Order

Michigan Supreme Court
Lansing, Michigan

July 2, 2025

166642

RESORT PROPERTIES CO-OPERATIVE,
Petitioner-Appellant,

v

SC: 166642
COA: 364744
Tax Tribunal: 22-001985

TOWNSHIP OF WATERLOO,
Respondent-Appellee.

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On March 13, 2025, the Court heard oral argument on the application for leave to appeal the November 21, 2023 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(I)(1). In lieu of granting leave to appeal, we AFFIRM the judgment of the Court of Appeals.

This case involves a matter of statutory interpretation arising from the Michigan Tax Tribunal's application of the General Property Tax Act (GPTA), MCL 211.1 *et seq*. This Court reviews issues of statutory construction de novo. *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 528 (2012). Review of Tax Tribunal proceedings is limited to questions of law; its factual findings are conclusive when supported by competent evidence. *Briggs Tax Serv, LLC v Detroit Pub Schs*, 485 Mich 69, 75 (2010). The foremost rule, and the Court's primary task in construing a statute, is to give effect to the intent of the Legislature. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236 (1999). As far as possible, every phrase, word, and clause in a statute must be given meaning. *Id*. at 237. Individual words and phrases must be considered both for their plain meaning as well as their placement and purpose in the larger statutory scheme. *Id*. A "statute must be interpreted in a manner that ensures that it works in harmony with the entire statutory scheme." *Bush v Shabahang*, 484 Mich 156, 167 (2009). A court's interpretation may not read anything into the statute that is not within the manifest intent of the Legislature as derived from the act itself. *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 218 (2011). We "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146 (2022).

The GPTA sections at issue in this matter are the enabling legislation implementing the amendments to Article 9, § 3, of the Michigan Constitution, commonly called Proposal A after the ballot question for its adoption. See *Mich Props, LLC*, 491 Mich at 528-530.

> Proposal A places a cap on the taxable value of a property so that, based on the previous year's taxable value, any yearly increase in taxable value is limited to either the rate of inflation or 5 percent, whichever is less. That cap on taxable value applies only to the current owner of the property, and the property's taxable value is uncapped when the property is transferred. [*Id*. at 529-530.]

"The purpose of Proposal A was to limit tax increases on property as long as it remains owned by the same party, even though the actual market value of the property may have risen at a greater rate." *Klooster v Charlevoix*, 488 Mich 289, 296 (2011). This created a system of property taxation in which a portion of the taxable value of an existing owner's real property was exempted from taxation until it was uncapped by a transfer. *Id*. at 296-297. As this Court has noted, "because tax exemptions upset the desirable balance achieved by equal taxation, they must be narrowly construed." *Wexford Med Group v City of Cadillac*, 474 Mich 192, 204 (2006).

At issue is the taxable valuation of a property held by petitioner-appellant, Resort Properties Cooperative, Inc.[1] This domestic nonprofit corporation has the sole purpose of holding a family cottage on behalf of its members. The corporation was formed with five distinct memberships, some held individually and some as joint tenancies between spouses. In 2021, existing members Dorothy Babbage and William Babbage bought two different interests from several of their fellow members, totaling a 48% interest in the business. Later that year, they sold a portion of their ownership interest in the property—20%—to one existing and two new members. The record gives no indication that the shares comprising these interests are traceable or identifiable (in other words, whether the 20% conveyed in the second transaction was part of the original ownership interest in the corporation held by the Babbages or whether it was part of the interest purchased in 2021 from other members).[2] Thus, for our purposes, there is no distinction between ownership interests and shares.

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[1] Nothing in this order impacts the meaning of the GPTA for homeowners (individuals or families who own their homes) as opposed to properties owned by corporations or other legal entities.

[2] Our decision does not rely on identifying the shares that were conveyed. As noted by the dissent, the Tax Tribunal made reference to IRS guidance to support placing the burden on the shareholder to show if they intended to structure their conveyances from a specific source. The dissent criticizes that tribunal for referring to this guidance, which is not

We consider whether these conveyances of more than 50% of the corporation's shares presented an uncapping event under the GPTA. The Board of Review and the Michigan Tax Tribunal answered yes, and the Court of Appeals affirmed.[3] *Resort Props Coop v Waterloo Twp*, ___ Mich App ___ (November 21, 2023) (Docket No. 364744). This Court owes respectful consideration to the interpretation of laws by enforcing agencies because of their subject-matter expertise. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 103 (2008). We hold that the interpretations of the Board of Review, the Tax Tribunal, and the Court of Appeals are consistent with the canons of statutory interpretation and the Legislature's intent as derived from the statute's text.

We first examine the constitutional text of the provision adopted by the citizens of Michigan, which tells us to look to statutes passed by our Legislature for the meaning of "transfer of ownership interest" in a parcel of property. See Const 1963, art IX, § 3.[4]

MCL 211.27a(6), which defines "transfer of ownership," states, in relevant part:

> As used in this act, "transfer of ownership" means the *conveyance of title to or a present interest in property*, including the beneficial use of the property, the *value of which is substantially equal to the value of the fee interest*. Transfer of ownership of property *includes, but is not limited to*, the following:
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> (h) Except as otherwise provided in this subdivision, a *conveyance* of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity *if the ownership interest conveyed is more than 50%* of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. . . . [Emphasis added.]

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necessary to our decision today, yet the dissent's reading would also require identification of who owns the "original" shares and where those interests go.

[3] Respondent-appellee and taxing authority Waterloo Township argued yes, as did amici curiae Michigan Municipal League, Michigan Townships Association, and Michigan Department of Treasury.

[4] Const 1963, art IX, § 3, states, in part: "When ownership of the parcel of property is transferred *as defined by law*, the parcel shall be assessed at the applicable proportion of current true cash value." (Emphasis added.)

Succinctly, the definition of "transfer of ownership" looks to the conveyance of an interest in the property. This subsection then provides a "nonexhaustive list,"[5] *Klooster*, 488 Mich at 297, of transfers that result in uncapping, and subsection (6)(h) addresses the transfer of property owned by corporations, limited liability companies (LLCs), and other legal entities. Therefore, to determine whether an uncapping event occurred in this case, the law directs us to determine whether a conveyance has occurred; whether it conveyed title or a present interest "the value of which is substantially equal to the value of the fee interest," MCL 211.27a(6); and whether, more specifically, the ownership interest conveyed was "more than 50% of the corporation," MCL 211.27a(6)(h).

Members of the petitioner corporation in this case engaged in five distinct conveyances. The interests conveyed were equal to approximately 68% of the corporation. These conveyances of ownership—once they reached more than 50% of the interest in the property—are the type of occurrences that the Legislature designated for uncapping. In MCL 211.27a(6), the Legislature defined "transfer of ownership" by a focus on "the *conveyance* of . . . a present interest in property" (emphasis added) and by requiring the value of that interest to be "substantially equal to the value of the fee interest." Nowhere else in the act is "transfer of ownership" defined. The Legislature directs the taxing authority, and this Court, to attend to the conveyances of the value of the property themselves.[6] The subdivisions within MCL 211.27a(6) provide examples of transfers of ownership, including subdivision (h), which addresses transfers of ownership in a corporation, an LLC, and the like. Following this statute, Waterloo Township properly counted the conveyances, and the total value of the conveyances, which was more than 50% of the corporation.

Sixty-eight percent of the corporation was conveyed, although not all at once. The Babbages themselves went from an equal-share minority interest of 24%, up to a super-majority of 72%, down to a simple majority of 52%. A "transfer of ownership" occurred, both as a matter of common sense and under the plain language of MCL 211.27a(6).

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[5] The term "includes," when used in a statute, can be either a term of enlargement or limitation. See *Belanger v Warren Consol Sch Dist, Bd of Ed*, 432 Mich 575, 587 n 25 (1989). However, this Court has already held that MCL 211.27a(6) "provides a nonexhaustive list," *Klooster*, 488 Mich at 297, and therefore, "includes" as used in this subsection is a term of enlargement.

[6] As used in MCL 211.27a(6), " 'transfer' means '[t]o convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of.' " *Zenti v City of Marquette*, 329 Mich App 258, 266 (2019), quoting *Black's Law Dictionary* (11th ed) (alteration in *Zenti*).

Petitioner argues that a conveyance of the "same" ownership interest across multiple transfers should not be considered an uncapping event. But if the Legislature meant to reach that outcome, it could have done so. In fact, the Legislature did provide for both exclusion of cumulative conveyances for some types of corporations—not including petitioner—and also exceptions for when transfers of ownership do not occur for purposes of uncapping. MCL 211.27a(6)(h)(*ii*) explicitly provides that conveyances of stock of "a corporation subject to . . . MCL 455.1 to 455.24"—which undisputedly does not include petitioner—are *not* to be counted cumulatively, i.e., added together to determine whether the total conveyance of interests in the property is more than 50%. We agree with the Court of Appeals that adopting petitioner's reading of MCL 211.27a(6)(h) to exclude cumulative conveyances for all corporations would render subsection (6)(h)(*ii*) surplusage:

> Put another way, our Legislature explicitly excluded certain corporations from having their conveyances considered cumulatively in MCL 211.27a(6)(h)(ii) because MCL 211.27a(6)(h) does not prohibit considering conveyances cumulatively toward its uncapping threshold. Thus, the Tax Tribunal did not err when it held that respondent correctly considered the conveyances cumulatively when uncapping petitioner's cottage under MCL 211.27a(6)(h). [*Resort Props Coop*, ___ Mich App at ___; slip op at 4.]

Additionally, MCL 211.27a(7) expressly exempts certain conveyances from the definition of "transfer of ownership." One example is that the public trading of ownership interests is not a transfer of ownership, even when the interests cumulatively total more than 50% of the total ownership interest. MCL 211.27a(7)(*l*). By excluding cumulative counting of "public trading" of ownership interests, the Legislature included cumulative counting of *private* trading of ownership interests like the members of petitioner engaged in here. See *Bronner v Detroit*, 507 Mich 158, 173 n 11 (2021) (express mention in a statute of one thing implies the exclusion of similar things under the principle of *expressio unius est exclusio alterius*).

Petitioner does not identify an exception in the GPTA that directs the taxing authority to forgo counting certain conveyances or requires that, at a given snapshot in time, less than 50 percent of the interest in a corporation be held by the "original" owners. Instead, the Legislature directed the taxing authority to look to the "conveyance" of interests, and when the interests conveyed are "more than 50% of the corporation," a "transfer of ownership" has occurred.[7]

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[7] The dissent relies on the "simple fact" that the ownership interests in a corporation cannot exceed 100%. We do not dispute its math or that the various ownership interests at a given time must add up to 100%. However, we are referring here to percentages of the corporation *transferred* or "conveyed," as we are directed to do by the statute. Considered together, multiple transfers may cumulatively amount to more than 100%.

"Nor will it be forgotten, in any question of statutory tax interpretation, that taxing is a practical matter and that the taxing statutes must receive a practical construction. While they will not be extended by implication, neither will the words thereof be so narrowly interpreted as to defeat the purposes of the act." *In re Brackett Estate*, 342 Mich 195, 205 (1955) (citation omitted). The Tax Tribunal and Court of Appeals construed the statute in accordance with its plain meaning and in a straightforward, practical, and workable manner. Petitioner's preferred interpretation would present major administrative hurdles for respondent and similarly situated cities and townships. By reading into the statute an implied requirement to track the percentage of ownership interest transferred from a defined set of original owners rather than the total percentage of ownership interest transferred, this interpretation would create a new category of information for taxing authorities to receive notification of and to track. Cf. MCL 211.27a(6)(h) (requiring, under current law, notifying "the assessing officer on a form provided by the state tax commission not more than 45 days after a *conveyance of an ownership interest* that constitutes a transfer of ownership") (emphasis added). Petitioner's reading, which looks to who has a certain "percentage ownership interest" at a fixed snapshot in time, also means that interests in the property that are sold and then resold would not be fully considered. This would present unworkable questions about how to determine when the snapshot in time should be analyzed and how to determine who owns what interest in the property held by the corporation at different points in time.[8]

The Court of Appeals' decision affirming the Tax Tribunal's approach is well-founded in the plain language of the statute, is consistent with this legislative intent, and provides practical guidance for taxing authorities. For the above reasons, we affirm the judgment of the Court of Appeals.

BERNSTEIN, J. (*dissenting*).

I dissent from this Court's order affirming the Court of Appeals judgment below. I believe that the Court of Appeals and the Tax Tribunal each erred by concluding that the taxable value of petitioner's property had been uncapped. I write to articulate what I

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[8] Imagine, as a hypothetical, that A owns a 75% interest in a corporation and B owns 25%. A transfers 15% to D, 5% to E, and 10% to F (30% of the total interest), and B transfers 25% to C. This snapshot in time appears to result in uncapping. However, C later sells 20% to A, so that A holds 65% of the interest and C, D, E, and F hold, together, 35% of the interest. Under petitioner's reading of the statute, there would be *no uncapping* because the "cumulative ownership interest conveyed"—using the longer period between the first and third transfers as the applicable snapshot in time rather than the period between the first and second transfers—would not be greater than 50%. This hypothetical highlights the unworkability of petitioner's reading.

believe to be the proper interpretation of the statutory provision implicated here, MCL 211.27a(6)(h), and how the application of this provision to the instant facts does *not* result in the uncapping of the taxable value of petitioner's property.

The facts of this case are largely undisputed. Petitioner, Resort Properties Co-Operative, is a nonprofit corporation that owns real property in respondent Waterloo Township. At the beginning of the relevant period, petitioner's ownership broke down as follows among its multiple shareholders: Dorothy and William Babbage held 24% of the shares, Nancy Erb held 24%, Jane and James Flynn held 24%, Patricia Fournier held 24%, and Mary Duffey held 4%. The Babbages later acquired an additional 48% interest by purchasing ownership shares from Erb and the Flynns. This brought the Babbages' total ownership interest to 72% of the corporation. The Babbages later sold a total of 20% of petitioner's overall ownership interest to three other parties. At all times, at least 52% of petitioner's ownership interest remained in the hands of the Babbages, Fournier, and Duffey.

Even though 52% of petitioner's ownership interest remained with its original shareholders, respondent sent petitioner a notice of assessment stating that 68% of the corporation's ownership interest had been sold and that the taxable value of petitioner's property had therefore been uncapped under MCL 211.27a(6)(h). The question before this Court is whether respondent properly calculated the amount of the corporation's ownership interest that was transferred, such that the property's taxable value could be uncapped. I disagree with the majority's conclusion that respondent's calculation was proper.

In Michigan, the standards governing a property's taxable value and the subsequent uncapping of that property's taxable value are established by our state's Constitution. Const 1963, art 9, § 3. This provision limits the yearly increase in a property's taxable value "until ownership of the parcel of property is transferred." *Id*. This Court previously held that this constitutional provision "limit[s] increases in property taxes on a parcel of property, as long as it remains owned by the same party, by capping the amount that the 'taxable value' of the property may increase each year, even if the 'true cash value,' that is, the actual market value, of the property rises at a greater rate." *WPW Acquisition Co v Troy*, 466 Mich 117, 121-122 (2002). An uncapping event essentially "allows reassessment of the property based on its state equalized value, lifting the cap on the rate of increase . . . ." *Klooster v Charlevoix*, 488 Mich 289, 299 (2011). A transfer of ownership is the trigger that uncaps the property's taxable value. *Id*., citing MCL 211.27a(3). Transfers involving real property held by corporations are governed by MCL 211.27a(6)(h), which provides that a "[t]ransfer of ownership of property includes":

> Except as otherwise provided in this subdivision, a conveyance of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than 50% of the corporation,

> partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. Unless notification is provided under subsection (10), the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the assessing officer on a form provided by the state tax commission not more than 45 days after a conveyance of an ownership interest that constitutes a transfer of ownership under this subdivision. Both of the following apply to a corporation subject to 1897 PA 230, MCL 455.1 to 455.24:
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> (*i*) A transfer of stock of the corporation is a transfer of ownership only with respect to the real property that is assessed to the transferor lessee stockholder.
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> (*ii*) A cumulative conveyance of more than 50% of the corporation's stock does not constitute a transfer of ownership of the corporation's real property.

Here, respondent determined that an uncapping event had occurred by calculating that more than 50% of the corporation's ownership interest had been sold in the same calendar year. It did so by combining the initial 48% conveyance to the Babbages with the subsequent 20% conveyance from the Babbages.

Petitioner unsuccessfully appealed to the Board of Review. Petitioner then filed a petition in the Tax Tribunal, which held that respondent had properly assessed the property's taxable value because petitioner had cumulatively transferred more than 50% of the property's ownership interest. The Tax Tribunal denied petitioner's motion for reconsideration. Petitioner then claimed an appeal of right, and the Court of Appeals affirmed the Tax Tribunal's decision. *Resort Props Co-Operative v Waterloo Twp*, 349 Mich App ___, ___ (November 21, 2023) (Docket No. 364744); slip op at 5. The Court of Appeals held that MCL 211.27a(6)(h) necessarily allows for consideration of a cumulative conveyance because MCL 211.27a(6)(h)(*ii*), which exempts certain qualifying corporations from cumulative conveyances, would be rendered surplusage under any other interpretation. *Id*. at ___; slip op at 4. In other words, the Court of Appeals reasoned that because the Legislature has specifically expressed that cumulative conveyances are *not* to be considered as they relate to certain entities, see MCL 211.27a(6)(h)(*ii*), it must be the case that the Legislature intended for cumulative conveyances to be considered for all other entities. Petitioner sought leave to appeal here, and we heard oral argument on the application.

This Court's review of a Tax Tribunal decision is limited. *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527 (2012). "If the facts are not disputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted

a wrong principle." *Id*. at 527-528. See also Const 1963, art 6, § 28. Here, we consider whether the Tax Tribunal and the Court of Appeals properly interpreted MCL 211.27a(6)(h). We review questions of statutory interpretation de novo. *Mich Props*, 491 Mich at 528. "When interpreting statutes, this Court must 'ascertain and give effect to the intent of the Legislature.' " *Id*. at 528, quoting *People v Koonce,* 466 Mich 515, 518 (2002). "In interpreting a statute, this Court avoids a construction that would render any part of the statute surplusage or nugatory." *Id*., citing *People v McGraw*, 484 Mich 120, 126 (2009).

The circumstances of this case require us to consider what it means to cumulatively convey an ownership interest constituting more than 50% of the corporation under MCL 211.27a(6)(h). This inquiry necessarily turns on how ownership interests are defined in the statute. MCL 211.27a(6)(h) states that, generally, "a conveyance of an ownership interest in a corporation" constitutes a transfer of ownership for the corporation's property "if the ownership interest conveyed is more than 50% of the corporation . . . ." That is, MCL 211.27a(6)(h) directs us to consider the percentage of the corporation's ownership interest that is conveyed. In determining whether an uncapping event is triggered, we must therefore examine the extent to which ownership interests change hands in terms of percentage of the total. It is undisputed that, at all relevant times, at least 52% of the corporation's ownership interest remained in the same hands. Accordingly, no more than 48% of the ownership interest was transferred, making it impossible for an ownership interest to have been conveyed that was "more than 50% of the corporation." MCL 211.27a(6)(h).

The majority places puzzling emphasis on the general definition of a transfer of ownership found in MCL 211.27a(6). MCL 211.27a(6) provides that, "As used in this act, 'transfer of ownership' means the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest." MCL 211.27a(6) then provides lead-in language—"Transfer of ownership of property includes, but is not limited to, the following"—which directs our consideration to MCL 211.27a(6)(h), the relevant subsection for determining when a transfer of ownership of property occurs due to the transfer of ownership in the legal entity that owns the property.

In this way, the majority misses the mark. MCL 211.27a(6)(h) is fully consistent with the more general language that precedes it. It simply provides a situation-specific definition of a transfer of ownership of property. Nothing about my plain-language interpretation of MCL 211.27a(6)(h) raises a hint of discord with MCL 211.27a(6) or the rest of the statute.[9] And even if there were tension between the more general and more

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[9] Although the majority places great weight on the general "transfer of ownership" definition in MCL 211.27a(6), the majority does little more than assert without explanation

specific definitions of "transfer of ownership," the more specific provision would control, lest it be rendered nugatory or surplusage. See *Milne v Robinson*, 513 Mich 1, 12 (2024) (explaining that, typically, "when statutes conflict, the more specific provision governs over the more general one").

With the understanding that MCL 211.27a(6)(h) controls the inquiry, the majority's conclusion that 68% of the property's ownership interests had been transferred cannot stand. Although the original shareholders always possessed at least 52% of the property's ownership interests, the Tax Tribunal and the Court of Appeals each held that 68% of the property's ownership interests had been transferred. Under this reasoning, the total ownership interests in the property would amount to 120%. However, a percent is defined as "one part in a hundred." *Merriam-Webster's Collegiate Dictionary* (11th ed). By definition, the total combined ownership interests in a property cannot exceed 100%. The Tax Tribunal and the Court of Appeals therefore erred on a basic level.

It appears that the Tax Tribunal, the Court of Appeals, and now this Court viewed each conveyance as cumulative transfers of individual shares, not ownership percentages. However, there is a distinction between the percentage of ownership interest transferred and the cumulative number of shares transferred. Although the individual shares that the Babbages bought and sold, when added together, exceeded 50% of the total shares in the corporation, the transfers did not result in more than 50% of the ownership interest changing hands. Again, at all relevant times in this case, at least 52% of petitioner's ownership interest remained with the original shareholders.

The majority seemingly takes exception to the characterization of 52% of the property's ownership interests remaining with the "original" shareholders, asserting that because "[t]he record gives no indication that the shares are traceable or identifiable," the majority cannot conclude "whether the 20% conveyed in the second transaction was part of the original ownership interest in the corporation held by the Babbages or whether it was part of the interest purchased in 2021 from other members." Quite simply, we do not need to identify which shares the Babbages used to conduct the 20% transfer to understand that a 20% transfer occurred. Indeed, the only relevant information for such an inquiry is the percentage of ownership interests transferred.[10] To the extent that the majority posits that

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that this general definition demands the majority's result. Further, the majority does not explain how fluctuation in the Babbages' own ownership interest (the change in which always remained below 50% of the total ownership interest) has any bearing on the question of statutory interpretation at hand.

[10] The majority posits that the test that I advance also requires identification of who owns the original shares. But the percentage of the ownership interests held, and the individual shares owned, are quite simply two totally different considerations. Certainly, the majority is correct that to know when a transfer of ownership has occurred, we necessarily must

its own test is "straightforward, practical, and workable" because it does not require the taxing authority to identify shares transferred, this assertion fails to recognize that the test actually required by the statutory language also does not require the identification of the transferred shares.

Because 52% of petitioner's ownership interest remained with the original shareholders, respondent's argument, now embraced by this Court, that 68% of the corporation's ownership interest was transferred while 52% of the ownership continued to be held by the remaining shareholders is a mathematical impossibility under the statute's plain terms.[11] In holding otherwise, the Tax Tribunal and the Court of Appeals incorrectly interpreted and applied MCL 211.27a(6)(h).[12] This Court doubles down on the error. I

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know who owns what and how that changes over time. But the majority has offered no explanation how the identification of individual shares is relevant to the percentage-based inquiry outlined in MCL 211.27a(6)(h). It is sufficient to know, as we know here, that more than 50% of the percentage of ownership interest in the property has not been transferred.

[11] This is not to say that a series of minor transactions will never result in an uncapping event. Suppose that A holds 75% of the ownership of a corporation, and A transfers 10% to B, 10% to C, and 6% to D. Suppose that E also holds 25% of the ownership of the corporation and transfers its 25% interest to F. These exchanges would result in a transfer of 51% of the corporation. Therefore, they would trigger an uncapping event because the cumulative ownership interest conveyed—and not merely the aggregate individual shares transferred—would be more than the 50% threshold imposed in MCL 211.27a(6)(h).

[12] To support their conclusions, both the Tax Tribunal and the Court of Appeals endorsed IRS guidance dubbed the "first-in, first-out" rule. This rule essentially provides that, for the calculation of capital gains from the sale of stock, whichever shares that the taxpayer purchased earliest will presumptively be considered the shares that were sold. *Helvering v Rankin*, 295 US 123, 125-126 (1935). The taxpayer can rebut the presumption by showing evidence of which individual shares were sold. *Id*. at 129. Here, the Court of Appeals stated that petitioner "had not provided any evidence for its proposition that the shares that were subsequently sold were the same shares that were first purchased that same year. If shareholders intend a specific conveyance to be from a specific source for tax purposes, then they need to specify and justify it." *Resort Props Co-Operative*, 349 Mich App at ___; slip op at 4. Reliance on this authority here is inherently flawed. The first-in, first-out rule is intended to simplify the calculation of capital gains for federal income tax purposes. When simply determining how transfers relate to total ownership interest, as we do here, there is no reason to consider capital gains or losses. Tellingly, respondent conceded at oral argument that this rule has no application to the present case. The majority similarly concedes that this guidance is inapplicable to the decision it reaches today. But the majority still refers to the traceability and identifiability of shares while focusing its

would instead hold that the statute's plain language requires courts to consider the percent of ownership interest transferred, not the number of individual shares transferred. In assessing the ownership interests transferred in a corporation under MCL 211.27a(6)(h), a calculation cannot exceed a total of 100%.

I find it curious that the majority order has not engaged with the simple fact that, definitionally, the ownership interests in a corporation cannot exceed 100%.[13] Instead, the majority disavows the consideration of a "snapshot in time." It is unclear from where the majority draws the idea that a "snapshot in time" is relevant to the existence of an uncapping event. Nonetheless, on the facts of this case, we are presented with an *undisputed* starting point at which there is a specified division of ownership interests in petitioner and at which the relevant property's taxable value was capped. From there, the task is to determine whether subsequent transfers resulted in transfer of ownership of the petitioner corporation, as defined in the statute, such that a transfer of petitioner's real property occurred. As explained, the point at which more than 50% of the ownership interest in the corporation or other legal entity has been conveyed is the point at which a transfer occurs.[14]

My conclusion here does not render MCL 211.27a(6)(h)(*ii*) surplusage, contrary to the majority's conclusion. As MCL 211.27a(h) states, MCL 211.27a(6)(h)(*i*) and (*ii*) both apply to corporations "subject to 1897 PA 230, MCL 455.1 to 455.24," which governs the formation of corporations for the purpose of forming summer resorts or recreational facilities associations. See MCL 455.1. The majority agrees with the Court of Appeals' conclusion, in which the panel observed that the Legislature "explicitly excluded certain

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analysis on the total sum of individual shares transferred rather than the total ownership interest transferred.

[13] The majority emphasizes that "[s]ixty-eight percent of the corporation was conveyed, although not all at once." This sentence reveals the majority's analytical flaw. Sixty-eight percent of the corporation was not conveyed. Instead, with 52% of the corporation's ownership interest held constant, there was a purchase of the remaining 48% and then a sale of 20%. Because the 52% ownership interest remained constant and was never conveyed, the conveyance of "[s]ixty-eight percent of the corporation" would require the corporation to consist of at least 120% of itself—a mathematical impossibility.

[14] As for the example given in note 8 of the majority order, there is, as in the case at hand, an undisputed starting point for the ownership interest owned by each party: A having 75% interest and B having 25%. The uncapping would be triggered when A transfers a total of 30% and B transfers a total of 25%, for a cumulative total of 55%. That uncapping would take effect in the next calendar year. MCL 211.27a(3). The hypothetical transfer of 20% from C to A would be irrelevant to this uncapping. It is unclear to me what the majority finds unworkable.

corporations from having their conveyances considered cumulatively in MCL 211.27a(6)(h)(*ii*) . . . ." *Resort Props Co-Operative*, 349 Mich App at ___; slip op at 4. From this, the panel concluded that MCL 211.27a(6)(h) necessarily implies that a cumulative conveyance of more than 50% of a corporation's stock that is not incorporated under MCL 455.1 to MCL 455.24 otherwise *does* constitute a transfer of ownership.

I agree. But that does not contradict my conclusion. A cumulative conveyance can result in a transfer of property ownership—but only if the cumulative conveyance is of more than 50% of the corporation's ownership interest.[15]

In conclusion, simply adding together individual shares that have been conveyed in a series of transactions and concluding that the sum is more than 50% of the *total shares* does not necessarily mean that more than 50% of the *ownership interest* has been conveyed. In conflating these two concepts, the majority erroneously holds that more than 50% of petitioner's ownership interest had been transferred, which triggered an uncapping event. If the majority properly cabined its consideration of this case to whether more than 50% of the corporation's ownership interest had transferred, as the statute dictates, it would properly conclude that an uncapping event was *not* triggered.

For these reasons, I dissent from the majority order. I would instead have reversed the judgment of the Court of Appeals.

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[15] For example, suppose that A owns 74% of a corporation that owns real property, and B owns the remaining 26%. If B sold its 26% to A, that would not trigger an uncapping event. If A then sold 25% to C, that also would not trigger an uncapping event, even though the total number of individual shares cumulatively conveyed would be 51% of the total. This is because at least 74% of the ownership interest would have always remained with A, meaning that it would be impossible for more than 50% of the ownership interest to have been conveyed away. But if B sold its 26% to C, and A also sold 25% to C, those transactions would cumulatively trigger an uncapping event because they would represent a conveyance of 51% of the ownership interest. The example in note 11 of this statement also illustrates how cumulative conveyances could result in uncapping. These simple examples clearly demonstrate that cumulative conveyances can still result in uncapping events. The majority's assertion that the approach I have explained—the one demanded by the statutory language—does away with the consideration of cumulative conveyances reflects the majority's misunderstanding of both my argument and the statute.

ZAHRA, J., joins the statement of BERNSTEIN, J.

HOOD, J., did not participate because the Court considered this case before he assumed office.