claim deed, the subject property transferred in 2015.

[9] Const 1963, Art IX, §3.

MCL 211.27a also sets forth in subsection (7) various transfers which are not considered a transfer of ownership for uncapping purposes. Of relevance to this appeal is subsection (7)(m), which states:

> (7) Transfer of ownership does not include the following:
>
> ***
>
> (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.

The key phrase in that subsection is "commonly controlled."

Respondent argues that the State Tax Commission's Transfer of Ownership Guidelines, and its adoption of RAB 1989-48 control this definition. This definition, which was promulgated for determining entities under common control for the now defunct Single Business Tax, has numerous requirements. It requires the ownership group to be five or fewer shareholders or members, with 80% ownership of both entities, and that each shareholder/member have the identical interest in each entity. The 80% requirement was somewhat tempered in that:

> The Department will follow the IRS Rules for determining constructive ownership. This means ownership attributed from partnerships, estates, trusts, corporations, spouse, and relatives will be used in determining entities under common control. (See IRS Regulation 1.414(c)-4.)[10]

[10] RAB 1989-48 p 7.

The STC and Respondent now take the position that the constructive ownership rules cannot apply to transfer of ownership situations, because to do so would negate and render meaningless other exceptions to the definition of uncapping concerning various relationships.[11]

Respondent contends that RAB 1989-48 applies, with its 80% requirement of common ownership, but without constructive ownership rules, which are referenced. While its argument that constructive ownership rules do not apply, because it would render other provisions of MCL 211.27a(7) superfluous and surplusage is convincing, the Tribunal holds that the 80% rule found in RAB 1989-48 without attribution rules makes little sense. With constructive ownership rules, the Farida family owns 100% of both the prior corporation and the Petitioner. Without these rules, Tony, Ricky and Jeffery Farida, owning 20% a piece of the prior owning corporation, own 75% of Petitioner. The Tribunal, while giving respectful consideration, is not bound by the STC's guidelines, nor by an email from one of its long-time employees.[12] Rather, the Tribunal is duty-bound to review the applicable statutes and case law. Unlike RAB 1989-48, MCL 211.27a(7)(m) does not contain the 80% ownership requirement, the five member control group requirement, or the requirement that each owner have an identical interest in each entity. In interpreting tax statutes, the Michigan Supreme Court has recently stated:

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

[11] For example, MCL 211.27a(7)(b), excluding a transfer between spouses, or (d), excluding the transfer of residential property after 2014 between certain relatives.

[12] The Tribunal acknowledges the long experience and obvious intelligence of Timothy Schnelle, whose opinion was submitted in support of Respondent's Motion. However, the Tribunal's review of STC rulings is, per MCL 205.735a(2), original and independent and is considered de novo.

> a legal error. *Thus, agency interpretations are entitled to "respectful consideration" but cannot control in the face of contradictory statutory text.*[13]

As to the validity of rulemaking, our Supreme Court has also stated:

> "Perhaps the most fundamental aspect of the 'legislative power' ... is the power to tax and to appropriate for specified purposes." *46th Circuit Trial Court v. Crawford Co.*, 476 Mich. 131, 141, 719 N.W.2d 553 (2006). "[A]gencies cannot exercise legislative power by creating law or changing the laws enacted by the Legislature." *In re Complaint of Rovas Against SBC Mich.*, 482 Mich. 90, 98, 754 N.W.2d 259 (2008). … defendant cannot impose the use tax on that property through the rulemaking process.[14]

Similarly, the STC cannot impose requirements on exclusions from transfer of ownership not found in the statute, by enacting guidelines.[15]

Case law interpreting this provision is not exactly on point, but reiterates that requirements outside of the statute are not permitted. In *C & J Investments v City of Grayling*,[16] the Court of Appeals affirmed the Tribunal's finding that a property held solely by a trust and then conveyed 50% to the trust and 50% to an individual did not constitute common control for uncapping purposes. While the Court of Appeals specifically stated that it was not error for the Tribunal to apply RAB 1989-48, its holding was that more than 50% control of each entity was required for there to be common control. The Court of Appeals also explicitly held that the same ownership requirement of RAB 1989-48 was not error because "the hearing referee was merely explaining the factual basis for her decision."[17] Importantly, the Court of Appeals in this unpublished decision did not rule on the 80% requirement of RAB 1989-48. While the Court of

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[13] *SBC Health Midwest v City of Kentwood*, __ Mich __; __ NW2d ___ (2017) (Docket No. 151524), Slip Op at 3. [Footnotes omitted. Emphasis added.]
[14] *Detroit Edison Co v Dep't of Treasury*, 498 Mich 28, 46; 869 NW2d 810 (2015).
[15] See *Danse Corp v City of Madison Heights*, 466 Mich 175; 644 NW2d 721 (2002) where the Court held that STC guidelines could not supersede the statutory language, even though it was given rule-making authority.
[16] *C & J Investments v City of Grayling*, unpublished opinion per curiam of the Court of Appeals, issued November 13, 2017 (Docket No. 270989).
[17] *Id*., at 3.

Appeals called RAB 1989-48 "an authoritative interpretation," the basis of its ruling was that neither Petitioner, who had no interest in the conveying entity, nor the 50% owning trust had greater than 50% control over petitioner.

Another more recent decision also involving trusts is the Court of Appeals published decision in *Sebastian J Mancuso Family Trust v City of Charlevoix.*[18] In *Mancuso*, the Court of Appeals held that two trusts with the same trustee, but different beneficiaries did not qualify as commonly controlled entities. While the Court of Appeals in *Mancuso* was asked to reject the Tribunal's reliance upon RAB 1998-48's business requirement, the court side-stepped this issue, and instead based its ruling on whether common trustees equals common control. The Court of Appeals stated:

> Simply having the same trustee does not satisfy the statutory requirement because the statute does not look to a change in the property's managers, it looks for a change in the *ownership* of the property. A trustee manages trust property held in trust for the benefit of the trust beneficiaries. Although the trustee has extensive control over the trust, he or she is ultimately liable to the beneficiaries.[19]

Again, the Court of Appeals did not base its ruling upon the various requirements found in RAB 1989-48, such as the 80% rule.

An earlier case most similar factually to the present one was *Entre Building v West Bloomfield Township.*[20] In *Entre Building*, the majority held that the precursor to MCL 211.27a(7)(m) did not apply because the prior owners, (an individual and a married couple) were not a legal entity,[21] but were part of a partnership. The Petitioner was owned by the same individual and one person who was part of the married couple. Importantly, the *Entre* court did

[18] *Sebastian J Mancuso Family Trust v City of Charlevoix*, 300 Mich App 1; 831 NW2d 907 (2013).
[19] *Id*., at 7-8.
[20] *Entre Building v West Bloomfield Township*, unpublished opinion per curiam of the Court of Appeals, issued March 6, 2003 (Docket No. 238550).
[21] In dissent, Judge Helene White, (later appointed to the U.S. Sixth Circuit Court of Appeals), held that it was not a transfer under MCL 211.27a7(a) because in effect, it was a transfer from one spouse to another.

not base its ruling on RAB 1989-48. Unlike the facts in *Entre*, the conveying entity, a corporation, is in fact a legal entity, created by the state. The Tribunal concludes that none of the cases dealing with subsection (m), or its predecessor require it to follow RAB 1989-48.

In the present case, the basis of Respondent's argument is that the requirements of RAB 1989-48 must be used to define common control under subsection (m). The Tribunal disagrees that a guideline adopting a rule requiring 80% common ownership (with attribution) that was promulgated in interpreting the defunct Single Business Tax must be applied to the definition of transfer of ownership found in the General Property Tax Act.[22] To 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.[23]

Further, reading the statute as a whole, the definitions are concerned with a change in the present beneficial interest of the property, rather than a change in form. The Tribunal therefore holds as a general rule that common control for brother-sister entities means the same owner or owners in both entities have cumulatively, more than 50% control in both entities, without constructive ownership rules.[24] Here, Tony, Ricky and Jeffrey Farida hold a 60% interest in TRJ Properties, Inc, the conveying corporation, and cumulatively hold a 75% interest in TRJ&E Properties LLC, the Petitioner herein. Sixty percent ownership clearly controls TRJ Properties Inc, and 75% ownership clearly controls Petitioner. An examination of Petitioner's Articles of Organization also shows that a mere majority of shares of all members is required to act. Also

[22] It is also notable that the STC abandoned the 80% control requirement, and went to the 50+% control requirement in RAB 2010-1 in formulating the Unitary Business Group Control Test for the (now defunct) Michigan Business Tax, which replaced the Single Business Tax.
[23] See *Detroit Edison*, 498 Mich 28.
[24] It remains an open question however without facts as stipulated in the present case, if either organization has a super-majority requirement, or other restrictions in its articles or bylaws not met by 50% plus control, as to whether the common control requirement of subsection (m) is met.

illustrative of common control is the land contract, which is signed on behalf of the vendor and the vendee by the same person – Rick[y] Farida. As both entities have common control by three of the four Farida brothers, MCL 211.27a(7)(m) applies, and the property's taxable value remains capped. Accordingly, Petitioner's contention of taxable value of $476,246 is adopted.

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that the taxable value for parcel no. 33 01 01 33 127 052 for tax year 2016 is $476,246.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.[25] 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,

[25] See MCL 205.755.

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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%.

This Final Opinion and Judgment resolves the last pending claim and closes the 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.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[26] 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.[27] 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.[28] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[29]

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

[26] See TTR 261 and 257.
[27] See TTR 217 and 267.
[28] See TTR 261 and 225.
[29] See TTR 261 and 257.

21 days after the entry of the final decision, it is an "appeal by leave."[30] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[31] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[32]

By____David B. Marmon_____

Entered: June 6, 2017

[30] See MCL 205.753 and MCR 7.204.
[31] See TTR 213.
[32] See TTR 217 and 267.