STATE OF MICHIGAN

IN THE MICHIGAN TAX TRIBUNAL

JEFFREY W. THOMPSON,

Petitioner / Appellant,

MTT (MAHS) Docket No. 18-003916

v

CITY OF MILAN ASSESSOR,

Respondent / Appellee.

PETITIONER'S BRIEF ON APPEAL

Respectfully submitted by:

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INTRODUCTION AND BACKGROUND

Pursuant to MCL 211.7cc(13), Petitioner appeals the decision of the City of Milan assessor's conclusion that the subject property at 562 Asher Pass (hereafter the Property) is not his principal and primary residence during the 2018 tax year. (**ATTACHMENT A**, Correspondence and Notice of Denial Form L-4154). As a result of that decision, the Petitioner has also lost the ability to claim a veteran's exemption as a disabled veteran. (**ATTACHMENT B**, VA Status Letter).

Petitioner purchased the property in 2016. (**ATTACHMENT C**, Deed). He lived in the subject Property during the entire year in 2016 and continued to maintain this as his principal and only residence. Afterwards, during 2017, Petitioner accompanied his wife who is performing her medical school residency in the state of Maine. As a result of this temporary residence, he resides with her in a rental apartment in that state.

Petitioner attends to and maintains the Property as his primary and only permanent residence and neither he nor his wife owns real property in any other state. Petitioner's parents now currently live in the Property to maintain it and take care of it during the Petitioner's accompaniment of his spouse in the state of Maine. Petitioner considers Michigan as his only and primary state of residence, he intends to return to Michigan and will keep the Property as his primary residence and domicile. Petitioner is registered to vote in the state of Michigan, and has voted in the state of Michigan during all prior elections to this point. (**ATTACHMENT D**, Michigan Voter Registration ID Card). Petitioner's driver's license is issued by the state of Michigan. (**ATTACHMENT E**, Michigan Driver's License). Petitioner's income taxes are and have been filed in and paid to the state of Michigan for all relevant time periods. (**ATTACHMENT F**, 2018 Michigan Income Tax Filing).

Through undersigned counsel, Petitioner communicated the then known facts to the assessor's office in an attempt to resolve this issue in September, October, and November 2018.

(**ATTACHMENT G**, Email Correspondence to Assessor and Attachments). Nonetheless, the assessor responded with an email attaching some documentation, including implying criminal conduct on the part of Petitioner and which correspondence coupled with the attached statutes, which implies the threat of prosecution. (**ATTACHMENT H**, September 27, 2018 email correspondence from assessor).

In a letter dated October 19, 2019, *after* undersigned counsel had reached out to the assessor and provided this additional factual information, which is described above, the State Tax Commission stated it had received a petition from the assessor listing petitioner's request to do away with the primary exemption for the summer and winter 2018 tax year and proposing new valuations. (**ATTACHMENT I**, October 19, 2018 STC Notice Letter). The assessor informed undersigned counsel that it would not submit a petition to the STC on September 27, 2019 when undersigned counsel conversed with the assessor and advised her of the additional facts as more fully explained herein and in the subsequent correspondence that was sent. However, the assessor then stated that the petition had been filed in August at the same time as Petitioner was notified. (**ATTACHMENT J**). The assessor then attached an October 4 letter to the STC regarding the denial of the veterans exemption. *Id*.

The assessor subsequently submitted correspondence to the STC failing to mention all of these aforementioned facts that she had been provided with, and included in the correspondence and documentation received, only mentioning Petitioner's voter registration and indicating same would be challenged. (**ATTACHMENT K**, Assessor's Submission to State Tax Commission, dated November 15, 2018**)**. However, Mr. Thompson subsequently voted in Michigan without any problems or issues. Further, contrary to the representations of the assessor, Petitioner stated that it was his intent to remain a resident of Michigan and it was his intent to move back to Michigan

permanently after his wife's educational requirements were fulfilled. (**ATTACHMENT L**, Email Correspondence from Client Regarding Response to Assessor's Submission to STC).

In November 2018, undersigned counsel for Petitioner contacted the STC and was advised that since an appeal had been timely filed and was pending before this tribunal, the petition in the STC could be dismissed. (**ATTACHMENT M**). Undersigned counsel submitted email correspondence notifying the STC of the pending appeal and including the copies of the petition for appeal and other documents indicating the facts and reasons stated for the appeal. (**ATTACHMENT N**, November 15, 2018 Email and Documents). Counsel for petitioner was then informed, beyond the time for submitting additional countering documentation that the petition was in fact not being dismissed before the STC. (**ATTACHMENT M**).

Despite this, the STC went ahead with the proceedings and found that Petitioner was not entitled to the primary residence exemption, which automatically excluded him from being considered for the veteran's exemption. Petitioner received a revised tax bill that is held in escrow pending this appeal. (**ATTACHMENT O**). In his appeal, Petitioner raises all factual and legal arguments supporting his claim that his primary residence is and continues to be the Property.

LAW AND ANALYSIS

I. PETITIONER'S PRIMARY AND ONLY RESIDENCE IS THE PROPERTY AT 562 ASHER PASS IN MILAN, MICHIGAN, AS PETITIONER PURCHASED THE PROPERTY AND IN 2016 AND LIVED IN IT; IS AND INTENDS TO REMAIN A RESIDENT OF THE STATE OF MICHIGAN AND TO RETURN TO LIVE IN THE PROPERTY AFTER HIS WIFE FINISHES HER MEDICAL SCHOOL EDUCATIONAL RESIDENCY REQUIREMENTS; PETITIONER FILED HIS TAXES AS A RESIDENT IN THE STATE OF MICHIGAN; PETITIONER HAS HIS DRIVER'S LICENSE ISSUED IN AND FROM THE STATE OF MICHIGAN, PETITIONER HAS A VALID AND LEGITIMATE VOTER ID REGISTRATION IN THE STATE OF MICHIGAN WHICH HE VOTED WITH IN ALL RECENT ELECTIONS; AND PETITIONER HAS NOT ESTABLISHED AND DOES NOT INTEND TO ESTABLISH ANOTHER PRINCIPAL RESIDENCE IN ANY OTHER STATE THAN THE STATE OF MICHIGAN

A. Standard of Review

The interpretation and application of tax statutes constitute legal questions that are subject to de novo review on appeal. *Danse Corp v City of Madison Hts*, 466 Mich 175, 178; 644 NW2d 721 (2002). A ruling of this entity, the MTT, will be reversed on further appeal in the presence of fraud, error of law, adoption of wrong principles, or factual findings unsupported by competent, material, and substantial evidence. *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012).

B. Applicable Legal Principles

The foremost rule of statutory construction is to discern and give effect to the intent of our Legislature, and the reviewing tribunal will do so by examining the most reliable evidence of that intent, which is the language of the statute itself. *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013), vacated on other grounds and remanded at 497 Mich 896; 855 NW2d 746 (2014). If the language of the statute is clear and unambiguous, it must be enforced as written and no judicial gloss or construction is permitted. *Id*. "Where a statute is clear and unambiguous, judicial construction is neither appropriate nor permitted, and the language contained in the statute must be read according to its ordinary and generally accepted meaning." *De Lamielleure Trust v Dep't of Treasury*, 305 Mich App 282, 284; 853 NW2d 708 (2014), citing *Columbia Assocs, LP v Dep't of Treasury*, 250 Mich App 656, 666; 649 NW2d 760 (2002). "Nothing may be read into a clear statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Id*. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 141; 783 NW2d 133 (2010) (citation and internal quotation marks omitted).

Thus, while it has been held tax exemptions are strictly construed against the taxpayer, given that exemptions represent the antithesis of tax equality, see *Marie De Lamielleure Trust v Dep't of Treasury,* 305 Mich App 282, 284-285; 853 NW2d 708 (2014), this cannot override a direct

interpretation and application of the plain language of the statutory provisions as applied, and the reviewing tribunal "should not…produce a strained construction that is adverse to legislative intent." *Id.* Moreover, ambiguities in the language of a tax statute are to be resolved in favor of the taxpayer. *Mich Milk Producers, Ass'n v Dep't of Treasury*, 242 Mich App 486, 493; 618 NW2d 917 (2000), citing *Czars, Inc v Dep't of Treasury,* 233 Mich. App. 632, 637; 593 N.W.2d 209 (1999).

C. The Statutory Language and Requirements

In the first instance, a "principal residence" is defined as "*the 1 place* where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return *and that shall continue as a principal residence until another principal residence is established*." MCL 211.7dd(c) (emphasis added). This provision is a conjunction which *requires* the intent to return *and* that the principal residence "shall continue as a principal residence *until another principal residence is established*". Use of the word shall in a statute compels a mandatory conclusion or directive. See, e.g., *People v Gaston (In re Forfeiture of Bail Bond)*, 496 Mich 320, 327; 852 NW2d 747 (2014). "The Legislature's use of the word 'shall' . . . indicates a mandatory and imperative directive." *Id*., citing and quoting *People v Francisco*, 474 Mich 82, 87; 711 NW2d 44 (2006); *Fradco, Inc v Dep't of Treasury*, 495 Mich 104, 114; 845 NW2d 81 (2014); and 3 Sutherland, Statutory Construction (7th ed).

Secondly, in assessing the factors applicable to determining whether a principal residence exemption was wrongly denied, the relevant statutory language further provides:

> [A] person is not entitled to an exemption under this section in any calendar year in which any of the following conditions occur:
>
> (a) That person has claimed a substantially similar exemption, deduction, or credit, regardless of amount, on property in another state. Upon request by the department of treasury, the assessor of the local tax collecting unit, the county treasurer or his

or her designee, or the county equalization director or his or her designee, a person who claims an exemption under this section shall, within 30 days, file an affidavit on a form prescribed by the department of treasury stating that the person has not claimed a substantially similar exemption, deduction, or credit on property in another state. A claim for a substantially similar exemption, deduction, or credit in another state occurs at the time of the filing or granting of a substantially similar exemption, deduction, or credit in another state. If the assessor of the local tax collecting unit, the department of treasury, or the county denies an existing claim for exemption under this section, an owner of the property subject to that denial cannot rescind a substantially similar exemption, deduction, or credit claimed in another state in order to qualify for the exemption under this section for any of the years denied. If a person claims an exemption under this section and a substantially similar exemption, deduction, or credit in another state, that person is subject to a penalty of $500.00. The penalty shall be distributed in the same manner as interest is distributed under subsection (25).

(b) Subject to subdivision (a), that person or his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section, unless that person and his or her spouse file separate income tax returns.

(c) That person has filed a nonresident Michigan income tax return, except active duty military personnel stationed in this state with his or her principal residence in this state.

(d) That person has filed an income tax return in a state other than this state as a resident, except active duty military personnel stationed in this state with his or her principal residence in this state.

(e) That person has previously rescinded an exemption under this section for the same property for which an exemption is now claimed and there has not been a transfer of ownership of that property after the previous exemption was rescinded, if either of the following conditions is satisfied:

(i) That person has claimed an exemption under this section for any other property for that tax year.

(ii) That person has rescinded an exemption under this section on other property, which exemption remains in effect for that tax year, and there has not been a transfer of ownership of that property.

[MCL 211.7cc]

D. Analysis

In the first instance, as already noted, a "principal residence" is defined as "*the 1 place* where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return *and that shall continue as a principal residence until another principal residence is established*." MCL 211.7dd(c) (emphasis added). This provision is a conjunction which *requires* (1) the intent to return *and* (2) that the principal residence "shall continue as a principal residence *until another principal residence is established*". Use of the word shall in a statute compels a mandatory conclusion or directive. See, e.g., *People v Gaston (In re Forfeiture of Bail Bond)*, 496 Mich 320, 327; 852 NW2d 747 (2014). "The Legislature's use of the word 'shall' . . . indicates a mandatory and imperative directive." *Id*., citing and quoting *People v Francisco*, 474 Mich 82, 87; 711 NW2d 44 (2006); *Fradco, Inc v Dep't of Treasury*, 495 Mich 104, 114; 845 NW2d 81 (2014); and 3 Sutherland, Statutory Construction (7th ed).

Here, there is no "other principal residence" established by Petitioner, ever. The plain and unambiguous statutory language in this definition requires, i.e., mandates, that it be shown "another principal residence is established" before Petitioner can be deprived of claiming the PRE. There is no other way to read this provision.

The principal and primary residence, the Property at 562 Asher Pass in Milan, Michigan, is the one and only place and it is required by this language in the statute placed in the conjunctive and mandated by use of the word shall that it must remain primary "until another *principal* residence is established". MCL 211.7dd (emphasis added). The apartment Petitioner lives in with his wife in Maine while she performs her medical school residency and professional requirements was never intended to be nor was it ever considered by Petitioner to be *another* principal residence. It also cannot be identified or confirmed to be *another* principal or primary residence that has been

established. This statutory language *compels* proof that Petitioner established *another principal* residence. There is simply no such proof, other than the fact Petitioner used the mailing address to receive mail in the state of Maine and that he was compelled by law to comply with Maine law on motor vehicle registration and perhaps its motor vehicle insurance requirements. That is the extent of Petitioner's existence living in the state of Maine temporarily accompanying his wife in an apartment that she rents to fulfill her educational and professional requirements. The one and only place Petitioner has as his true, fixed, and permanent home to which, whenever absent, he intends to and has returned is the Property at 562 Asher Pass. There is no need for judicial gloss or construction, as this definition is clear and must be enforced as written. ." *De Lamielleure Trust v Dep't of Treasury*, 305 Mich App 282, 284; 853 NW2d 708 (2014), citing *Columbia Assocs, LP v Dep't of Treasury*, 250 Mich App 656, 666; 649 NW2d 760 (2002). The Property at 562 Asher Pass is the "1 [and only] place" Petitioner has as his true, fixed, and permanent home, to which, whenever absent, he or she intends to return *and that [principal residence] shall continue as a principal residence until another principal residence is established.*" MCL 211.7dd(c) (emphasis added). This language clearly and plainly mandates *proof* by the entity denying the Petitioner's assertion that another *principal residence* has been established by Petitioner. And this requires the denying entity to *prove* that there is another place than the one being claimed as a principal residence that is yet "the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return….". The assessor has not and cannot prove that Petitioner has established *another* principal residence that is the rented apartment in Maine to which he had his mail forwarded while living with his wife while she fulfills her educational and professional goals.

Further, concerning the factors, Petitioner has proved and/or can prove that he has not claimed any other primary residence exemptions, deductions or credits on property in another state, MCL 211.7cc(a) (he certainly could not do so in an apartment that his rents and does not own); that neither he nor his wife owns any real property in any other state, MCL 211.7cc(b); that he and his wife filed jointly a Michigan resident tax return for 2018 (see **ATTACHMENT F**), MCL 211.7cc(c) and (d); and that there has been no rescission as contemplated in MCL 211.7cc(e).

The only "evidence" to date that has been submitted by the assessor is the November 15, 2018 Letter to the STC, with the attachments (see **ATTACHMENT K**), which includes the assessor's conclusions about the return in the mail to Milan of Petitioner's voter registration card because the forwarding address had been changed from Petitioner's primary and only residence at the Property to a forwarding address at the apartment in Maine, which is the apartment being rented for his wife's medical residency educational and professional requirements being performed in that state. No one would contend in these circumstances that the change of address for purposes of forwarding mail negates the legitimate (and indeed constitutional) rights of a Michigan resident and a Michigan citizen with his or her only primary residence in the state of Michigan to vote in the state of Michigan. Indeed, MCL 211.7cc does not even mention *the right to vote* or the *negation of that right* in Michigan as being something that would even deprive someone of the ability to claim the exemption (or justifying a denial thereof). There could be other reasons that a person could not vote in Michigan, but still be entitled to claim a primary residence exemption.

The next thing the assessor did in this submission of "proof" to the STC was use "hearsay" to claim that Petitioner "stated" during a conversation on August 28, 2018 that "he had a Maine Driver License and had to become a resident of Maine for his wife's residency". See **ATTACHMENT K**. If the MTT is going to accept this hearsay as *any* "evidence", then it has to

consider Petitioner's direct response as recounted by him in his Monday, November 19, 2018 email:

> I didn't say that I had to become a resident of Maine because of [my wife's medical school] residency, I literally said I wanted to maintain Michigan as my domicile because we were moving back there, but we had to live in Maine for my wife's school. I basically told [the assessor] the the[sic] exact opposite of what [the assessor] said in that [November 18, 2018] letter.
>
> [**ATTACHMENT L**, Petitioner's Email Correspondence Responding to November 15, 2018 Submission by Assessor to STC (bracketed text added for correction and identifying context).]

The tribunal has the right to accept this as competent and relevant evidence in opposition to the "hearsay" submitted by the assessor. "[A] somewhat relaxed evidentiary standard applies to administrative hearings: 'The rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.' MCL 24.275." *Becker-Witt v Bd of Examiners of Social Workers*, 256 Mich App 359, 365; 663 NW2d 514 (2003). The MTT can certainly discern among the proofs and information submitted herein, that which is the more robust and relevant, and that which is the more suspect. "[T]he Tax Tribunal should be permissive in the admission of *relevant* evidence…." *Prof Plaza, LLC v City of Detroit*, 250 Mich App 473, 476; 647 NW2d 529 (2002) (emphasis added).

Finally, in this letter, the assessor claims she had not received any further information from Petitioner to prove he is a Michigan resident. But, when the assessor wrote this letter, she had already received all of the prior correspondence and documentation that had already been provided to the assessor and the STC by way of undersigned counsel's constant communication with the assessor at least from September 27th forward, see, *inter alia*, **ATTACHMENTS H, G, M and N**. Notwithstanding what has already been provided by Petitioner in factual documentation

covering all aspects of the factors required to demonstrate primary residence (and to negate the denial of such a designation) under MCL 211.7cc and MCL 211.7dd, and notwithstanding with perhaps the exception of the 2018 tax filing information (**ATTACHMENT F** (which could not have been provided in November of 2018 anyway as the taxes were filed in 2019)), this was all already provided to the assessor! Even giving the assessor the benefit of the doubt that when she wrote the November 15, 2018 letter (**ATTACHMENT K**), she had not already received the submission with these additional factual details and information (**ATTACHMENT G**), *even though she responded to that email later on the same day* (**ATTACHMENT J**), the "factual findings" presented to the STC in **ATTACHMENT K** are unsupported by competent, material and substantial evidence because these minimal conclusions about the return of the voter registration card and "tagging it to be challenged when/if [Petitioner] came in to vote" (which by the way did not happen and Petitioner was in Michigan and successfully voted without a challenge); the hearsay recounting Petitioner's alleged statements regarding his driver's license (when Petitioner in fact has a Michigan driver's license (see **ATTACHMENT E**)); and the car insurance and registration information (which is also not mentioned as being relevant in MCL 211.7cc) are not relevant. In fact, all of this is actually refuted, and far outweighed by the actual and robust, competent, material and substantial evidence that Petitioner has provided since at least November 15, 2018 in these proceedings to negate the inadequate, unsubstantiated, and largely irrelevant factual information that was provided by the assessor to justify the denial of the PRE and the consequent denial of the veteran's exemption that follows as a result.

Temporarily living and working outside of Michigan (even for long periods) like fulfilling "sabbaticals", educational and professional residencies, military assignments, work requiring frequent national and international travel, and indeed, accompanying someone who (like

Petitioner's wife) is required to be out of state for these same similar reasons to fulfil educational and/or professional requirements, like "sabbaticals", which are specifically mentioned in the guidelines, see Guidelines for the Michigan Principal Residence Exception, Ch 2, para 6, is not considered a reason to justify denial of the PRE.

CONCLUSION AND RELIEF REQUESTED

Based on the factual information and supporting documentation supplied with this brief, the statements and principles of law, and the argument and analysis provided after applying the latter to the former, Petitioner respectfully requests that the MTT reverse the assessor's conclusions that the Property was not his principal and primary residence, and allow Petitioner to recover any and all costs and fees to which he is entitled by court rule and/or law; and further reverse the State Tax Commission's conclusions affirming the assessor's conclusions and allow Petitioner's right to claim the veteran's exemption as a result of the restoration of his right to claim the PRE.

Respectfully submitted,

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