

STATE OF MICHIGAN
COURT OF APPEALS

DAVID REESE and DEBORAH K. REESE,

Petitioners-Appellants,

v

LYON TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED

July 1, 2010

No. 291328

Tax Tribunal

LC No. 00-327869

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Petitioners appeal as of right from a judgment of the Michigan Tax Tribunal granting partial summary disposition in favor of each party and determining the taxable value of real property for the years 2006 through 2008. Because petitioners have not shown that the Tax Tribunal made an error of law, we affirm.

Petitioner David Reese's father, William Reese, conveyed the property at issue to a revocable living trust. William had the sole right to the income and principal of the trust during his lifetime. After William died in 2000, the property was to pass into one of two subtrusts. The assets of one subtrust were to be conveyed to David immediately and the assets of the other subtrust were to be held in trust for two years and then distributed to David. In 2005, David, as successor trustee, transferred the house from the trust to himself and his wife Deborah. Respondent contended that the conveyance from the trust to petitioners constituted a transfer of ownership under MCL 211.27a(6), which lifted the cap on the property tax. See MCL 211.27a(2) and (3). The Tax Tribunal determined that a transfer of ownership occurred after William's death in 2000, but not in 2005, but for reasons not pertinent here, determined that the taxable value would be reset only for the years 2006 and after.

Absent fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal erred in its application of the law or adopted a wrong legal principle. *VanderWerp v Plainfield Twp*, 278 Mich App 624, 627; 752 NW2d 479 (2008). The Tax Tribunal's interpretation and application of a statute to the facts is reviewed de novo, *Alvan Motor Freight, Inc v Dep't of Treasury*, 281 Mich App 35, 38; 761 NW2d 269 (2008), although this Court will "generally defer to the Tax Tribunal's interpretations of the statutes it administers and enforces." *Kok v Cascade Twp*, 265 Mich App 413, 416; 695 NW2d 545 (2005).

Petitioners contend that a transfer of ownership did not occur with William's death in 2000 because his death did not result in any form of transfer recognized by MCL 211.27a(6) or common law. STC Bulletin No. 16 of 1995 provides some guidance.¹ In discussing transfers of ownership under § 27a(6), it identifies the beneficiary as "the person(s) who has the enjoyment and the beneficial use of the property during the life of the trust" and the contingent beneficiary as "a person who is NOT now a beneficiary but will become a beneficiary if some specified event occurs in the future." Thus, in the case of a revocable living trust in which the "parents (acting as settlors) deed their property to a trust and name themselves as beneficiaries and trustees of the trust" and may name their children as contingent beneficiaries, the parents/settlors are the sole present beneficiaries because they "have the use of the property during their lifetimes." Accordingly, William was the sole present beneficiary because he was the only person entitled to the principal and income of the trust during the life of the trust and David was a contingent beneficiary because he only became entitled to "the enjoyment and the beneficial use of the property" upon William's death. The bulletin gives the following example:

A husband and wife convey property to a trust and name themselves as beneficiaries and their children as contingent beneficiaries. The children do not become beneficiaries until the death of the parents. In this example, a "transfer of ownership" occurs upon the death of the parents, when the children actually become beneficiaries, NOT when the property is originally conveyed to the trust. [Emphasis in original.]

That is what happened in this case. William conveyed the property to the revocable living trust, made himself the beneficiary during his lifetime, and made David (through subtrusts A and B) the beneficiary after his death. When William died, the property was transferred to one of the subtrusts of which William was not the sole present beneficiary. This supports the Tax Tribunal's decision that a transfer of ownership occurred at William's death.

Affirmed. Respondent, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Pat M. Donofrio

¹ The bulletin "does not have the force of law because it is not a properly promulgated administrative rule," but does "provide[] . . . guidance on those matters that will constitute a transfer of ownership under the STC's interpretation of the law." *Moshier v Whitewater Twp*, 277 Mich App 403, 408 n 2; 745 NW2d 523 (2007).