

STATE OF MICHIGAN
COURT OF APPEALS

JAMES GARDNER and SUSAN GARDNER,

Petitioners-Appellees,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

FOR PUBLICATION
September 9, 2014

No. 315531
Tax Tribunal
LC No. 00-434966

LIEM NGO and ALECIA NGO,

Petitioners-Appellees,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

No. 315684
Tax Tribunal
LC No. 00-443522

JOHN MASELLI and JENNIFER MASELLI,

Petitioners-Appellees,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

No. 317171
Tax Tribunal
LC No. 00-448648

Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

OWENS, J. (*dissenting*).

I respectfully dissent from the majority opinion, and for the reasons provided below, would affirm the judgments of the Tax Tribunal.

MCL 207.526(u) provides a seller or transferor an exemption from the state real estate transfer tax if (1) the seller or transferor claimed a principal residence exemption for the subject property pursuant to MCL 211.7cc, and (2) the state equalized value (SEV) at the time the property was conveyed was equal to or lesser than the SEV on the date the property was acquired. The purpose of this exemption is to provide relief for homeowners in a declining market where the property's SEV decreased from the time of purchase to the time of sale.

The second sentence of subsection (u), which is in dispute, states,

If after an exemption is claimed under this subsection, the sale or transfer of property is found by the treasurer to be at a value other than the true cash value, then a penalty equal to 20% of the tax shall be assessed in addition to the tax due under this act to the seller or transferor.

The majority's interpretation of this clause, known as the "penalty clause," renders the statute effectively nugatory. Based on the plain language of the statute, the Legislature clearly intended for a penalty to be assessed where a seller or transferor claimed the exemption and the sale was "at a value other than the true cash value." In other words, the Legislature did not intend for the exemption to apply to situations where a seller or transferor sold their house at a value other than the true cash value.

The majority defined "true cash value" to mean the SEV of the property multiplied by two. According to the majority, the exemption would only apply if the property sold for exactly twice the SEV. The problem with employing this definition is that the exemption would become virtually nonexistent because a property will almost never sell for exactly twice its SEV. Although an assessor does his or her best, twice the SEV can only ever be an estimate of the true cash value, and that is why, unless the assessor is particularly lucky, sales are almost never exactly twice the SEV. This cannot be what the Legislature intended when it enacted an exemption designed to protect homeowners in a declining market.

Rather, it is an arm's length sale that, by definition, gives us the true cash value. "True cash value is synonymous with fair market value, and refers to the probable price that a willing buyer and a willing seller would arrive at through arm's length negotiation." *Detroit Lions, Inc v Dearborn*, 302 Mich App 676, 696; 840 NW2d 168 (2013). By this definition, then, the exemption would not apply only when a seller or transferor sold the property at a value other than the "price that a willing buyer and a willing seller would arrive at through arm's length negotiation." *Id.* Therefore, to claim the transfer-tax exemption, the property must be the principal residence of the seller or transferor, must have an SEV at the time of conveyance that is lesser than or equal to the SEV at the time it was acquired, and must be sold or transferred at a price resulting from an arm's length sale. Employing this definition best effectuates the legislative intent, which is the foremost rule of statutory construction. *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013).

Applying this construction to the present cases, I would affirm the judgments of the Tax Tribunal. Petitioners were selling their principal residences, the SEV of each property at the time of conveyance was lesser than the SEV at the time it was acquired, and the sales were conducted through arm's length negotiations. Because the requirements of MCL 207.526(u)

were met in all three cases, petitioners were entitled to the exemption, and therefore, the Tax Tribunal did not err by awarding refunds of the transfer tax that they each paid.

/s/ Donald S. Owens