

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

Dvera Mandel,
Petitioner,

v

MTT Docket No. 274378

City of Oak Park,
Respondent,

Tribunal Judge Presiding
Michael A. Stimpson

and
Michigan State Tax Commission,
Michigan Municipal League,
Amicus Curiae

ORDER DESIGNATING DECISION AS PRECEDENT

Pursuant to MCL 205.765, the Michigan Tax Tribunal designates as precedential the decision of Tribunal Judge Thomas J. Hughes entered in the captioned proceeding on August 15, 2002 holding invalid and unlawful a policy and guidelines adopted by the governing body of a local assessing unit that limits the number of years a homestead is eligible for a property tax poverty exemption claimed under section 7u; MCL 211.7u, of the general property tax act.

The decision provides guidance regarding legal standards applicable to the adoption under section 7u(4); MCL 211.7u(4), of the policy and guidelines that a local assessing unit uses for granting exemptions under section 7u; MCL 211.7u.

IT IS SO ORDERED.

MICHIGAN TAX TRIBUNAL

Entered: August 15, 2002

By: _____
Michael A. Stimpson, Tribunal Chair

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OPINION AND JUDGMENT ON REHEARING

Tribunal Judge Presiding: Thomas J. Hughes

Location of Hearing: Pontiac, Michigan

Date of Hearing: September 5, 2001

A rehearing was held on September 5, 2001 in MTT Docket No. 274378 pursuant to an order entered June 12, 2001 granting Respondent City of Oak Park's (the City) motion for rehearing in respect of the opinion and judgment entered March 22, 2001, which is hereby VACATED.

Petitioner, Dvera Mandel, was given proper written notice of the hearing, but did not appear. Aaron Powers, the City Assessor and Lawrence A. Berg, the City Attorney were present. Argument was heard and testimony taken. At the request of the Tribunal, the City filed on October 22, 2001 a supplemental memorandum regarding the property tax poverty exemption claimed by Petitioner under

MCL 211.7u of the general property tax act, MCL 211.1 *et seq.*

By order entered November 19, 2001, the State Tax Commission (STC) was required to appear as amicus curiae and filed an amicus brief on April 29, 2002; the City filed a reply brief on May 13, 2002. On January 17, 2002, the Tribunal granted the Michigan Municipal League's motion to file an amicus brief that was filed on May 14, 2002.

This property tax appeal requires the Tribunal to determine whether the limitations adopted by the City on the frequency a claimant may be eligible for a poverty exemption are valid and enforceable under the provisions of MCL 211.7u as amended by 1994 PA 390, effective December 29, 1994, or other applicable law.

FINDINGS OF FACT

Petitioner appealed to the Tax Tribunal the City's denial of her property tax poverty exemption claim for the tax year 2000 under MCL 211.7u in respect of her homestead, the subject property, located in the City of Oak Park, Oakland County, Michigan. The subject property was assessed to Petitioner for the tax year 2000 as follows:

PARCEL NUMBER	TRUE CASH VALUE	STATE EQUALIZED VALUE	TAXABLE VALUE
52-25-29-278-008	\$107,000	\$53,500	\$33,800

Petitioner was granted partial poverty exemptions under MCL 211.7u for the subject property for the tax years 1998 and 1999 but denied an exemption for the tax year 2000 as set forth in the following documentary evidence submitted by the City in this proceeding:

MTT DOCKET # 274378

PARCEL # 52-25-29-278-008

As previously noted on our Respondent's Answer Form [to the petition], the petitioner fell outside the guidelines of the City of Oak Park Board of Review Poverty Exemption Policy. More specifically, as indicated in the Longevity Limitations section of said policy, "A poverty exemption will not be granted in more than two (2) consecutive years." This policy was adopted on August 18, 1997, with an effective date of December 31, 1997. Since that time, the petitioner has been granted exemptions in both 1998 & 1999, as detailed below and in the enclosed minutes from those hearings.

<u>Tax Year</u>	<u>Original A/V</u>	<u>Revised A/V</u>	<u>Original T/V</u>	<u>Revised T/V</u>
1999	46,200	36,300	33,170	23,170
1998	41,400	30,900	32,650	21,870

Respondent's Documentary Evidence, filed January 3, 2001.

Petitioner properly completed the City's poverty exemption process for the tax year 2000 and appeared before the March 2000 Board of Review. The City Assessor and Board of Review denied her poverty exemption claim as the subject property was disqualified for an MCL 211.7u property tax exemption under the longevity limitations contained in the City's 2000 Poverty Exemption Policy (Appendix A hereto), which provides:

LONGEVITY LIMITATIONS

A Poverty Exemption may only be granted for the current tax year. To obtain a Poverty Exemption for the following tax year the applicant(s) must repeat the application process.

A Poverty Exemption will not be granted in more than two (2) consecutive years.

A Poverty Exemption will not be granted more than two (2) times in any five (5) year period.

On March 27, 2000 the Board of Review denied Petitioner's poverty exemption request because "Petitioner did not fall within the City's poverty exemption policy" for the reason that an exemption will not be granted in more than two (2) consecutive years or more than two (2) times in any five (5) year period. The City's documentary evidence (filed January 3, 2001) contains an estimate that the subject property would have qualified under the City's Poverty Exemption Policy for a partial exemption of \$11,263 in taxable value (reducing the 2000 taxable value to \$22,537) if the longevity limitations were not invoked.

CONCLUSIONS OF LAW

Section 7u; MCL 211.7u of the general property tax act, in effect for the tax year 2000, provides:

Sec. 7u. (1) The homestead 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 for exemption under this section, a person shall do all of the following on an annual basis:

(a) Be an owner of and occupy as a homestead the property for which an exemption is requested.

(b) File a claim with the supervisor or board of review on a form provided by the local assessing unit, accompanied by federal and state income tax returns for all persons residing in the homestead, including any property tax credit returns, filed in the immediately preceding year or in the current year. The filing of a claim under this subsection constitutes an appearance before the board of review for the purpose of preserving the claimant's right to appeal the decision of the board of review regarding the claim.

(c) Produce a valid driver's license or other form of identification if requested by the supervisor or board of review.

(d) Produce a deed, land contract, or other evidence of ownership of the

property for which an exemption is requested if required by the supervisor or board of review.

(e) Meet the federal poverty income standards as defined and determined annually by the United States office of management and budget 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.

(3) The application for an exemption under this section shall be filed after January 1 but before the day prior to the last day of the board of review.

(4) 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.

(5) The board of review shall follow the policy and guidelines of the local assessing unit in granting or denying an exemption under this section unless the board of review determines there are substantial and compelling reasons why there should be a deviation from the policy and guidelines and the substantial and compelling reasons are communicated in writing to the claimant.

(6) A person who files a claim under this section is not prohibited from also appealing the assessment on the property for which that claim is made before the board of review in the same year.

(7) As used in this section, "homestead" means homestead or qualified agricultural property as those terms are defined in section 7dd.

In response to MCL 211.7u(4), the City adopted a policy and guidelines for use in granting exemptions under section 7u. In addition to the requirements of MCL 211.7u(2), the City's 2000 Poverty Exemption Policy (Appendix A) includes a limitation that an exemption will not be granted for more than two (2) consecutive years or for more than two (2) years in any five (5) year period. The effect of this restriction is that a homestead granted an exemption under MCL 211.7u for either the previous two years or any two years out of the previous four is not eligible for exemption for the current year. In the instant case, Petitioner's exemption claim for the tax year 2000 was denied because the subject property was granted an MCL 211.7u exemption for the two consecutive years 1998 and 1999.

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) in which the Michigan Supreme Court held invalid certain STC guidelines contained in the *Assessor's Manual* for use by assessors in determining whether a particular device is a special tool because the guidelines contained a time condition that expanded the definition of special tools adopted by the STC in rule 21; 1999 AC, R 209.21, promulgated in accordance with the Administrative Procedures Act, MCL 24.201 *et seq.*

Section 7u(4) requires a local assessing unit to determine and publish the policy and guidelines that it uses for granting exemptions under section 7u which “shall *include but not be limited to the specific income and asset levels of the claimant and total household income and assets.*” But section 7u(4) does not grant unlimited discretion to a local assessing unit in adopting additional guidelines. To be valid, such guidelines must comply with the provisions of section 7u(1) and must be rationally related to the legislative purpose and policy. *Guardian Industries Corp v Dept of Treasury*, 243 Mich App 244, 254, 621 NW2d 450, 456 (2000) (“[I]nterpretive rules are invalid when they conflict with the governing statute, extend or modify the statute, or have no reasonable relationship to a statutory purpose. *Clonlara, Inc v State Bd of Ed*, 442 Mich. 230, 243, n 26; 501 NW 2d 88 (1993), citing 1 Cooper, *State Administrative Law*, pp. 252-259.”)

Unlike a 7u(4) guideline based upon “specific income and asset levels of the claimant and total household income and assets,” the City’s longevity limitation guideline is invalid as contrary to and wholly unrelated to the express terms and legislative purpose of section 7u(1), which is to grant a property tax exemption of the homestead of persons who “by reason of poverty, are unable to contribute to the public charges.” The purpose of the City’s limitation is to restrict the availability of the exemption to claimants otherwise qualified under its 2000 Poverty Exemption Policy; it has nothing to do with determining a claimant’s poverty or ability to contribute to the public charges, which are the criteria necessary under section 7u(1) to qualify for the exemption.

Section 7u(5) requires the City Board of Review to follow the policies and guidelines adopted by the City unless the Board determines that there are substantial and compelling reasons why there should be a deviation from the policy and guidelines. Similarly, the City’s Poverty Exemption Policy provides

that if the Board of Review determines that there are substantial and compelling reasons why there should be a deviation from the guidelines, the Board may approve or deny relief beyond the stated guidelines and the board shall communicate the substantial and compelling reasons in writing to the exemption applicant. (*See Appendix A*)

Relying on section 7u(5) and the similar provision in the City's Poverty Exemption Policy, the City Board of Review arguably could in the exercise of its judgment in a particular case grant an exemption otherwise barred by the City's longevity limitations. But such discretion in the City Board of Review does not validate a limitation that restricts the frequency of the availability of the section 7u exemption and is wholly unrelated to the fundamental legislative purpose of section 7u to grant a property tax exemption of the homestead of persons who by reason of poverty are unable to contribute to the public charges. Nothing in section 7u indicates that eligibility for the exemption is or may be limited in any way by the number of years that a homestead has been granted a section 7u exemption.

The Tribunal concludes that the limitation included in the City's 2000 Poverty Exemption Policy (Appendix A) that an MCL 211.7u exemption will not be granted for more than two (2) consecutive years or more than two (2) times in any five (5) year period is invalid and unlawful. The Tribunal further concludes that the subject property is entitled under the City's 2000 Poverty Exemption Policy to a partial exemption of \$11,263 in taxable value (reducing the 2000 taxable value to \$22,537).

JUDGMENT

IT IS ORDERED that the subject property, parcel number 52-25-29-278-008, is entitled to a partial property tax exemption under MCL 211.7u for the tax year 2000 as provided in the Conclusions of Law of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with keeping the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's revised assessed and taxable value as exempt as provided in the Conclusions of Law of this Opinion and Judgment, within 20 days of the entry of this Order.

IT IS FURTHER ORDERED that the persons having responsibility for the tax rolls and tax bills for the tax year at issue shall correct or cause the rolls and bills to be corrected to reflect the property's revised assessed and taxable value as exempt as provided in the Conclusions of Law of this Opinion and Judgment, within 20 days of the date this judgment is entered.

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 this Order within 20 days of the entry of this Order. 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. 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 Order. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of 91- day discount treasury bill rate for the first Monday in each month, plus 1%. After December 31, 1995, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after

December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at a rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at a rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at a rate of 6.56% for calendar year 2001, and (vii) after December 31, 2001, at a rate of 5.56% for calendar year 2002.

The interested school districts are Ferndale Public, Oakland County Intermediate and Oakland Community College.

MICHIGAN TAX TRIBUNAL

Entered: August 15, 2002

By: Thomas J. Hughes