

Michigan Supreme Court
Clarifies requirements of joint tenancy exception to property tax uncapping:
Klooster v City of Charlevoix

EXECUTIVE SUMMARY:

On March 10, 2011, the Michigan Supreme Court issued a unanimous decision in *Klooster v City of Charlevoix*. The Court clarified the requirements of the joint tenancy exception to property tax uncapping. If carefully prepared in accordance with *Klooster*, a property transaction creating or terminating a joint tenancy will avoid property tax uncapping and, therefore, lock-in low property tax values and result in property tax savings. This is especially important for highly appreciated properties. Taxpayers should seek property tax advice from legal counsel knowledgeable with the *Klooster* decision before executing a deed creating or terminating a joint tenancy.

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Previously, property taxes had been levied against the assessed value of property as determined each year by the local assessor. Since 1995, property taxes are now levied against the taxable value of property, regardless of its assessed value. Generally, taxable value increases in any year by the amount of five percent or the rate of inflation, whichever is less. The single biggest exception to this cap is a “transfer of ownership” of the property. When a transfer of ownership occurs, the cap on taxable value is lifted and adjusted to assessed value. Michigan statutes define certain transfers or conveyances which are not a “transfer of ownership.” The *Klooster* decision dealt with one such instance, specifically, the joint tenancy exception to “transfer of ownership.”

In 1959, the taxpayer’s parents purchased the subject property. In 2004, the taxpayer’s mother transferred her interest in the property to the taxpayer’s father. The father then transferred the property to himself and the taxpayer as joint tenants with rights of survivorship. In early 2005, the taxpayer’s father passed away. The taxpayer then became the sole owner of the property. Later that year, the taxpayer transferred the property to himself and his brother as joint tenants with rights of survivorship. The events in 2005 led the city assessor to uncap the property’s taxable value in 2006. The issue presented was whether the property’s taxable value uncapped in 2006 as a result of the 2005 transfers.

The Michigan Supreme Court explained that there are two requirements to the joint tenancy exception. The first is original-ownership. That is, at least one person creating or terminating a joint tenancy must be an original owner of the property going back to the last uncapping event. The second requirement is continuous-tenancy. This requirement only applies when the property is held as a joint tenancy at the time of the transfer. If applicable, it requires at least one person to have been a joint tenant since the creation of the joint tenancy. Applying these requirements to the facts before it, the Court found that the property transfer resulting from the death of the taxpayer’s father met the requirements of the joint tenancy exception and, therefore, an uncapping did not result. However, the Court found that the property’s taxable value did uncap when the taxpayer later transferred the property to himself and his brother as joint tenants with rights of survivorship.

The complexity of the joint tenancy exception can be demonstrated by the *Klooster* decision's history. The Michigan Tax Tribunal found that the property's taxable value uncapped in 2006. In its decision, however, the tribunal only considered the first 2005 transfer resulting from the death of the taxpayer's father. It did not reach the second 2005 transfer from the taxpayer to himself and his brother. The Michigan Court of Appeals reversed the tribunal and held that the property's taxable value did not uncap in 2006. It also held that for purposes of the second requirement, a "conveyance" requires a transfer of title in writing.

The Michigan Supreme Court reversed the Michigan Court of Appeals. The Supreme Court held that the taxable value of the property did uncap in 2006 and that a "conveyance" did not require a written instrument. The Supreme Court found that the tax tribunal reached the right result but for the wrong reason. Applying the requirements of the joint tenancy exception, it was the second 2005 transfer that ultimately uncapped the property, not the first.

The Michigan Supreme Court in *Klooster* answered many (but not all) questions which had caused confusion among legal practitioners and the courts alike. Taxpayers should seek property tax advice from legal counsel knowledgeable with the *Klooster* decision before executing a deed creating or terminating a joint tenancy. Careful attention should also be paid to the Michigan Legislature to see if it overturns the *Klooster* decision by legislation.

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