

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Linda Williams (a.k.a. Marie Ruth Linda Monie),
Petitioner,

v

MTT Docket No. 322275

City of Detroit,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER DESIGNATING DECISION AS PRECEDENT

Pursuant to MCL 205.765, the Michigan Tax Tribunal declares the March 21, 2008 decision rendered in this case precedential for defining entitlement to a poverty exemption, pursuant to MCL 211.7u.

MICHIGAN TAX TRIBUNAL

Entered: April 4, 2008

By: Patricia L. Halm

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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

Linda Williams (a.k.a. Marie Ruth Linda Monie),
Petitioner,

v

MTT Docket No. 322275

City of Detroit,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

FINAL OPINION AND JUDGMENT

This matter was heard before Administrative Law Judge Thomas A. Halick, who issued a Proposed Judgment on February 12, 2008. No exceptions or written arguments to the Proposed

Judgment have been filed. The Tribunal, pursuant to Section 26 of the Tax Tribunal Act, as amended by 1980 PA 437, has given due consideration to the case file, and adopts and incorporates by reference the findings of fact and conclusions of law in the Proposed Judgment as the final decision of the Tribunal.

IT IS ORDERED that Petitioner's request for a poverty exemption for the subject property for tax year 2006 is GRANTED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the *granting* of Petitioner's poverty exemption for tax year 2006, as necessary.

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 as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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 interest shall accrue (i) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

Entered: March 21, 2008

By: Patricia L. Halm

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of

**Linda Williams (a.k.a. Marie Ruth Linda
Monie),
Petitioner,**

**MICHIGAN TAX TRIBUNAL
RESIDENTIAL PROPERTY AND
SMALL CLAIMS DIVISION**

v

MTT Docket No. 0322275

**City of Detroit,
Respondent.**

**Administrative Law Judge Presiding
Thomas A. Halick**

PROPOSED OPINION AND JUDGMENT

A hearing for the above-captioned case was held on January 17, 2008. Petitioner represented herself. Respondent was represented by Eloreen Smothers.

SUMMARY OF JUDGMENT

The Tribunal, having considered the evidence properly submitted in the above-captioned case, concludes that the subject property (Parcel No. 15004726) shall be granted a Poverty Exemption of 100% for the 2006 tax year under MCL 211.7u.

BACKGROUND

The subject property is located in Wayne County, State of Michigan. The property is classified for taxation purposes as residential property and the average level of assessment in effect for the property's classification for the tax years at issue is 50%.

The affected school districts are Detroit Public Schools, Wayne Intermediate, and Wayne County Community College.

The property has a principal residence exemption of 100% for the tax year at issue.

Petitioner submitted an application to the 2006 Board of Review.

Petitioner filed the original letter of appeal by letter postmarked April 26, 2006.

The issues in this case relate to the exempt status for the 2006 tax year.

A. Petitioner's Statement of Facts

Petitioner presented the following documents:

1. Property Tax Appeal Petition letter filed April 26, 2006.
2. Copy of the Board of Review decision filed April 26, 2006.
3. Copy of Petition to the Board of Review filed April 26, 2006.
4. Copies of Social Security and Medicare records filed April 26, 2006.
5. Copies of utility bills and medical bills filed April 26, 2006.
6. Property Tax Appeal Petition Form filed June 20, 2006
7. Copy of letter to Board of Review filed June 20, 2006.
8. Copy of Social Security records filed June 20, 2006.
9. Letter requesting reconsideration of dismissal filed October 4, 2007.

Based upon the above documentation, the pleadings, and the sworn testimony of Linda Williams, Petitioner contends she is entitled to a poverty exemption for the tax years at issue and that the determination of the Board of Review was incorrect.

B. Respondent's Statement of Facts

Respondent presented the following documents:

1. Property Tax Appeal Answer form filed November 2, 2006.
2. Copy of real estate listing information for the subject property filed November 2, 2006.
3. Copy of Board of Review determination, with supporting documents, filed November 2, 2006.

Based upon the above documents, pleadings, and the sworn testimony of Eloreen Smothers, Respondent contends that the Board of Review was correct in denying Petitioner a poverty exemption because she has not owned the subject property for the requisite period of time (three years).

FINDINGS OF FACT

Petitioner owns and occupies the subject property as her principal residence. A quitclaim deed executed October 7, 2004 establishes that Petitioner's son, Ivreco Nicholson, and an individual named Natasha PL Gibson, as joint owners, transferred the property to Petitioner. She lived in the subject property for many years prior to 2004 and continued to live there in 2005 and 2006. The subject property received a 100% poverty exemption in 2007 under MCL 211.7u, as testified to by Petitioner, and no contrary evidence was presented.

Respondent denied the exemption because Petitioner had not owned the subject property for more than three years as required by the policy adopted by the Board of Review.

There is no dispute that Petitioner's household income and assets are below the statutory threshold for the 2006 tax year. Petitioner did not present photo identification with her application, but she testified that her current driver's license shows the address of the subject property as her residence. She receives mail at a post office box at the Centerline post office, which is close to her house. Another post office in Detroit near the subject does not have post office boxes available. The Centerline post office is conveniently located on the bus line. She has had problems with stolen mail and therefore uses a post office box.

Petitioner claims that she legally changed her name to Marie Ruth Linda Monie on December 1, 2006.

CONCLUSIONS OF LAW

"In general, tax exemption statutes are to be strictly construed in favor of the taxing authority." *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664 (1985); *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753-754 (1980). The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490 (2002).

In this case, Petitioner argues that she is entitled to a poverty exemption under MCL 211.7u, which provides in pertinent part:

- (1) The principal residence of persons, who, in the judgment of the supervisor and board of review, by reason of poverty, are unable to contribute toward the public charges is eligible for exemption in whole or in part from taxation under this act. This section does not apply to the property of a corporation.
- (2) To be eligible under this section, a person shall do all of the following on an annual basis...
 - (e) Meet the federal poverty guidelines updated annually in the federal register by the United States department of health and human services under authority of section 673 of subtitle B of title VI of the omnibus budget reconciliation act of 1981, Public Law 97-35, 42 U.S.C. 9902, or alternative guidelines adopted by the governing body of the local assessing unit provided the alternative guidelines do not provide income eligibility requirements less than the federal guidelines.

Based upon the above findings of fact and the applicable statutory and case law, the Tribunal concludes that Petitioner has met all the above criteria and shall be granted a 100% exemption from property taxes under MCL 211.7u for parcel No. 15004726.

Respondent denied the claim for Petitioner's failure to own the property for at least three years as required by paragraph 2 of Respondent's Policy. The Tribunal concludes that there is insufficient evidence to establish that this policy was enacted by a legislative act of the governing body of the City of Detroit (The City Council). The documentary evidence merely shows that it was

“respectfully submitted” by the “Detroit Citizens Board of Review,” which lacks legislative powers. The statute requires that the “governing body” (Detroit City Council) shall establish local guidelines.

The governing body of the local assessing unit shall determine and make available to the public the policy and guidelines the local assessing unit uses for the granting of exemptions under this section. The guidelines shall include but not be limited to the specific income and asset levels of the claimant and total household income and assets. MCL 211.7u(4).

A resolution is the form in which a legislative body expresses a determination or directs a particular action. *Duggan v Clare Co Bd of Comm’rs*, 203 Mich App 573 (1994). In this case there is no evidence that the City Council adopted a resolution or enacted this policy by ordinance.

Assuming, for the sake of argument, that the policy has the force and effect of law, it is concluded that the three-year ownership requirement is not authorized by the statute. The city is expressly authorized to adopt a more lenient income test and is required to adopt an asset test. However, there is no express authority to disqualify an otherwise eligible person merely for failure to own the property for three years. The statute speaks to this issue, and only requires that the person be “an owner of and occupy as a principal residence the property for which an exemption is requested.” MCL 211.7u2(a). The statutory definition of “principal residence” does not require occupancy for a specific period of time in order for a property to qualify as a person’s principal residence. MCL 211.7dd. The three-year requirement places an additional burden on the taxpayer that is not imposed by the statute with regard to an issue that is affirmatively addressed by the statute. The legislature indicated that occupancy and ownership is required for the tax year at issue, but did not include a time element.

This case is similar to the Tribunal’s precedential decision in *Mandel v City of Oak Park*, MTT Docket No. 274378 (August 15, 2002), in which the city adopted a policy denying the exemption for more than three years in a row. The Tribunal held that such a policy was contrary to the intent and purpose of the statute and bore no relation to the person’s ability to contribute to the public charges.

The general property tax act (Act), MCL 211.1 *et seq.*, provides for the annual assessment and taxation of all real and personal property within the state not expressly exempted. Subsection 2 of section 2 of the Act; MCL 211.2(2) provides in relevant part:

(2) The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.

Thus the taxable status of real property is determined each year as of the tax day;

each tax year stands alone. Instead, under the City's longevity limitation guideline, section 7u exemption eligibility (taxable status) for a current year is restricted by past grants of the exemption (taxable status). The Tribunal concludes that the City's longevity limitation on the grant of a section 7u exemption violates the mandate of MCL 211.2(2) that the taxable status of real property for a tax year shall be determined each year. Nothing in section 7u permits the City to adopt a policy or guideline contrary to the mandate of MCL 211.2(2) that the taxable status of real property be determined each year. A guideline or rule that conflicts with the provisions of the governing statute is invalid. *Michigan Sportservice, Inc v Dept of Revenue*, 319 Mich 561, 566, 30 NW2d 281, 283 (1948) (“The provisions of the rule must, of course, be construed in connection with the statute itself. In case of conflict the latter governs.”); *Meade Twp v Andrus*, 695 F2d 1006, 1009 (1982). See also, *Danse Corp v City of Madison Heights*, 466 Mich 175, 644 NW2d 721 (2002). *Mandel v City of Oak Park*, MTT Docket No. 274378 (August 15, 2002).

As in *Mandel*, the three-year ownership rule is contrary to the statute, is arbitrary, and effectively punishes home ownership. A person may acquire ownership of a home by gift or inheritance or other means unrelated to her ability to pay property taxes due to poverty. In this case, Petitioner acquired the property from her son for no consideration. She has lived in the subject property for many years. The restriction at issue here is contrary to the statutory intent to provide a property tax exemption to persons who “by reason of poverty, are unable to contribute to the public charges.”

Based upon the above findings of fact and the applicable statutory and case law, the Tribunal concludes that Petitioner is entitled to a 100% exemption under MCL 211.7u for the 2006 tax year.

JUDGMENT

IT IS ORDERED that the subject property (Parcel No. 15004726) shall be granted a 100% exemption from property taxes under MCL 211.7u for the 2006 tax year.

Entered by Chief Clerk: February 12, 2008

Date Signed: February 6, 2008

By: Thomas A. Halick, Administrative Law Judge

This Proposed Opinion and Judgment (“Proposed Opinion”) was prepared by the State Office of Administrative Hearings and Rules. The parties have 20 days from date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree (i.e., exceptions). After the expiration of the 20-day time period, the Tribunal will review the Proposed Opinion and consider the exceptions, if any, and:

- a. Adopt the Proposed Opinion as a Final Decision.

- b. Modify the Proposed Opinion and adopt it as a Final Decision.
- c. Order a rehearing or take such other action as is necessary and appropriate.

The exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Opinion. There is no fee for the filing of exceptions. A copy of a party's written exceptions must be sent to the opposing party.