S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

C & J INVESTMENTS OF GRAYLING, LLC, Petitioner-Appellant,	UNPUBLISHED November 13, 2007
v CITY OF GRAYLING, Respondent-Appellee.	No. 270989 Tax Tribunal LC No. 00-306256

Before: Talbot, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Petitioner appeals as of right from a Tax Tribunal decision holding that a 2002 transfer of two parcels of real property from the Annette E. Carey Revocable Trust to petitioner constituted a transfer of ownership under MCL 211.27a(6), thereby allowing the taxable values of the properties to be uncapped and reassessed. Petitioner contends that reassessment was improper because the transfer involved an exempt transaction under MCL 211.27a(7)(l). We affirm.

The parties agree that petitioner is a legal entity comprised of two members, the Annette E. Carey Revocable Trust and Richard Jaskowski, each holding a 50 percent interest. The properties in question were formerly held solely by the trust. In 2002, Annette E. Carey, as trustee of her trust, and her husband, executed quitclaim deeds conveying the properties to petitioner.

As this Court recently explained in *Signature Villas, LLC v City of Ann Arbor*, 269 Mich App 694, 696-697; 714 NW2d 392 (2006):

> Pursuant to the Michigan Constitution and the GPTA, property may not be assessed at more than 50 percent of its "true cash value," or fair market value. Const 1963, art 9, § 3; MCL 211.27a(1). Additionally, Const 1963, art 9, § 3 limits annual increases in property valuation for taxation purposes until ownership of the property is transferred. An assessment, or "taxable value," may not be annually increased at more than the rate of inflation or five percent, whichever is less. *Id*. Because this limitation undervalues property in relation to market factors, a "state equalized valuation" is calculated and maintained to more accurately reflect property value increases. MCL 211.27a(3); House Legislative Analysis, HB 5945, January 5, 1995, p 1. The Michigan Constitution permits the property's taxable value to be reassessed according to the following year's state

> equalized value upon the sale or transfer of the property, Const 1963, art 9, § 3; MCL 211.27a(3).

In this case, the hearing referee determined that the trust and petitioner were not commonly controlled entities, and therefore rejected petitioner's argument that the property transfer was exempt from readjustment under MCL 211.27a(7)(l).

This Court's review of a Tax Tribunal decision is very limited. In the absence of an allegation of fraud, review is limited to deciding whether the tribunal committed an error of law or adopted a wrong legal principle. *Pheasant Ring v Waterford Twp,* 272 Mich App 436, 438; 726 NW2d 741 (2006). Factual findings made by the tribunal will not be disturbed so long as they are supported by competent, material, and substantial evidence on the whole record. *Id*. In this case, however, the hearing referee was not required to find any facts because the parties stipulated to the relevant facts.

Resolution of this case also involves a question of statutory interpretation. Questions of statutory interpretation are reviewed de novo. *Signature Villas*, *supra* at 699. Where statutory language is clear and unambiguous, it is enforced as written. *Id*.

Petitioner argues that the transfer of the property from the trust to petitioner did not involve a "transfer of ownership" within the meaning of MCL 211.27a(6), because the transfer fell within the exception set forth in subsection (7)(1) of the statute, which provides:

> Transfer of ownership does not include the following:
>
> * * *
>
> (l) 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 exemption in MCL 211.27a(7)(l) applies if (1) the transaction is between legal entities, and (2) the legal entities involved are commonly controlled. The parties do not dispute that both the trust and petitioner are legal entities. Rather, they dispute whether the trust and petitioner are "commonly controlled." MCL 211.27a does not define "commonly controlled."

Initially, we reject petitioner's argument that it was improper for the hearing referee to look to Revenue Administrative Bulletin (RAB) 1989-48 for a definition of "commonly controlled," because RAB 1989-48 was written to apply to the single business tax. State Tax Commission (STC) Bulletin No. 16, "Transfers of Ownership," September 20, 1995, states that the STC has specifically adopted RAB 1989-48 to define "commonly controlled" entities for purposes of MCL 211.27a(7)(l).

RAB 1989-48 defines three categories of groups that can qualify as entities under common control: (1) parent-subsidiary entities under common control; (2) brother-sister entities under common control; and (3) a combination of entities under common control.

First, the trust cannot be considered a parent entity with respect to petitioner because it owns only a 50 percent interest in petitioner, which is inadequate to have a controlling interest, and petitioner likewise is not a parent entity of the trust.

Second, the trust and petitioner do not qualify as a "brother-sister group of entities under common control." In order to qualify under that category, the same persons must own a controlling interest in each entity. Here, the trust does not have a controlling interest in petitioner and Jaskowski does not have *any* interest in the trust.

Third, the trust and petitioner are not a "combined group of entities under common control." To qualify as a combined group of entities, there must be a group of three or more entities. Further, the entities must also be engaged in business or trade activity. Therefore, petitioner and the trust do not fall under this category.

Petitioner argues that both petitioner and the trust are under the common control of Annette Carey. We disagree. Even if Carey controls the trust, she does not have control over petitioner. Her 50 percent interest in petitioner, through the trust, is inadequate to give her a controlling interest in petitioner. Rather, one must have more than a 50 percent interest to have control under RAB 1989-48.

Petitioner argues that the hearing referee erred by requiring that the entities must be involved in business activity and that the transferring entity must have the same interest in the properties both before and after the transfer because MCL 211.27a does not impose such a requirement. The hearing referee noted that RAB 1989-48 provides that the entities at issue in the transaction "must be engaged in business activity." Trusts are primarily used to avoid probate, manage financial affairs, preserve privacy, or reduce estate taxes. The hearing referee therefore found that while the trust holds assets, including commercial real estate for investment, it is not a legal entity engaged in business activity.

RAB 1989-48 provides that for the first two categories of groups, the entities involved must be engaged in some form of business or trade activities. For the third category of combined groups, RAB 1989-48 does not specifically require that the entities involved must be engaged in business or trade activities. However, the third category consists of a combination of the first two categories. Therefore, any groups that qualify under the third category must also satisfy the first two categories and, therefore, be engaged in business or trade activities.

Accordingly, applying RAB 1989-48, the hearing referee correctly concluded that the transfer of property to petitioner was not exempt under MCL 211.27a(7)(l) and that respondent could therefore reassess the taxable value of the property.

RAB 1989-48 represents an authoritative interpretation of the phrase "commonly controlled" by the agency responsible for administering and enforcing the statute. A court will defer to the interpretation of statutes administered and enforced by the Tax Tribunal. *Signature Villas*, *supra* at 699. Although tax statutes may not be extended by forced construction or implication, *id*. at 702, we conclude that RAB 1989-48 is not inconsistent with the plain meaning of “commonly controlled” in MCL 211.27a(7)(l).

The term “common” is defined as “belonging equally to, or shared alike by, two or more or all in question.” *Random House Webster’s College Dictionary* (1997), p 264. The term “control” means, “to exercise restraint or direction over; dominate, regulate, or command.” *Random House Webster’s College Dictionary* (1997), p 288. In this case, neither petitioner, nor its 50-percent member, Jaskowski, has any control over the trust, and the trust does not control petitioner. Thus, the transfer of property from the trust to petitioner did not involve a transfer among entities that are commonly controlled.

Petitioner also argues that the hearing referee erred by ruling against it for the reason that the ownership interests before and after the property transfer had changed. While MCL 211.27a does not impose any requirement that ownership interests must be the same both before and after the transaction, the hearing referee’s analysis and discussion of ownership interests occurred in the context of applying MCL 211.27a(7)(l). The hearing referee was merely explaining the factual basis for her decision. No error has been shown.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly