



**Date:** February 4, 2007  
**To:** Township Supervisors  
**From:** MTA Member Information Services

**Re:** Exemption of Certain Joint Tenancy Transfers from Uncapping of Taxable Value

A recent Michigan Court of Appeals opinion established a new interpretation of whether certain transfers of real property between joint tenants are transfers exempt from uncapping the taxable value of the property under MCL 211.27a(7)(h). As a result, owners of property that was previously uncapped may be entitled to a corrected taxable value and a refund of a portion of property taxes paid for up to three prior years.

In *Moshier v Whitewater Township*, \_\_\_ Mich. App. \_\_\_, issued December 20, 2007, the Court held that, where at least one of the persons involved in a transfer between joint tenants was a joint tenant at the time the joint tenancy was originally created and has remained a joint tenant since that time, a transfer to a joint tenant who was not an original owner of the property is exempt from uncapping under MCL 211.27a(7)(h).

Moshier's parents acquired the property as tenants by the entirety in 1987, and shortly before Proposal A took effect in 1994, they deeded the property to themselves and their son as joint tenants with rights of survivorship. The father died in 1995, and the mother quit-claimed her entire interest in the property to the son in 2003. Following State Tax Commission (STC) Bulletin No. 16 of 1995, the township uncapped the taxable value of the property beginning with the 2004 tax year because the son was not an original owner of the property when the property was purchased.

The Court held, however, that MCL 211.27a(7)(h) does not require that the property vest in an original owner, as long as it vests in a joint tenant and "one of the persons involved in the transfer in question was a joint tenant at the time the joint tenancy was originally created, and that this person remained so since that time."

On February 5, 2007, the STC issued a statement that, as a published Court of Appeals decision, the *Moshier* decision is precedent-setting, and assessors should familiarize themselves with the decision. The STC cautioned that the decision "should be read with a narrow interpretation, given the specific facts as outlined in this case."

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The March board of review has the authority to correct the current tax year's taxable value. Under Public Act 23 of 2005 (MCL 211.7a(4)) and STC Bulletin No. 9 of 2005, the July or December boards of review have "the authority to [adjust] the taxable value of property that was previously uncapped (due to a perceived transfer of ownership) if the assessor has determined that there had not been a transfer of ownership after all. This authority applies to the current year and the three immediately preceding years."

Bulletin No. 9 explains that, "Adjustment of taxable value refers to the process of reversing an incorrect uncapping by changing the existing uncapped taxable value to the taxable value the property would have if it had not been uncapped. This process will require going back to the year when the taxable value was (incorrectly) uncapped and recalculating the capped value from that point forward to the current year to determine the revised taxable value(s)."

The Michigan Townships Association and the Michigan Department of Treasury are working with the Legislature to provide clarification in the statute regarding this issue, which may include closing this "loophole" retroactively to 1994.

Supervisors, assessors and boards of review should be aware that some previously uncapped properties may be eligible for a current tax year adjustment at the March 2008 board of review, requiring a recalculation of the taxable value from the time the uncapping occurred. Refunds of previous year taxes would not be addressed until the July or December board of review.

Because of the potential for legislative action, townships may wish to inform taxpayers who appeal an uncapping that legislative amendments may yet preserve the original uncapping.

*(End)*