

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

Gregory H Videan,
Petitioner,

MTT Docket No. 15-000143

v

Case Type: Disabled Veterans Exemption

Norwich Township,
Respondent.

Tribunal Member Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

Location of Hearing:	Traverse City, MI
Hearing Held on:	February 5, 2016
Appearances on Behalf of Petitioner:	Gregory H. Videan, Margo Videan, Brian Hoffman, Esq.
Appearances on Behalf of Respondent:	Failed to appear

SUMMARY OF JUDGMENT

The subject property, parcel number 57-010-059-002-50, shall be granted an exemption, under MCL 211.7b, for the 2013 tax year; the amount of the exemption is 100%.

PROCEDURAL HISTORY

Petitioner filed an affidavit with the supervisor or other assessing officer on December 4, 2013.

Petitioner filed his Petition with the Tribunal on January 29, 2015, and Respondent filed its Answer on December 1, 2015.

The amount of the taxable value in dispute, as set forth in the pleadings, for the tax year at issue, is within the jurisdictional limits of the Small Claims Division.¹

ISSUES AND APPLICABLE LAW

The issue in this matter is:

Whether Petitioner's property qualifies for a property tax exemption pursuant to MCL 211.7b.

¹ See MCL 205.762(1).

“In general, tax exempt statutes must be strictly construed in favor of the taxing authority.”² The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption.³

MCL 211.7b provides in pertinent part:

Real property used and owned as a homestead by a disabled veteran who was discharged from the armed forces of the United States under honorable conditions . . . is exempt from the collection of taxes under this act. . . . If a disabled veteran who is otherwise eligible for the exemption under this section dies, either before or after the exemption under this section is granted, the exemption shall remain available to or shall continue for his or her unremarried surviving spouse.

To qualify for the Disabled Veterans Exemption, MCL 211.7b requires that:

[A]n affidavit showing the facts required by this section and a description of the real property shall be filed by the property owner or his or her legal designee with the supervisor or other assessing officer during the period beginning with the tax day for each year and ending at the time of the final adjournment of the local board of review. The affidavit when filed shall be open to inspection. The county treasurer shall cancel taxes subject to collection under this act for any year in which a disabled veteran eligible for the exemption under this section has acquired title to real property exempt under this section. Upon granting the exemption under this section, each local taxing unit shall bear the loss of its portion of the taxes upon which the exemption has been granted.

MCL 211.7b(3) defines a disabled veteran as a person who resides in Michigan and satisfies one of the following requirements:

- (1) Has been determined by the United States department of veterans affairs to be permanently and totally disabled as a result of military service and entitled to veterans' benefits at the 100% rate.
- (2) Has a certificate from the United States veterans' administration, or its successors, certifying that he or she is receiving or has received pecuniary assistance due to disability for specially adapted housing.
- (3) Has been rated by the United States department of veterans affairs as individually unemployable.

SUMMARY OF EVIDENCE

A. Petitioner's Evidence

Petitioner offered the following exhibits:

² *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); see also *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753; 298 NW2d 422 (1980).

³ See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

1. Evidence, filed on January 29, 2015
 - a. An affidavit signed by Petitioner, dated December 4, 2013.
 - b. A letter from Dawn Jones, Norwich Township Treasurer, dated January 15, 2015.

Based on the pleadings, admitted exhibits, and sworn testimony, Petitioner stated that he timely filed his Affidavit claiming the exemption with the December 2013 Board of Review, which granted the exemption. Subsequently, Respondent's assessor denied Petitioner the exemption for 2013, citing Petitioner's daughter as a part owner of the subject property. Petitioner contends that he is a 100% disabled veteran and qualifies for the veteran's exemption.

B. Respondent's Evidence

Respondent offered the following exhibits: None

Respondent failed to appear at the hearing. Further, Respondent failed to offer any evidence in this matter.

FINDINGS OF FACT

The following facts were found to be proven by a preponderance of the evidence:

1. The subject property is located at 10733 North 9 Mile Road, in the county of Missaukee.
2. The subject property is classified as residential.
3. Petitioner is an owner of the subject property.
4. The subject property is used and owned as a homestead.
5. Petitioner has been determined to be 100% disabled by the Veteran's Administration.
6. Petitioner filed an Affidavit claiming the Veteran's Exemption for 2013 with the December 2013 Board of Review.
7. The December 2013 Board of Review granted the exemption to Petitioner, but the exemption was subsequently denied by Respondent's assessor.

CONCLUSIONS OF LAW

1. The following authority and reasoned opinion supports the Tribunal's determination:

Petitioner contends that Respondent improperly denied his request for a disabled veteran's exemption for the 2013 tax year at issue in this appeal. MCL 211.7b governs such requests and states, in pertinent part, as follows:

To obtain the exemption, an affidavit showing the facts required by this section and a description of the real property shall be filed by the property owner or his or her legal designee with the supervisor or other assessing officer during the period beginning with the tax day for each year and ending at the time of the final

adjournment of the local board of review.⁴

Petitioner testified that he timely filed his affidavit claiming the exemption with the December 2013 Board of Review, which granted the exemption. Subsequently, Respondent's assessor denied Petitioner the exemption for 2013, citing Petitioner's daughter as a part owner of the subject property. The Tribunal notes, in that regard, that the State Tax Commission's P.A. 161 of 2013: Disabled Veterans Exemption Frequently Asked Questions publication, which was approved August 26, 2014, provides as follows:

My home is in a joint tenancy, am I eligible for the exemption?

No. A joint tenancy is a form of concurrent ownership wherein each co-tenant owns an undivided share of property and the surviving co-tenant has the right to the whole estate. The Act does not provide for a partial exemption in the situation where you are a partial owner of a property.

The Tribunal finds that there is no basis for this interpretation of the relevant statute. MCL 211.7b(1) states only that “[r]eal property used and owned as a homestead by a disabled veteran who was discharged from the armed forces of the United States under honorable conditions or by an individual described in subsection (2) is exempt from the collection of taxes under this act.” Words and phrases in a statute are to be given their plain and ordinary meaning.⁵ The Tribunal finds that the plain meaning of the statute only indicates that the disabled veteran must *own* the subject property. There is no indication that the legislature intended to require that the property be *solely* owned by the disabled veteran. The word “owned” is not defined in the statute, and the Tribunal finds that dictionary definitions may be helpful in construing statutory language according to its common and approved usage.⁶ Black's Law Dictionary defines “own” as “[t]o rightfully have or possess as property; to have legal title to.”⁷ Therefore, without modification, that the mere use of the word “owned” does not indicate a sole possessory right. Rather, the veteran must only rightfully have or possess the subject property. Therefore, the Tribunal finds that the State Tax Commission Bulletin No. 22 of 2013 erroneously indicates that the veteran must be a sole owner. This interpretation is contrary to the plain language of the statute.

Given the above, the Tribunal finds that the evidence and testimony on record reliably support that Petitioner qualified for the disabled veteran's exemption under MCL 211.7b for the 2013 tax year. The only reason the exemption was denied is because of the STC's erroneous interpretation of the statute at hand; there is no dispute that Petitioner is an owner, albeit a joint owner of the subject property.

2. Based upon the findings of fact and conclusions of law, the property's Disabled Veterans Exemption for the tax year at issue are as listed in the Summary of Judgment section of this Final Opinion and Judgment.

⁴ *Id.*

⁵ *Kinder Morgan Mich, LLC v City of Jackson*, 277 Mich App 159, 163; 744 NW2d 184, 188 (2007).

⁶ *People v Bobek*, 217 Mich App 524, 529; 553 NW2d 18, 21 (1996).

⁷ Black's Law Dictionary (9th ed).

JUDGMENT

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.⁸ To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the \$25.00 filing fee, if applicable, within 21 days from the date of entry of this final decision.⁹ A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion for reconsideration was served on the opposing party.¹⁰ However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.¹¹

⁸ See MCL 205.755.

⁹ See TTR 257 and TTR 267.

¹⁰ See TTR 225.

¹¹ See TTR 257.

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.¹² If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the \$100.00 fee, if applicable, for the certification of the record on appeal.¹³

By Steven H. Lasher

Date Entered by Tribunal: February 22, 2016
kmr

¹² See MCR 7.204.

¹³ See TTR 213 and TTR 267.