

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MILLER-BRADFORD & RISBERG, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF NEGAUNEE and COUNTY OF  
MARQUETTE,

Respondents-Appellees.

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UNPUBLISHED  
October 10, 2013

No. 309726  
Tax Tribunal  
LC No. 00-357742

Before: RIORDAN, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Petitioner appeals by right the Tax Tribunal's grant of respondent's motion for summary disposition pursuant MCR 2.116(C)(10). Petitioner argues that respondent erroneously uncapped the taxable value of its commercial property located in Negaunee, Michigan under MCL 211.27a and b. We reverse.

**I. FACTS**

Petitioner is a Wisconsin company owned and operated by Michael J. Soley. In 1989, Soley entered into an agreement with Lake Shore Inc., a Michigan corporation, to purchase the subject property for \$320,000. But because the property required extensive environmental remediation, the parties structured the sale as a "lease/purchase" agreement. Under the agreement, petitioner paid monthly installments of \$5,000, \$2,000 of which went toward the purchase of the property. Petitioner acquired beneficial use of the property, including possession and occupancy. In addition, petitioner was responsible for the property's liabilities, including its maintenance, utilities, and taxes. The agreement specified that when Lake Shore completed environmental remediation, petitioner would pay the balance of the remaining principal and take legal title.

In 1996, petitioner acquired full legal title to the property from Lake Shore. Petitioner lost the deed, and it was never recorded. In 2008, petitioner acquired and recorded a replacement deed. Thereafter, respondent retroactively uncapped the taxable value of the subject property, considering petitioner's acquisition of legal title in 1996 to be a transfer of ownership under MCL 211.27a. As a result, respondent issued petitioner a tax bill for \$113,407.09.

On cross motions for summary disposition, the tribunal found that the “the two parties clearly negotiated the sale of the Subject by a land contract,” as the lease/purchase agreement contained “all the essential terms for a land contract,” and that petitioner “acquired a legally protected ownership interest in the Subject in 1989 even though legal title did not pass until January 1996.” Nonetheless, the tribunal granted respondent’s motion for summary disposition, concluding that the taxable value of the property uncapped “in the year succeeding when legal title eventually passed and not the year following when the contract was entered into.”

## II. STANDARD OF REVIEW

In the absence of fraud, we review a Tax Tribunal decision for misapplication of the law or adoption of a wrong principle. We consider the Tax Tribunal’s factual findings conclusive if they are supported by competent, material, and substantial evidence on the whole record. However, we review issues of statutory interpretation *de novo*. [*Malpass v Dep’t of Treasury*, 494 Mich 237, 245; 833 NW2d 272 (2013) (Citations and quotation marks omitted).]

## III. ANALYSIS

The tribunal ultimately found that the “Lease/Purchase Agreement” was a land contract in substance. Specifically, it held:

For tax purposes, a transaction’s substance rather than its form controls. . . . Though denominated as a “Lease/Purchase Agreement,” the two parties clearly negotiated the sale of the Subject by a land contract. We find that the 1989 Agreement, as amended in 1992, contains all the essential terms for a land contract, such that it could be enforced by the circuit court. . . . As a result, [petitioner] acquired a legally protected ownership interest in the Subject in 1989 even though legal title did not pass until January 1996.

Respondent does not take issue with this holding. Thus, this Court need only decide whether the passing of the “legally protected ownership interest” pursuant to the land contract entered into before 1994 was a statutory transfer of ownership under MCL 211.27a.

MCL 211.27a(2) caps the amount that a property’s taxable value can increase from year to year, notwithstanding increases in the property’s actual market value. Under MCL 211.27a(3), however, if there is a transfer of ownership, the property’s base taxable value is uncapped and recalculated using the property’s state equalized value for the calendar year following the transfer. The statute defines a “transfer of ownership” as a “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.” MCL 211.27a(6)(emphasis added). The statute further states that a “transfer of ownership” includes, but is not limited to:

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. [MCL 211.27a(6)(b).]

Here, the tribunal found that the subject property's statutory transfer of ownership occurred in 1996, when legal title passed, rather than in 1989, when petitioner entered into the land contract. MCL 211.27a(6)(b) specifically states that for land contracts entered into after 1994, the statutory transfer of ownership occurs when the contract is entered into, and not when title passes. The tribunal reasoned that the inclusion of this statutory provision implies that land contracts entered into before 1994 should be treated differently. We disagree.

“The primary goal of judicial interpretation of statutes is to discern and give effect to the intent of the Legislature; the rules of statutory construction merely serve as guides to assist in determining that intent with a greater degree of certainty.” *Niles Twp v Berrien Co Bd of Comm'rs*, 261 Mich App 308, 313; 683 NW2d 148 (2004). If statutory language is clear and unambiguous, courts presume the intended meaning is as expressed and further construction is neither required nor permitted. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). Generally, where a statute that levies a tax is ambiguous, this Court will construe that statute against the taxing unit, in favor of the taxpayer. *Stege v Dep't of Treasury*, 252 Mich App 183, 188; 651 NW2d 164 (2002).

Determining legislative intent must begin by examining the language of the statute itself, which is the most reliable evidence of the Legislature's intent. *Joseph*, 491 Mich at 205-206. Courts must accord an undefined statutory term its ordinary meaning and may not substitute alternative language for that of the Legislature. *Lash v Traverse City*, 479 Mich 180, 189; 735 NW2d 628 (2007).

A plain reading of MCL 211.27a(6) supports that the subject property's transfer of ownership occurred in 1989 when petitioner entered into the land contract. First, the statute specifically states that a transfer of ownership occurs when there is a conveyance of the “beneficial use of the property.” MCL 211.27a(6). In entering into the land contract, petitioner acquired equitable title to the property. *Graves v Am Acceptance Mortg Corp*, 469 Mich 608, 614; 677 NW2d 829 (2004). With it, petitioner enjoyed all of the rights and liabilities of ownership, including its beneficial use. As such, it would be contrary to the plain language of the statute to conclude that petitioner did not acquire ownership of the property until legal title passed in 1996.

Second, the Legislature did not implicitly limit MCL 211.27a(6)(b) to land contracts entered into before 1994. The statute expressly provides that a “transfer of ownership” includes, but is not limited to: “A conveyance by land contract.” This sentence is clear, unambiguous, and unqualified. The statute later explains that if a land contract is entered into after 1994, the property's taxable value only uncaps at the time of contract formation, and not again when legal title passes. But, this does not imply that for pre-1994 land contracts, transfer of ownership occurs at the passing of legal title. Rather, this is simply an explanatory provision intended to ensure that a property's taxable value is not uncapped twice for a single owner. Indeed, the Legislature had no reason to include such a provision for land contracts entered into before 1994. A property's taxable value cannot uncap twice in such a situation because the contract formation

would have occurred before the state began capping and uncapping the taxable value of real property.

Last, the tribunal should not have relied on the canon *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another), as the Legislature specifically stated, the list of statutory transfers of ownership is nonexclusive. If anything, the tribunal should have applied the canon to MCL 211.27a(7), which lists items not to be considered statutory transfers of ownership and *does not* include land contracts entered into before 1994. See MCL 211.27a(7).

The tribunal's interpretation of MCL 211.27a(6)(b) contradicts the plain language of the statute and directly conflicts with the general definition of "transfer of ownership" contained in MCL 211.27a(6). As such, the tribunal erred in finding that the subject property's transfer of ownership occurred when legal title passed in 1996, and not when petitioner entered into the lease/purchase agreement in 1989.

Because no statutory transfer of ownership occurred in 1996, respondent should not have uncapped the taxable value of the subject property. As a result, petitioner's remaining arguments on appeal are moot, and we decline to address them.

We reverse and remand for issuance of an order consistent with this opinion. We do not retain jurisdiction. As the prevailing party petitioner-appellant may tax costs pursuant to MCR.7.219.

/s/ Michael J. Riordan

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly