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# Real and Personal Property Tax

*Jason C. Long*

## I. Introduction

**§2.1** Although the general property tax has been called the "worst tax," *see* Glenn W. Fisher, *The Worst Tax?: A History of the Property Tax in America* 4 (1996), it is the single largest source of revenue for Michigan governments. *See Annual Survey of Michigan Law: Taxation,* 51 Wayne LR 901, 902 (2005). The property tax affects all "real and tangible personal property" that is not exempt, Mich Const 1963 art 9, §3, rendering it perhaps the most comprehensive and important tax in Michigan.

This chapter will address the General Property Tax Act (GPTA), MCL 211.1 et seq., including the nature of the tax, the definitions of real and personal property, exemptions, classification, incorrectly reported and omitted property, and assessment notices. Challenges to property assessment, including boards of review, appeals to the Michigan Tax Tribunal and its several divisions, and appearances before the Michigan State Tax Commission (STC), are discussed in chapter 5.

Finally, this chapter will discuss the Lessee-User Tax Act (LUTA), MCL 211.181 et seq., which applies to certain types of property to which the GPTA is not applicable, and will discuss several other acts that apply in lieu of the GPTA in special circumstances.

## II. General Property Tax Act

### A. Introduction

**§2.2** The Michigan Constitution directs the legislature to provide for "uniform general ad valorem taxation of real and tangible personal property not exempt by law." Mich Const 1963 art 9, §3. *Ad valorem tax* means "a tax or duty upon the value of the article or thing subject to taxation." *Continental Cablevision of Michigan, Inc v Roseville*, 430 Mich 727, 730 n1, 425 NW2d 53 (1988) (citation omitted). The legislature carried out this directive when it adopted the GPTA, MCL 211.1 et seq. The GPTA identifies the property that is subject to taxation based on its true cash value, the means of determining true cash value, and other values that must be determined in Michigan's property tax system.

### B. Nature of Ad Valorem Taxation

**§2.3** An ad valorem tax is a "tax levied on property or an article of commerce in proportion to its value as determined by assessment or appraisal." *Meijer Inc v City of Midland*, 240 Mich App 1, 3 n1, 610 NW2d 242 (2000) (citation omitted). Thus, the first step in determining the amount of a property's ad valorem taxation is determining the value that will provide the basis for calculating the tax. There are several steps in this process under the GPTA, including determining a property's true cash value, its assessed value, and its taxable value.

### C. The Amount of Tax: The Millage Rate

**§2.4** The amount of property tax due for any given property in terms of dollars depends on both the applicable millage rate and the property's taxable value. Michigan property taxes are calculated using a millage rate, meaning that property is taxed at a rate equaling a certain number of dollars for every $1,000 of the property's taxable value. Taxable value is discussed in §2.27. In any event, the number of dollars per $1,000 of taxable value equals the "millage rate." *Black's Law Dictionary* 994 (6th ed 1990). Thus, if a property has a taxable value equaling $100,000, and the annual millage rate that applies to that property is 54.321, the amount of property tax due for that property on an annual basis equals $5,432.10. It is calculated by dividing the taxable value by 1,000 and then multiplying the quotient by the applicable total annual millage rate.

The total annual millage rate that applies to any given property represents the sum of a number of millages that are levied against that property. For example, most counties, cities, and townships have operating millages that fund governmental functions. *See, e.g.,* MCL 117.3; *see also* MCL 141.436. In some instances, there are special millages for municipal improvements like new fire or police stations, and other public entities, such as community colleges, MCL 389.144, school districts, MCL 380.1211, and recreational authorities, MCL 123.1141, also impose millages. Notably, if Michigan law did not authorize imposition of a millage before December 1978, a popular vote approving the millage in the jurisdiction where it would be imposed is generally necessary before the millage can be imposed. Mich Const 1963 art 9, §31; *see also American Axle & Mfg, Inc v City of Hamtramck*, 461 Mich 352, 356–357, 604 NW2d 330 (2000) (holding that because authorization for millage for judgment levy was adopted before December 21, 1978, even though no levy was ever imposed, no popular vote was necessary to impose levy). The vast majority of taxpayer property tax challenges relate to valuation, classification, or exemption, and the opposing party for these challenges is generally the assessing governmental unit. Challenges to the valid authorization for a millage are rarer and beyond the scope of this book.

### D. Taxing Jurisdictions and Taxpayers Under the GPTA

**§2.5** The GPTA provides the administration of ad valorem taxation to local municipal governments, usually cities and townships. Thus, the city or township assessor values property for tax purposes, MCL 211.27, and the city or township notifies the taxpayer of the value, MCL 211.24c. See §3.7 for additional information about notice requirements. The city or township is also responsible for billing and collecting property taxes. MCL 211.44–.46. Accordingly, the taxing jurisdiction for any given property is the government of the city or township where the property is located.

On the other hand, the taxpayer is generally the property's owner or occupant. Under MCL 211.3, real property is taxed to its owner, if the owner is known, and the occupant, if there is an occupant:

> Real property shall be assessed in the township or place where situated, to the owner if known, and also to the occupant, if any; if the owner be not known and there be an occupant, then to such occupant, and either or both shall be liable for the taxes on said property, and if there be no owner or occupant known, then as unknown. A trustee, guardian, executor, administrator, assignee or agent, having control or possession of real property, may be treated as the owner. The real property which belonged to a person deceased, not being in control of an executor or administrator, may be assessed to his heirs or devisees jointly, without naming them, until they shall have given notice of their respective names to the supervisor, and of the division of the estate.

Determining the taxpayer for personal property is somewhat more complicated; generally it is the property's owner or user, not including persons holding security interests in the property:

> All tangible personal property, except as otherwise provided in this act, shall be assessed to the owner of that tangible personal property, if known, in the local tax collecting unit in which the tangible personal property is located on tax day as provided in section 2. If the owner is not known and a person is beneficially entitled to tangible personal property or has possession of tangible personal property, the tangible personal property shall be assessed to that person. However, a person with only a security interest and no ownership interest in tangible personal property without possession shall not be assessed as an owner of that tangible personal property.

MCL 211.13(1). Additional details concerning the persons that may be taxed for personal property are set forth in MCL 211.14.

In any event, the taxpayer for any given property is determined as of the *tax day,* which is December 31 of the year preceding the tax year. MCL 211.2(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.").

### E. Significance of Distinction Between Real Property and Personal Property Under the GPTA

**§2.6** Both real and personal property have their taxes determined based on taxable value, and the GPTA sets forth definitions for real property and personal property. Historically, the primary significance of the distinction between real and personal property under the GPTA was that personal property is generally valued using a depreciation analysis that results in decreasing taxable values as time passes, *see, e.g., County of Wayne v Michigan State Tax Comm'n*, 261 Mich App 174, 181, 682 NW2d 100 (2004), while real property value may increase or decrease over time depending on the property's characteristics and market conditions, *Edward Rose Bldg Co v Independence Township*, 164 Mich App 324, 331, 416 NW2d 433 (1987), *aff'd,* 436 Mich 620, 462 NW2d 325 (1990). For additional discussion of this topic in the context of real property transfer taxes, see §§5.19–5.22.

The distinction between real and personal property became more important beginning in 2008, when Michigan law began to apply a lower millage rate to certain kinds of personal property. Beginning in that year, while all real property continued to be taxed at the same millage rates that had applied in the past, personal property classified as industrial is exempt from up to 18 mills, while personal property classified as commercial is exempt from up to 12 mills. MCL 380.1211. Accordingly, whether an item is considered real or personal property, in addition to its classification, can have a significant effect on the applicable tax rate. For additional discussion on classification of property, including how to appeal an erroneous classification, see §§2.22–2.23, 3.10, 3.23, and 3.29.

### F. Definition of *Real Property* Under the GPTA

**§2.7** The GPTA generally defines *real property* to include land, buildings, and fixtures on the land; appurtenances to the land; and certain other property:

> (1) For the purpose of taxation, real property includes all of the following:
>
> (a) All land within this state, all buildings and fixtures on the land, and all appurtenances to the land, except as expressly exempted by law.
>
> (b) All real property owned by this state or purchased or condemned for public highway purposes by any board, officer, commission, or department of this state and sold on land contract, notwithstanding the fact that the deed has not been executed transferring title.
>
> (c) For taxes levied after December 31, 2002, buildings and improvements located upon leased real property, except buildings and improvements exempt under section 9f or improvements assessable under section 8(h), if the value of the buildings or improvements is not otherwise included in the assessment of the real property. However, buildings and improvements located on leased real property shall not be treated as real property unless they would be treated as real property if they were located on real property owned by the taxpayer.

MCL 211.2(1). In the past, buildings and improvements on leased real property were considered personal property except where the real property was also taxed to the tenant. But in a series of acts that became effective in 2003, the Michigan legislature amended the GPTA to generally provide that improvements on leased property must be considered real property. MCL 211.2 (as amended by 2000 PA 415). But property that fits the definition of leasehold improvements under the GPTA's definition of personal property was excepted from this change and remains personal property under the GPTA so long as its value is not attributed to the underlying real property. MCL 211.2 (as amended by 2002 PA 620).

The GPTA also includes provisions establishing that certain mobile homes are real property, MCL 211.2a, governing the persons to which real property shall be assessed, MCL 211.3, and differentiating between real property and mineral rights in certain instances, MCL 211.6a, .6b.

### G. Definition of *Personal Property* Under the GPTA

**§2.8** The GPTA's definition of personal property is broader than its definition of real property. *Personal property* generally includes all goods, chattels, and effects located in Michigan as well as a number of other items:

> For the purposes of taxation, personal property includes all of the following:
>
> (a) All goods, chattels, and effects within this state.
>
> (b) All goods, chattels, and effects belonging to inhabitants of this state, located without this state, except that property actually and permanently invested in business in another state shall not be included.
>
> * * *
>
> (f) All other personal property not enumerated in this section and not especially exempted by law.
>
> (g) The personal property of gas and coke companies, natural gas companies, electric light companies, waterworks companies, hydraulic companies, and pipe line companies transporting oil or gas as public or common carriers, to be assessed in the local tax collecting unit in which the personal property is located. The mains, pipes, supports, and wires of these companies, including the supports and wire or other line used for communication purposes in the operation of those facilities, and the rights of way and the easements or other interests in real property by virtue of which the mains, pipes, supports, and wires are erected and maintained, shall be assessed as personal property ….
>
> (h) During the tenancy of a lessee, leasehold improvements and structures installed and constructed on real property by the lessee, provided and to the extent the improvements or structures add to the true cash taxable value of the real property notwithstanding that the real property is encumbered by a lease agreement, and the value added by the improvements or structures is not otherwise included in the assessment of the real property …. Leasehold improvements and structures assessed under this subdivision shall be assessed to the lessee.
>
> * * *

(k) For taxes levied after December 31, 2002, a trade fixture.

MCL 211.8. The definition of personal property also reiterates that improvements on leased real property are generally considered real property, subject to the exceptions provided in the definition of personal property. MCL 211.8(d).

The STC, which generally supervises the administration of Michigan tax laws, MCL 209.104 (see §§3.26–3.32 for more about the STC), has stated that the GPTA's definition of personal property is, in fact, more of a listing. The probable reason is that "there are thousands of different items" that may qualify as personal property, and, therefore, personal property defies easy definition. Mich State Assessors Bd, Assessor's Training Manual 12-1 (1998). Under Michigan law, definitions from a standard dictionary may generally be used to give meaning to terms that are not defined in statutes. *See, e.g., TMW Enters v Department of Treasury*, 285 Mich App 167, 172, 775 NW2d 342 (2009). Such an analysis of the terms within the definition of personal property, however, does not provide any valuable insight. For example, the dictionary definitions of *chattel* are "a movable article of personal property" and "any tangible property other than land and buildings." *Webster's College Dictionary* 206 (2005). Likewise, in other contexts, the Michigan courts have applied the legal definition of *chattel,* which is generally an "article of personal property." *Clancy v Oak Park Vill Athletic Ctr*, 140 Mich App 304, 308 n2, 364 NW2d 312 (1985). Thus, the GPTA's definition of personal property may be best understood as meaning all property that is not real property, as well as all property that the GPTA specifically identifies as personal property. *See, e.g.,* Mich State Tax Comm'n, Instructions for Form L-4175 (2004) (stating that personal property encompasses "tangible property that is not real estate").

Other components of the personal property list, however, do have established meanings under Michigan law. One item on the list, for example, is trade fixtures. Under Michigan law, *fixtures* are items of property that have "a possible existence apart from realty, but which may, by annexation, be assimilated into realty." *Wayne County v Britton Trust*, 454 Mich 608, 615, 563 NW2d 674 (1997). *Trade fixtures* are a subcategory of fixtures that are installed by a tenant on leased property and that may be removed by the tenant at the lease's termination even though, as a fixture, the item would have normally become part of the underlying real property. *Id.* Because the tenants can remove their trade fixtures, Michigan courts have held that trade fixtures are personal property as between a tenant and landlord. But the courts had historically held that, as to third parties, trade fixtures are real property just as any other fixture would be. Therefore, in *Michigan Nat'l Bank v City of Lansing*, 96 Mich App 551, 555, 293 NW2d 626 (1980), the Michigan Court of Appeals held that although certain items in a bank building may have qualified as the bank's trade fixtures, "for the purpose of taxation, trade fixtures are properly classified as real property." The legislature effectively overruled cases like *Michigan National Bank* beginning in 2003, as it amended the GPTA to provide that trade fixtures are personal property for taxation purposes. *See* MCL 211.8(k).

Finally, intangible personal property is excluded from taxation under Mich Const 1963 art 9, §3, as this section only authorizes ad valorem taxation of "real and tangible personal property not exempt by law." *See Michigan Bell Tel Co v*

*Department of Treasury*, 445 Mich 470, 486, 518 NW2d 808 (1994) (holding that Mich Const 1963 art 9, §3 distinguishes "between tangible and intangible property, and it limits the application of the general ad valorem property tax to real and tangible personal property"). Property subject to taxation under other tax structures, such as certain public service property, can include intangible property. *Id.*

### H. Distinguishing Between Real and Personal Property Under the GPTA

#### 1. Fixture Analysis

**§2.9** To distinguish between real and personal property, Michigan law applies the analysis that governs whether an item is a fixture. Under the GPTA, if an item is a fixture, it is real property and taxable as such; on the other hand, if the item is not a fixture, the item is personal property. *See, e.g., Continental Cablevision of Michigan, Inc v Roseville*, 430 Mich 727, 735, 425 NW2d 53 (1988). In *Continental Cablevision,* the Michigan Supreme Court addressed whether wires extending from utility poles to residences were fixtures that were taxable to the owners as real property or personal property that was taxable to the cable television company that had installed them. In doing so, the court explained the three-step analysis that applies to determine whether such an item is a fixture:

> Courts of this state have consistently applied a three-factor test to determine whether an item of property constitutes a fixture. The factors are: [1] *annexation* to the realty, either actual or constructive; [2] *adaptation* or application to the use or purpose to which that part of the realty to which it is connected is appropriated; and [3] *intention* to make the article a permanent accession to the freehold.

430 Mich at 735–736. Michigan courts have developed analyses for each of the factors in the fixtures analysis.

#### 2. Annexation

**§2.10** Annexation refers to whether an item is physically attached to the underlying real estate. The Michigan Supreme Court explained the requirements for annexation in the condemnation action *Wayne County v Britton Trust*, 454 Mich 608, 615, 563 NW2d 674 (1997) (quoting 35 Am Jur 2d *Fixtures* §5):

> Annexation refers to "the act of attaching or affixing personal property to real property and, as a general proposition, an object will not acquire the status of a fixture unless it is in some manner or means, albeit slight, attached or affixed, either actually or constructively, to the realty. That is, if the object is not attached to the land or to some structure or appliance which is attached to it, it will retain its character as personalty even though intended for permanent use on the premises."

*Britton Trust* also explained that an item may "acquire the status of a fixture by constructive annexation." *Id.* An item becomes a fixture through constructive annexation when the item, though not physically attached to the real property, is necessary for the property's use and operation.

### 3. Adaptation

**§2.11** Adaptation refers to "the relationship between the chattel and the use which is made of the realty to which the chattel is annexed." *Wayne County v Britton Trust*, 454 Mich 608, 618, 563 NW2d 674 (1997). *Britton Trust* was the first Michigan case to explicitly address this step in the analysis in detail, stating that an "object introduced onto the realty may become a fixture if it is a necessary or at least a useful adjunct to the realty, considering the purposes to which the latter is devoted." 454 Mich at 619.

### 4. Intent

**§2.12** Whether there is an objective intent to render an item a fixture is the third step in the analysis:

> This Court examines the objective visible facts to determine whether intention to make the article a permanent accession to the realty exists. The surrounding circumstances determine the intent of the party making the annexation, not the annexor's secret subjective intent. Intent may be inferred from the nature of the article affixed, the purpose for which it was affixed, and the manner of annexation.

*Wayne County v Britton Trust*, 454 Mich 608, 619, 563 NW2d 674 (1997). Intent has long been considered the most important component of the fixtures analysis under Michigan law. *See, e.g., Manwaring v Jenison*, 61 Mich 117, 135, 27 NW 899 (1886).

### 5. Contesting the Assessment as Real or Personal

**§2.13** A taxpayer can challenge a property assessment by filing a petition in the Michigan Tax Tribunal alleging that the taxing jurisdiction has included personal property in the real property assessment and that the real property assessment must be corrected to exclude the personal property. Fundamentally, the taxpayer will have to demonstrate that the value that the taxing jurisdiction has placed on the real property includes value attributable to items of personal property. To do so, the taxpayer will have to demonstrate that the contested item is either specifically identified as personal property in the GPTA or fails the fixture analysis and therefore is not real estate. If the taxpayer is successful, the value attributable to the item of personal property would have to be deducted from the real property assessment. *See Tuinier v Bedford Charter Township*, 235 Mich App 663, 599 NW2d 116 (1999) (disagreeing with taxpayer's arguments that certain improvements were personal property and could not be included on taxpayer's real property assessment); *College Inn of Big Rapids v City of Big Rapids*, No 299574 (Mich Tax Trib July 7, 2005) (agreeing with taxpayer that value of sign could not be taken into account in valuing taxpayer's real property because sign was personal property).

The procedure is essentially the same when a taxpayer believes that property has been assessed as personal property but should have been assessed as real property. The taxpayer will have to file a petition in the tax tribunal alleging that the taxpayer's personal property assessment includes value attributable to real property. If the taxpayer can demonstrate that this is true, the value attributable to the real property will have to be deducted from the personal property assessment. *See Continental Cablevision of Michigan, Inc v Roseville*, 430 Mich 727, 749, 425 NW2d 53 (1988) (rejecting taxpayer's argument that certain items were real property and concluding that items were properly taken into account on taxpayer's personal property assessment); *see also Howard Plating Indus, Inc v City of Madison Heights*, No 119656 (Mich Tax Trib July 8, 1992) (holding that taxpayer failed to demonstrate that certain items did not satisfy three-step fixture analysis and concluding that items were real property).

Ultimately, the tribunal's decisions hinge on the definitions of real property and personal property under the GPTA, with the tribunal and the courts acknowledging that the GPTA prohibits real property assessments from accounting for personal property and personal property assessments from accounting for real property. *See Tunier*, 235 Mich App at 667; *Howard Plating Indus.* This is different from a decision regarding a property's classification as industrial, commercial, agricultural, or one of the other classifications that the GPTA sets forth in MCL 211.34c. The tribunal has stated that it lacks jurisdiction to consider those classifications. *See TES Filer City Station v Township of Filer*, No 192808 (Mich Tax Trib Jan 23, 2004). Classification under MCL 211.34c and challenges to such classifications are discussed in §§2.14–2.21.

If a property owner does demonstrate that either real or personal property was improperly taken into account on the wrong assessment and obtains a judgment from the tribunal reducing the amount of the real or personal assessment to exclude real or personal property, the taxing jurisdiction may be able to place the personal or real property on the correct assessment under MCL 211.154, which allows for property that was omitted from an assessment to be retrospectively added. This is because if property was included in the wrong assessment, it was omitted from the correct assessment and may possibly be added. Adding omitted property under MCL 211.154 is addressed in chapter 3.

## I. Classification

### 1. Introduction

**§2.14** The GPTA also requires that each local taxing jurisdiction must classify all assessable property within that jurisdiction. MCL 211.34c(1). The classifications include industrial real property, industrial personal property, commercial real property, commercial personal property, and so forth. Historically, the classifications' only real significance was in the equalization process, which ensures that all property is taxed uniformly across Michigan's various taxing jurisdictions. *See, e.g., Ann Arbor Township v State Tax Comm'n*, 393 Mich 682, 687, 227 NW2d 784 (1975). Beginning with the 2008 tax year, however, Michigan law changed. In conjunction with the now-defunct Michigan Business Tax Act (MBT Act), reduced tax rates applied to property classified as commercial personal property, and property classified as industrial personal property is subject to even lower rates. MCL 211.7kk. This remains true even after the MBT's repeal. The tax rates for real property, both before and after the MBT and regardless of the real property's classification, are the same. Accordingly, whether property is classified as real property or personal property, and whether personal property is commercial, industrial, or some other classification, has become more important than it was in the past.

The GPTA's classification provisions do not define real and personal property. Rather, they only identify which real property and which personal property fall into the industrial, commercial, and other classes. MCL 211.34c. Accordingly, the general definitions of real property, MCL 211.2, and personal property, MCL 211.8, apply, as does the fixtures analysis for distinguishing between real and personal property. See discussion in §§2.7–2.9.

Whether any given item of property is defined as real or personal property, however, is only the first factor in the classification process. The GPTA requires taxing jurisdictions to assign classifications to property and sets forth definitions for the property classifications. MCL 211.34c.

### 2. Industrial Real Property

**§2.15** *Industrial real property* includes the following:

(i) Platted or unplatted parcels used for manufacturing and processing purposes, with or without buildings.

(ii) Parcels used for utilities sites for generating plants, pumping stations, switches, substations, compressing stations, warehouses, rights-of-way, flowage land, and storage areas.

(iii) Parcels used for removal or processing of gravel, stone, or mineral ores, whether valued by the local assessor or by the state geologist.

(iv) For taxes levied after December 31, 2002, buildings on leased land used for industrial purposes.

(v) For taxes levied after December 31, 2002, buildings on leased land for utility purposes.

MCL 211.34c(2)(d). Thus, whether real property is used for "manufacturing and processing purposes" and other uses included within the definition of industrial real property is the critical factor in determining whether the property should be classified as industrial property.

But the GPTA does not define the term *manufacturing and processing* that controls whether a property may be classified as industrial real property. The applicable dictionary definitions of *manufacture* generally mean to produce something from source material, especially on a large scale:

> 1. to make or produce by hand or machinery, esp. on a large scale. 2. to work up (material) into form for use: *to manufacture cotton* …. 4. to produce in a mechanical way …. 5. the making of goods or wares by manual labor or by machinery, esp. on a large scale: *the manufacture of cars.* 6. the making or producing of something; generation ….

*Webster's College Dictionary,* at 753. *Process* has many dictionary definitions, but the applicable definitions focus on systematic or continuous actions treating or preparing materials:

> 1. a systematic series of actions directed to some end: *a process for homogenizing milk.* 2. a continuous action, operation, or series of changes taking place in a definite manner …. 10. to treat or prepare by some particular process, as in manufacturing.

*Id.* at 981. Other Michigan statutes provide additional guidance to the meaning of manufacturing and processing. The Industrial Facilities Tax Act (IFT Act) (see §2.61) exempts certain properties from taxation under the GPTA and defines *manufacture of goods or materials* and *processing of goods or materials* to mean the uses identified in the North American Industry Classification System (NAICS):

> "Manufacture of goods or materials" or "processing of goods or materials" means any type of operation that would be conducted by an entity included in the classifications provided by sector 31–33—manufacturing, of the North American industry classification system, United States, 1997, published by the office of management and budget, regardless of whether the entity conducting that operation is included in that manual.

MCL 207.552(11). The NAICS, developed by the U.S. Office of Management and Budget, describes certain economic activities to assist in compiling statistics about business activity. See http://www.census.gov/naics. It describes the manufacturing sector in a manner consistent with the dictionary definitions:

> The Manufacturing sector comprises establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of manufactured products is considered manufacturing, except in cases where the activity is appropriately classified in Sector 23, Construction.
>
> Establishments in the Manufacturing sector are often described as plants, factories, or mills and characteristically use power-driven machines and materials handling equipment ….
>
> ….
>
> The new product of a manufacturing establishment may be finished in the sense that it is ready for utilization or consumption, or may be semifinished to become an input for an establishment engaged in further manufacturing.

NAICS Sector: 31-33 Manufacturing, *at* http://www.census.gov/epcd/ec97/def/31-33.HTM. The NAICS then extensively itemizes activities that fall within the manufacturing sector and places the activities into categories, all of which should qualify as manufacturing and processing under the IFT Act.

### 3. Industrial Personal Property

**§2.16** Under the GPTA's definition, the class of *industrial personal property* includes equipment located on industrial parcels as well as mining companies' property:

> (c) Industrial personal property includes the following:
>
> (i) All machinery and equipment, furniture and fixtures, and dies on industrial parcels, and inventories not exempt by law.
>
> (ii) Personal property of mining companies valued by the state geologist.

MCL 211.34c(3)(c). This section's plain language provides that if personal property is "on" an "industrial parcel," that personal property should be industrial personal property. This suggests that the personal property's location will drive its classification. *See* Jason C. Long, *This Time It's Personal(?) Property Classification and Recent Amendments to Michigan's Property Tax Laws,* 25 TM Cooley LR 303, 324–326 (2008).

From the time that classification first became an issue until late 2011, the STC nevertheless directed taxing jurisdictions to classify personal property according to the property's use and to interpret the term "on" in MCL 211.34c(3)(c)(i) to mean parcels where industrial activity is occurring, rather than just the locational sense derived from its plain meaning. *See STC Memorandum* (Feb 18, 2010); *see also* STC Bulletin No 22 (2010). But at the STC's October 31, 2011, meeting, the STC rescinded Bulletin No 22 (2010) and resolved that personal property located on a parcel of industrial real property should be classified as industrial personal property.

### 4. Commercial Real Property

**§2.17** The class of *commercial real property* is defined to include properties used for wholesale and retail operations, properties used by certain clubs, certain recreational properties, apartments, and buildings on leased property:

> Commercial real property includes the following:
>
> (i) Platted or unplatted parcels used for commercial purposes, whether wholesale, retail, or service, with or without buildings.
>
> (ii) Parcels used by fraternal societies.
>
> (iii) Parcels used as golf courses, boat clubs, ski areas, or apartment buildings with more than 4 units.
>
> (iv) For taxes levied after December 31, 2002, buildings on leased land used for commercial purposes.

MCL 211.34c(2)(b). As is the case with industrial real property, the GPTA does not define the terms used to identify the properties that must be classified as commercial real property, requiring application of dictionary definitions of these terms. The first term is *commercial,* as any property used for "commercial purposes" should be classified as commercial real property. *Commercial use* generally means use in commerce or to generate a profit, particularly on a wide scale:

> 1. of, pertaining to, or characteristic of commerce. 2. produced, marketed, etc., with emphasis on salability, profit, or the like: *a commercial book.* 3. able or likely to yield a profit. 4. suitable for a wide popular market: *commercial uses for satellites.* 5. engaged in, used for, or suitable to commerce or business, esp. of a public or nonprivate nature: *commercial vehicles.*

*Webster's College Dictionary* at 245. Commerce would encompass the types of activities identified as industrial uses, so commercial use under the GPTA must be understood to be limited to those uses in commerce emphasizing profitability that do not also qualify as industrial uses.

The GPTA elaborates on which properties are "used for commercial purposes," stating that a property is so used whether it is used for "wholesale, retail, or service." *Wholesale,* the first alternative, is defined to mean "the sale of goods in quantity, as to retailers." *Id.* at 1396. *Retail,* the second alternative, means "the sale of goods to ultimate consumers," usually "in small quantities." *Id.* at 1052. *Service,* the third alternative, is defined more broadly to mean providing accommodations or activities rather than goods:

> 3. the providing or a provider of accommodation and activities required by the public, as maintenance or repair: *guaranteed service and parts.* 4. the organized system of apparatus, appliances, employees, etc., for supplying some accommodation required by the public: *a television repair service* .... 24. supplying services rather than products or goods: *the service professions.* 25. supplying maintenance and repair: *a service center for electrical appliances* .... 28. to make fit for use; repair or restore: *to service an automobile.*

*Id.* at 1121. The definition of service also includes "a supplier of utilities," but because the GPTA includes utility use in the industrial classification, MCL 211.34c(2)(d)(ii), and the definitions cannot be redundant, use for service as a commercial purpose must be understood to exclude utility uses.

Other uses that the GPTA identifies as commercial uses are addressed in other legislation. For example, although "fraternal" generally refers to a "society of men associated in brotherly union, as for mutual aid or benefit," *id.* at 489, an entire chapter of the Michigan Compiled Laws addresses fraternal societies. This chapter provides for the incorporation and treatment by the government of fraternal societies like the Ancient Order of Hibernians and many others. MCL 457.41–.48. Likewise, while *ski area* might refer to any space or surface devoted to skiing, see *Webster's College Dictionary* at 66, the Ski Area Safety Act specifically defines a ski area as "an area used for skiing and served by 1 or more ski lifts." MCL 408.322(f).

### 5. Commercial Personal Property

**§2.18** The GPTA's language defines the *commercial personal property* class to include personal property on commercial parcels, outdoor signs, and certain vehicles:

> Commercial personal property includes the following:
>
> (i) All equipment, furniture, and fixtures on commercial parcels, and inventories not exempt by law.
>
> (ii) All outdoor advertising signs and billboards.
>
> (iii) Well drilling rigs and other equipment attached to a transporting vehicle but not designed for operation while the vehicle is moving on the highway.
>
> (iv) Unlicensed commercial vehicles or commercial vehicles licensed as special mobile equipment or by temporary permits.

MCL 211.34c(3)(b). As with industrial personal property, the language in the GPTA's definition of commercial personal property apparently conditions much of the personal property that will receive the commercial classification on whether the personal property is located on commercial parcels. Under the STC's previous directive taxing jurisdictions were required to analyze the activity on a parcel to determine whether to classify the personal property as commercial. See *STC Memorandum* (Feb 18, 2010). But with the STC rescinding Bulletin No 22 (2010) and acknowledging that personal property located on a parcel of industrial real property should be classified as industrial personal property, the same reasoning should apply to commercial personal property. In other words, under the GPTA's plain language, it should also be the case that personal property located on a parcel of commercial real property is classified as commercial personal property.

The GPTA additionally specifies certain other kinds of personal property as commercial personal property. For example, the GPTA provides that "[a]ll outdoor advertising signs and billboards" must receive the commercial personal property classification. MCL 211.34c(3)(b)(ii). The GPTA also specifically provides that certain vehicles must be classified as commercial personal property. First, it addresses "well drilling rigs and other equipment attached to a transporting vehicle but not designed for operation while the vehicle is moving on the highway." MCL 211.34c(3)(b)(iii). This provision is straightforward as it applies to well-drilling equipment, which is typically mounted on a truck. The description is broad enough, however, seemingly to encompass other equipment that is similar, such as a truck-mounted tree spade, to other equipment on a vehicle that is not intended for use while the vehicle is moving, such as cranes that are mounted on the trucks that they unload and equipment that might commonly be considered part of the vehicle itself, such as the tank on a septic-cleaning vehicle.

Other vehicles that the GPTA specifically identifies as commercial personal property include unlicensed commercial vehicles. *Commercial vehicles* might mean any vehicles used to earn a profit, *Webster's College Dictionary,* at 245, but the Michigan Vehicle Code defines that term to mean vehicles used to transport people and goods and vehicles used to tow other vehicles:

> "Commercial vehicle" includes all motor vehicles used for the transportation of passengers for hire, or constructed or used for transportation of goods, wares or merchandise, and/or all motor vehicles designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

MCL 257.7 Of course, the classification requirement applies only to unlicensed commercial vehicles, as licensed vehicles are taxed under the Michigan Vehicle Code itself. MCL 257.801–.810.

*Special mobile equipment* is another type of property that the GPTA provides must be classified as commercial personal. The GPTA does not define this term, but the Michigan Vehicle Code defines it to mean vehicles that are not designed or used primarily for transporting people or property:

> "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, mobile office trailers, mobile tool shed trailers, mobile trailer units used for housing stationary construction equipment, ditch-digging apparatus,

> and well-boring and well-servicing apparatus. The foregoing enumeration shall be considered partial and shall not operate to exclude other vehicles which are within the general terms of this definition. Although not within the general terms of this definition, the combination of a mobile car crusher trailer permanently attached to a truck tractor or road tractor shall be considered special mobile equipment for purposes of this act.

MCL 257.62. Notably, the Michigan Vehicle Code's definition of special mobile equipment seems to duplicate the GPTA's specific provision governing equipment attached to a vehicle that is not designed for use while the vehicle is moving. But because Michigan statutes cannot be construed to be redundant, the definition of special mobile equipment must be understood to encompass only that equipment that is not specifically identified in another section. In this instance, the ambiguity is seemingly inconsequential because both "equipment attached to a transporting vehicle but not designed for operation while the vehicle is moving on the highway" and "special mobile equipment" are classified as commercial personal property. Finally, commercial vehicles operating on temporary permits, which are governed by the Michigan Vehicle Code, MCL 257.243, are also included as commercial personal property.

### 6. Other Classes of Assessable Property

**§2.19** The GPTA includes several other classes of assessable property, including agricultural real and personal property, developmental real property, residential real property, timber-cutover real property, and utility personal property. Aside from the agricultural real property classification, which results in the property's exemption from certain school taxes akin to the benefit of the principal residence exemption, MCL 380.1613, a property's classification among these classes relates only to equalization and has little consequence for the property and taxpayer.

### 7. Properties Used for More Than One Purpose

**§2.20** The GPTA also provides for the classification of properties that are used for multiple purposes. If a property's uses fall within more than one of the GPTA's classifications, the GPTA provides that the taxing jurisdiction's assessor must determine which use most significantly influences the parcel's value: "If the total usage of a parcel includes more than 1 classification, the assessor shall determine the classification that most significantly influences the total valuation of the parcel." MCL 211.34c(5). The property then will be classified under the use that has the most significant influence on the property's value.

Under this provision, any number of factors can influence a property's classification. It is not uncommon, for example, for a property to be used not only to prepare a company's products, which may qualify as manufacturing and processing that would result in an industrial classification, but also to sell the products, which may qualify as wholesale or retail use and result in a commercial classification. The relative portions of the property devoted to the each use, the value of industrial and commercial property in the property's market, and the property's own position in that market will all affect the property's classification under the GPTA.

#### 8. Challenging a Property Tax Assessment

**§2.21** Under the GPTA, generally the taxing jurisdiction first assigns a property's classification and valuation and makes initial determinations on the qualification for exemption. For a discussion of how to appeal a property's classification, assessment, or denial of exemption, see chapter 3. Depending on the city ordinance of the taxing jurisdiction, the classification of the property involved, and the type of challenge made, appeals may first be made to the local assessor, the local board of review, the Michigan Tax Tribunal, or the STC. The GPTA's language provides that an STC decision regarding classification is final and that the taxpayer has no further right of review from such a decision. MCL 211.34c(6). However, in *Midland Cogeneration Venture LP v Naftaly*, 489 Mich 83, 94–95, 803 NW2d 674 (2011), the supreme court held that the failure of MCL 211.34c(6) to provide for judicial review of STC classification decisions rendered unconstitutional that portion of the GPTA providing that the STC's decision is final. Accordingly, the supreme court held that a taxpayer may appeal an STC decision regarding classification to the circuit court with jurisdiction where the taxpayer resides or to the court of claims.

### J. Improperly Reported and Omitted Property

#### 1. Authority to Correct

**§2.22** The GPTA authorizes the STC to retroactively correct property tax assessments to include property that was incorrectly reported by a taxpayer and to add omitted real and personal property to the assessment roll. The GPTA provides the STC with the authority to add to a property's assessment to account for incorrectly reported and omitted property for the current tax year and the two preceding years:

> If the state tax commission determines that property subject to the collection of taxes under this act, including property subject to taxation under 1974 PA 198, MCL 207.551 to 207.572, 1905 PA 282, MCL 207.1 to 207.21, 1953 PA 189, MCL 211.181 to 211.182, and the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, has been incorrectly reported or omitted for any previous year, but not to exceed the current assessment year and 2 years immediately preceding the date the incorrect reporting or omission was discovered and disclosed to the state tax commission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll.

MCL 211.154(1). Changes implemented under this section may only be assessed to the property's current owner, as the GPTA provides that "[t]axes computed under this section shall not be spread against the property for a period before the last change of ownership of the property." *Id.*

As the court of appeals explained in *Superior Hotels, LLC v Mackinaw Township*, 282 Mich App 621, 630, 765 NW2d 31 (2009), "in § 154 the Legislature has conferred administrative jurisdiction on the STC to correct erroneous property tax assessments in specific limited circumstances." The circumstances involve two different scenarios. First are those instances when the taxpayer "is required to self-report property," as with personal property statements under MCL 211.19, and "the assessor is expected to rely upon that report when determining the assessment." *SSAB Hardtech, Inc v State Tax Comm'n*, No 288672 (Mich Tax Trib Mar 30, 2004). Second are the instances when property is omitted from an assessment and the assessment is based on that omission.

Regarding the first scenario, the GPTA does not define the term *incorrectly reported property*. However, incorrectly reported property can include property that is not correctly identified on a personal property statement. That is, if a taxpayer is in possession of taxable personal property but does not accurately report the property on its personal property statement, for example by reporting the property in the incorrect depreciation class, the property may be incorrectly reported. Incorrectly reported property can also include real property. For example, in *City of Mt Pleasant v State Tax Comm'n*, 267 Mich App 1, 703 NW2d 227 (2005), *rev'd on other grounds,* 477 Mich 50, 729 NW2d 833 (2007), the court of appeals approved the STC's action under MCL 211.154 to change the status of real property from exempt to taxable. The city in that case had reported real property that belonged to Isabella County as exempt from taxation. Later it petitioned the STC to act under MCL 211.154 to change the property's status from exempt to taxable, and the court of appeals held that this was a valid application of MCL 211.154. 267 Mich App at 5–6. In addition, the STC's administrative rules provide that the STC may remove real property from an assessment roll under MCL 211.154 in a case of "[i]ncorrect measurement" or "[e]rrors of inclusion, for example, pole barn not built or placed on an incorrect parcel." AC, R 209.31(2).

Regarding the second scenario, in *Superior Hotels,* the court of appeals applied the definitions in MCL 211.34d to understand the provisions in MCL 211.154 concerning omitted property. MCL 211.34d defines *omitted real property* broadly to mean "previously existing tangible real property not included in the assessment." MCL 211.34d(1)(b)(i). The definition then discusses adding omitted real property to a property's assessment under MCL 211.154:

> Omitted real property shall not increase taxable value as an addition unless the assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment. The assessing jurisdiction has the burden of proof in establishing whether the omitted real property is included in the assessment. Omitted real property for the current and the 2 immediately preceding years, discovered after the assessment roll has been completed, shall be added to the tax roll pursuant to the procedures established in section 154.

MCL 211.34d(1)(b)(i). In *Superior Hotels,* the omitted real property involved the completion of a construction project. The subject property was assessed and, after its completion, the township did not initially account for the new construction as an addition under MCL 211.27. The court held that when the new construction was not added, it became omitted property that could be added to the assessment under MCL 211.154. *Superior Hotels,* 282 Mich App at 638–639.

As for omitted personal property, the GPTA similarly defines it as "previously existing tangible personal property not included in the assessment." MCL

211.34d(1)(b)(ii). This definition also provides that "[o]mitted personal property shall be added to the tax roll pursuant to section 154." *Id.*

### 2. Petition to Correct Improperly Reported or Omitted Property

**§2.23** Either the taxing jurisdiction, the taxpayer, or any other person may request that the STC retroactively correct a property tax assessment under MCL 211.154. Pursuant to the STC's administrative rules, the STC has created standard forms for such requests, providing one form for the taxing jurisdiction, another for the taxpayer, and another for other persons. The forms for the taxing jurisdiction and the taxpayer require that each attach supporting information when seeking a retroactive change in a property's assessment and require that each party must request the other's concurrence in the assessment change. AC, R 209.33, .34. When other persons request an assessment change, the STC first investigates the allegations, determines an amount that it believes to be the appropriate assessment, and then seeks concurrence from both the taxpayer and the taxing jurisdiction. AC, R 209.37. When the parties concur in any of these circumstances, the STC generally issues an order approving the assessment change. If there is a dispute, however, the parties proceed to a hearing before the STC where the STC will determine an appropriate assessment. AC, R 209.33, .34, .37.

Under the STC's administrative rules, "[t]he commission does not have jurisdiction to hear a taxpayer request to remove personal property from the roll when the taxpayer fails to file or fails to timely file a personal property statement." AC, R 209.31(1). Thus, as *SSAB Hardtech, Inc v State Tax Comm'n*, No 288672 (Mich Tax Trib Mar 30, 2004), explained, for MCL 211.154 to apply, the "taxpayer must incorrectly report its property to the local unit, AND the local unit must rely on that incorrect statement when assessing tax." The tribunal went on to explain the limitations in MCL 211.154:

> Section 154 is *not* a mechanism for either the taxpayer or the assessor to correct a mistake in judgment as to the value or the quantity of property where the assessor rejects the incorrect personal property tax statement and bases the assessment on his or her own determination. This is true notwithstanding that the assessor later discovers that the amount that the taxing authority assessed was not accurate.

Summarizing in a statement that reflects the section's overall purpose, the tribunal stated that "[a] taxpayer may not contest the valuation of property under MCL 211.154, but may obtain relief only for 'incorrectly reported or omitted property.' " *SSAB Hardtech* (quoting *Detroit v Norman Allan & Co*, 107 Mich App 186, 309 NW2d 198 (1981)).

Section 3.30 provides discussion concerning MCL 211.154, its limitations on attempts to dispute a property's value, and a taxpayer's right to appeal a decision from the STC to the Michigan Tax Tribunal.

# III. Taxation of Real Property Under GPTA

## A. True Cash Value

### 1. Definition

**§2.24** Under the GPTA, *true cash value* means a property's usual selling price in a private sale:

> As used in this act, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.

MCL 211.27(1).

The usual selling price may account for auction sales if such sales are a common method of acquisition for the type of property involved in the property's jurisdiction, but not liquidation auctions or those for which marketing is unavailable:

> The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing techniques to obtain the usual selling price for the property.

MCL 211.27(1).

Importantly, the GPTA provides, with one exception, that "the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred." MCL 211.27(5). Rather, a property's actual sale price is only one indication of its usual selling price, which is generally synonymous with the property's fair market value. *See CAF Inv Co v Michigan State Tax Comm'n*, 392 Mich 442, 450, 221 NW2d 588 (1974). For eligible nonprofit housing property transferred from a charitable nonprofit housing organization to low-income person after December 31, 2010, the purchase price is the presumptive true cash value of that property. MCL 211.27(6), *added by* 2010 PA 340 (eff. Dec 21, 2010).

The GPTA additionally provides that a number of factors must be considered in determining true cash value:

> In determining the true cash value, the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; existing use; present economic income of structures, including farm structures; present economic income of land if the land is being farmed or otherwise put to income producing use; quantity and value of standing timber; water power and privileges; and mines, minerals, quarries, or other valuable deposits known to be available in the land and their value.

MCL 211.27(1). Notably, none of these factors is controlling. The GPTA merely directs that these factors must be considered in determining true cash value.

Also, the GPTA defines some of these factors. *Present economic income,* for example, generally means the income that a property could generate under prevailing market conditions rather than the property's actual income:

> As used in subsection (1), "present economic income" means for leased or rented property the ordinary, general, and usual economic return realized from the lease or rental of property negotiated under current, contemporary conditions between parties equally knowledgeable and familiar with real estate values.

MCL 211.27(4). Under this definition, the "actual income generated by the lease of rental property is not the controlling indicator of its true cash value in all cases." *Id.*

### 2. Methods for Determining True Cash Value

**§2.25** Michigan courts have explained that the GPTA does not prescribe any single method for determining a property's true cash value. Instead, "the task of approving or disapproving specific valuation methods or approaches has fallen to the courts." *Meadowlanes Ltd Dividend Hous Ass'n v Holland*, 437 Mich 473, 484, 473 NW2d 636 (1991). In considering valuation methods and approaches, the Michigan Supreme Court has stated that it is "the goal of the assessment process to determine, in the abstract, the usual selling price of a given piece of property between a willing buyer and a willing seller and to develop methodologies that make it possible to achieve uniformity in making such determinations." *County of Washtenaw v State Tax Comm'n*, 422 Mich 346, 363, 373 NW2d 697 (1985).

The courts have generally approved the three traditional methods for determining a property's true cash value:

> They are: (1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach. Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.

*Meadowlanes,* 437 Mich at 484–485.

The cost approach estimates true cash value by "adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation in structures, i.e., physical deterioration and functional or economic obsolescence." *Id.* at 485 n18. Next, the sales-comparison approach "indicates true cash value by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the sales price of the comparable properties to reflect differences between the two properties." *Id.* at 485 n19. Notably, the sales-comparison approach is used to provide an estimate of the land value within the cost approach. Finally, the income-capitalization approach estimates true cash value by measuring "the present value of the future benefits of property ownership by estimating the property's income stream and its resale value (reversionary interests) and then developing a capitalization rate which is used to convert the estimated future benefits into a present lump-sum value." *Id.* at 485 n20. Michigan courts have generally approved these three traditional methods for estimating true cash value, but "[a]ny method which is recognized as accurate and is reasonably related to fair market valuation is an acceptable indicator of true cash value." *Safran Printing Co v Detroit*, 88 Mich App 376, 380, 276 NW2d 602 (1979).

### 3. True Cash Value Must Be Analyzed as of Tax Day

**§2.26** Regardless of the type of property or the valuation methodology applied, the GPTA provides that a property's true cash value for any given tax year must be determined as of December 31 of the preceding year. MCL 211.2(2). December 31 of the preceding year is known as the "tax day" for the following year. *Id.*

## B. Assessed Value and Taxable Value

**§2.27** A property's true cash value provides the basis for its assessed value. The GPTA provides for property to be "assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963." MCL 211.27a(1). In other words, a property's assessed value in any given tax year should equal 50 percent of the property's fair market value as of December 31 of the preceding year.

Historically, a property's assessed value provided the basis for determining the amount of ad valorem tax that would be due for that property. That changed when Michigan voters adopted Proposal A in 1994 to amend Mich Const 1963 art 9, §3 by introducing the concept of *taxable value.* Beginning in 1995, taxable value replaced assessed value as the basis for determining the amount of tax that is due for a property. MCL 211.27a.

The amendments to the constitution directed the legislature to provide that a property's taxable value cannot increase annually by more than the general price level or 5 percent, whichever is less, until the property is transferred. In the year after the property transfers, its taxable value is uncapped and should equal the property's assessed value. As amended, the constitution provides:

> For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property … shall not increase each year by more than the increase in the immediately preceding year in the general price level … or 5 percent, whichever is less until ownership of the parcel of property is transferred. 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.

Mich Const 1963 art 9, §3. Under this provision, a property's assessed value will continue to equal 50 percent of its true cash value, MCL 211.27a(1), but the property's taxable value is calculated separately, based on the general price level. Changes in the general price level are based on the consumer price index (CPI). MCL 211.34d(1)(f). But regardless of the CPI taxable value calculation, a property's taxable value cannot exceed its assessed value. MCL 211.27a(2)(b).

Beginning in 1995, Michigan properties therefore have three values placed on them for tax purposes: (1) a true cash value that equals the property's market value, (2) an assessed value that equals 50 percent of the property's true cash value, and (3) a taxable value that will equal the assessed value in a year after the property is transferred and that in other years will fluctuate annually in the amount of the CPI (but never by an amount that would cause the taxable value to exceed the assessed value).

Proposal A has had some expected and perhaps unexpected consequences. By design, the taxable value cap protects long-term property owners against rising taxes in an increasing real estate market. Assessed values must track true cash, or market, values, but taxable values cannot increase by more than 5 percent annually. In a rising market, a property's taxable value, and thus its tax burden, should not increase by more than 5 percent, regardless of increases in market value.

This can create distinctions between properties in long-term ownership and properties that have been transferred. Indeed, under Proposal A, two otherwise identical properties could have significantly different tax burdens depending on the period of their respective ownerships. A property in long-term ownership would enjoy the benefits of the cap in a rising market, while a property that has been transferred will have its taxable value set in the amount of its assessed value, which is 50 percent of its true cash value. Therefore, when using tax records to compare properties for purposes of demonstrating relative values (whether in the process of purchasing a property or when presenting comparable properties for purposes of a tax appeal) one should use the state equalized value and not the taxable value.

Perhaps unexpectedly, Proposal A can result in tax increases even in a declining market. After a period of market increases, properties in long-term ownership will have gaps between their taxable and assessed values. If the real estate market begins to flatten or decline, assessed values will remain constant or begin to decrease. But even when assessed values are constant or decreasing, taxable values may nevertheless increase in the amount of the CPI as long as the resulting taxable value does not exceed the assessed value. Thus, even in a declining market, a property's taxable value may increase, increasing the basis for determining the amount of tax due. This has led to a number of proposals to amend the constitution and the GPTA, but to date none of the proposals have been successful. In the meantime, this disconnect between rising taxes and reduced property values has lead to significant angst and confusion among taxpayers and sparked an explosion of appeals to the tax tribunal based on valuation.

### C. Uncapping

#### 1. Transfers of Ownership

**§2.28** The GPTA governs those transactions that qualify as transfers that will reset a property's taxable value to equal its assessed value. A *transfer of ownership* is defined generally as a "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). *Beneficial use* means the "right to possession, use, and enjoyment of property, limited only by encumbrances, easements, and restrictions of record." MCL 211.27a(11)(b).

MCL 211.27a(6) provides a nonexclusive list of transactions that qualify as transfers for purposes of lifting the taxable value cap on property. This detailed list includes transactions that intuitively are transfers, such as conveyance by deed, but it also addresses sales of corporate entities and interests in cooperative housing complexes. Transfers include, but are not limited to, the following:

> (a)A conveyance by deed.
>
> (b)A conveyance by land contract. …
>
> (c)A conveyance to a trust after December 31, 1994, except if the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both.
>
> (d)A conveyance by distribution from a trust, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.
>
> (e)A change in the sole present beneficiary or beneficiaries of a trust, except a change that adds or substitutes the spouse of the sole present beneficiary.
>
> (f)A conveyance by distribution under a will or by intestate succession, except if the distributee is the decedent's spouse.
>
> (g)A conveyance by lease if the total duration of the lease, including the initial term and all options for renewal, is more than 35 years or the lease grants the lessee a bargain purchase option. …
>
> (h)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. …
>
> (i)A transfer of property held as a tenancy in common, except that portion of the property not subject to the ownership interest conveyed.
>
> (j)A conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed.

MCL 211.27a(6). Again, this list identifies transactions that qualify as transfers but it is not exhaustive. Any transaction that conveys "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," may qualify as a transfer that will result in uncapping. *Id.*

### 2. Transactions Excluded from "Transfers"

**§2.29** Equally important as the nonexclusive list of transfers, MCL 211.27a(7) provides a detailed list of transactions that are excluded from the definition of transfer of ownership for uncapping a property's taxable value:

> (a)The transfer of property from 1 spouse to the other spouse or from a decedent to a surviving spouse.
>
> (b) A transfer from a husband, a wife, or a husband and wife creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.

(c) A transfer of that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease. That portion of property transferred that is not subject to a life lease shall be adjusted under subsection (3).

(d)A transfer through foreclosure or forfeiture of a recorded instrument … or through deed or conveyance in lieu of a foreclosure or forfeiture, until the mortgagee or land contract vendor subsequently transfers the property. …

(e)A transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes.

(f) A conveyance to a trust if the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary of the trust is the settlor or the settlor's spouse, or both.

(g) A transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer.

(h) A transfer creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. For purposes of this subdivision, a person is an original owner of property owned by that person's spouse.

(i)A transfer for security or an assignment or discharge of a security interest.

(j)A transfer of real property or other ownership interests among members of an affiliated group. …

(k) Normal public trading of shares of stock or other ownership interests that, over any period of time, cumulatively represent more than 50% of the total ownership interest in a corporation or other legal entity and are traded in multiple transactions involving unrelated individuals, institutions, or other legal entities.

(*l*)A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. …

(m)A direct or indirect transfer of real property or other ownership interests resulting from a transaction that qualifies as a tax-free reorganization under [IRC 368]. …

(n)A transfer of qualified agricultural property ….

(*o*)A transfer of qualified forest property ….

(p)… [A] transfer of land, but not buildings or structures located on the land, which meets 1 or more of the following requirements:

(i)The land is subject to a conservation easement ….

> (ii)A transfer of ownership of the land or a transfer of an interest in the land is eligible for a deduction as a qualified conservation contribution under [IRC 170].
>
> (q) A transfer of real property or other ownership interests resulting from a consolidation or merger of a domestic nonprofit corporation that is a boy or girl scout or camp fire girls organization, a 4-H club or foundation, a young men's Christian association, or a young women's Christian association and at least 50% of the members of that organization or association are residents of this state.

Unlike the list of illustrative transfers, the list of transactions that are excluded from the definition of transfer of ownership is exhaustive. Therefore, if a transaction does not qualify for one of the exclusions set forth in MCL 211.27a(7), it is a transfer and will result in uncapping.

### 3. Guidance on Transfers and Excluded Transactions

#### a. Introduction

**§2.30** Many of the transactions that qualify as transfers appear to be straightforward, such as a conveyance by deed. MCL 211.27a(6)(a). However, the circumstances of any given transaction can create ambiguity whether the transaction is merely a conveyance by deed that results in a transfer or whether a conveyance by deed falls into one of the specific exclusions. Michigan court decisions and the STC may offer guidance on specific transfers and excluded transactions. However, Michigan's courts have not addressed all the provisions of MCL 211.27a(6) and (7), and the STC's guidance sometimes merely reiterates the statutory language. In those situations, practitioners addressing these provisions should carefully apply the statutory language to ensure that they have properly accounted for the consequences of a transaction involving any such property.

#### b. Land Contracts

**§2.31** The STC has expounded that the assignment of a seller's interest in a land contract is not a transfer that results in uncapping; instead, it is considered a transfer of a security interest and is exempt by law from being a transfer of ownership. *See* MCL 211.27a(7)(i). On the other hand, the conveyance of the buyer's interest in a land contract is a transfer of ownership because it "conveys equitable title to the property and a change in the beneficial use of the property" results. Michigan STC, *Transfer of Ownership Guidelines* (*Transfer Guidelines*) 2, 3 (2010).

#### c. Trusts

**§2.32** The STC has also addressed transfers concerning trusts. A conveyance to a trust after December 31, 1994, is a transfer "except if the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both." MCL 211.27a(6)(c), (7)(f). The present beneficiary of a trust is the person who possesses the right to the beneficial use of the property during the life of the trust. Accordingly, if a husband and wife deed property to a trust identifying themselves only as present beneficiaries, there is no transfer of ownership. However, if they also include their children as present beneficiaries, the exclusion does not apply. On the other hand, if the children are merely contingent beneficiaries, who do not possess current rights in the property, there is no transfer. *Transfer Guidelines,* at 3.

If the sole present beneficiary of a trust is changed, that is a transfer under MCL 211.27a(6)(e) unless the change "merely adds or substitutes the spouse of the sole present beneficiary" and no other exclusion applies. *Transfer Guidelines,* at 4.

Conveyances from trusts are generally viewed under the same general principles governing any other transaction subject to certain exceptions. The exceptions are for trust distributions to a trust's sole present beneficiary or the beneficiary's spouse. MCL 211.27a(6)(d). Practitioners should note that not every conveyance from a trust is a distribution. Just like other legal entities, trusts may buy, sell, exchange, or otherwise dispose of property, and their dispositions should be viewed under the general principles governing transfers.

### d. Distributions Under Wills or Through Probate

**§2.33** A conveyance through a will or by intestate succession, except to the decedent's spouse, is a transfer. MCL 211.27a(6)(f). The STC has explained that the transfer generally occurs when the property is probated. But long delays in probate and the devisee's control over a property can result in an earlier transfer:

> The transfer of ownership, if any, typically occurs when the property is probated and conveys the decedent's title to real property as of the time of death, whether by will or by intestate succession. However, it is possible for a significant amount of time to pass between an individual's death and the distribution of that person's property under a will or by a probate court. If the distribution process has not proceeded in a typically timely manner and after a person's death but before the distribution of the person's property, the person's heir exercises dominion over the property, a transfer of ownership to the heir is considered to have occurred when dominion was first exercised by the heir.

*Transfer Guidelines,* at 4–5. This kind of transfer resulting from the heir's "dominion" is based on a transfer of beneficial use.

Notably, even though there is an exclusion from the definition of transfer for conveyances resulting from a court order, MCL 211.27a(7)(g), the specific inclusion of conveyances through distributions of estates, which necessarily involve a court order, is more specific and therefore applies despite the exclusion pertaining to court orders in general. *See, e.g., Michigan Employment Sec Comm'n v Westphal*, 214 Mich App 261, 265, 542 NW2d 360 (1995) ("When two statutes cover the same general subject matter, the more specific statute must prevail over the more general one.").

### e. Leases

**§2.34** The execution of a lease can be a transfer under certain circumstances, MCL 211.27a(6)(g), but the STC has addressed a few details on transfers and uncappings when a property is leased. When only a portion of a property that is conveyed is subject to a 35-year lease, there is an uncapping only as to that portion of the property subject to the lease. "In other words, a partial uncapping of the parcel's taxable value" will result. *Transfer Guidelines,* at 5. Moreover, if a lessee assigns its interest in a lease that has a remaining term of more than 35 years or a purchase option, that too is a transfer. If the remaining term at the time of assignment is less than 35 years, however, there is no transfer. *Id.* at 5–6.

### f. Ownership Changes in Legal Entities that Own Property

**§2.35** Michigan courts and the STC have addressed whether changes in ownership of a legal entity results in the uncapping of the taxable value of the entity's property under MCL 211.27a(6)(h). The STC has explained that the requirement for more than 50 percent of the entity's ownership to change hands to result in a transfer of ownership of the entity's property is viewed cumulatively. For example, if 25 percent of a limited liability company's ownership changes hands in year one, 10 percent changes in year two, and 20 percent changes in year three, in year three more than 50 percent of the company's ownership has changed hands, and the company's property is considered to have been transferred during year three under MCL 211.27a(6)(h) such that the property's taxable value may be uncapped. Once the company's property is transferred and uncapped, however, the 50 percent threshold resets. Thus, if in year four, another 20 percent of the company's ownership changes hands, there is no transfer or uncapping of the company's property for that year. Another 30.1 percent of the company's ownership would have to change hands for another transfer and uncapping of the company's property to occur. *See Transfer Guidelines,* at 6.

In addition, the Michigan Court of Appeals has held that "stacking" or "tiering" entities does not insulate property that the entity at the top of the stack owns from experiencing a transfer and being uncapped when entities lower in the stack experience changes in ownership. Accordingly, in *Signature Villas, LLC v City of Ann Arbor*, 269 Mich App 694, 714 NW2d 392 (2006), the court of appeals held that the sale of all the membership interests in a limited liability company that owned all the membership interests in another limited liability company that in turn owned real property was a transfer of ownership of the real property under MCL 211.27a(6)(h).

### g. Tenancies in Common

**§2.36** If a property is owned as a tenancy in common, conveyance of an ownership interest in that property results in a transfer only for that portion of the property ownership that is conveyed. MCL 211.27a(6)(i). The STC provides this example:

> Individuals A, B, and C owned a property as tenants in common. Individual A had a 50 percent undivided interest in the property and individuals B and C each had a 25 percent interest. In 2009, individual A conveyed his/her interest to individual B (and this conveyance was a transfer of ownership). Under these circumstances, a partial, 50% uncapping of the property's taxable value occurs for 2010.

*Transfer Guidelines,* at 7.

#### h. Cooperative Housing Associations

**§2.37** The court of appeals addressed transfers of shares of a cooperative housing property in *Colonial Square Coop v City of Ann Arbor*, 263 Mich App 208, 687 NW2d 618 (2004). As background, a cooperative is generally a corporation or other similar entity, and ownership of a share in the entity entitles the shareholder to use a cooperative unit that is akin to an apartment or condominium. The GPTA provides that conveyance of a share in the cooperative is a transfer for that share, i.e., for that housing unit, but not the remaining property: "A conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed." MCL 211.27a(6)(j). Some taxing jurisdictions had implemented this provision by multiplying a property's assessed value by the percentage of units that transferred and multiplying its taxable value by the percentage of units that were not transferred. Adding the products provided a partially uncapped value, as the transferred units taxable values matched a proportionate share of the assessed value. *Colonial Square Coop* held that this method of implementing the transfer provision for cooperatives is unconstitutional, concluding that it represented a reevaluation of the entire cooperative property that effectively uncapped the portions of the property that were not transferred. 263 Mich App at 211.

Instead of permitting taxing jurisdictions to use a percentage method, the court of appeals held that taxing jurisdictions instead must track the individual units transferred. The percentage method "veil[ed] which units, if any, the city actually reassessed. The Constitution does not allow the city to reassess the entire parcel's value on the basis of a phantom reevaluation of the percentage of units transferred," so tracking the individual units that transferred and uncapping to account for their values is necessary. *Id.* at 211–212.

#### i. Spousal Exemptions and Tenancies by the Entireties

**§2.38** MCL 211.27a(7)(a) provides exclusions for conveyances between spouses, including from a deceased spouse to the surviving spouse. Relatedly, MCL 211.27a(7)(b) provides that a conveyance that has its sole purpose as creating or terminating a tenancy by the entireties is not a transfer of ownership for purposes of uncapping. Under Michigan law, a tenancy by the entireties is unique to married couples and can only be terminated with the consent of both husband and wife:

> A tenancy by the entirety is a type of concurrent ownership in real property that is unique to married persons. [*Field v Steiner*, 250 Mich 469, 477, 231 NW 109 (1930)]. In [*Long v Earle*, 277 Mich 505, 517, 269 NW 577 (1936)], this Court explained that a defining incident of this tenancy under Michigan law is "that one tenant by the entirety has no interest separable from that of the other" and "has nothing to convey or mortgage or to which he alone can attach a lien." Thus, when title to real estate is vested in a husband and wife by the entirety, separate alienation by one spouse only is barred. *Id.* Furthermore, MCL 557.71 states, "a husband and wife shall be equally entitled to the rents, products,

> income, or profits, and to the control and management of real or personal property held by them as tenants by the entirety."
>
> In addition to these rights, both spouses have a right of survivorship, meaning that, in the event that one spouse dies, the remaining spouse automatically owns the entire property. MCL 700.2901(2)(g); [*Rogers v Rogers*, 136 Mich App 125, 134, 356 NW2d 288 (1984)]. Thus, entireties properties are not part of a decedent spouse's estate, and the law of descent and distribution does not apply to property passing to the survivor.

*Tkachik v Mandeville*, 487 Mich 38, 46–47, 790 NW2d 260 (2010). Importantly, if a man and woman own property together before marriage, their ownership is not converted to a tenancy by the entireties on marriage. A further conveyance from the man and woman to the man and woman as husband and wife is necessary. *See Williams v Dean*, 356 Mich 426, 431–32, 97 NW2d 42 (1959).

A conveyance that creates a tenancy by the entireties, by conveying property to a married couple, or that is intended to terminate a tenancy by the entireties, such as a conveyance from both spouses as husband and wife to one of the spouses in conjunction with a divorce, is not a transfer under MCL 211.27a(7)(b). Importantly, however, this does not insulate all married couple's conveyances from becoming transfers of ownership for purposes of uncapping. If a seller conveys a property to a husband and wife, even though a tenancy by the entireties is created, the conveyance is a transfer because the sole purpose is not creating the tenancy by the entireties. Instead, the purpose of the conveyance is for the husband and wife to acquire the property. Similarly, if a husband and wife sell property that they own as tenants by the entireties, that is not exempt. It is a transfer because, even though the tenancy by the entireties is terminated, that is not the sole purpose of the transaction. The primary purpose is selling the property to the buyer. *See Transfer Guidelines,* at 10.

If a husband and wife own property and are divorced, the divorce terminates their tenancy by the entireties and the ownership is converted to a tenancy in common. MCL 552.102. This would not subject the property to uncapping because of the exemption in MCL 211.27a(7)(b) for conveyances that solely terminate a tenancy by the entireties. The GPTA's provisions governing tenancies in common, and other transactions generally, will govern any subsequent conveyance by the former husband and wife after their divorce. Once the divorce terminates the tenancy by the entireties, the GPTA's tenancy by the entireties exclusion no longer apply. *See Transfer Guidelines,* at 10–11.

#### j. Life Leases and Life Estates

**§2.39** Transfers that reserve a life lease or life estate in the transferor do not result in uncapping. MCL 211.27a(7)(c). However, the life estate or lease must be reserved for the life of the grantor, and the exclusion applies only to the property subject to the life estate or lease. So if a grantor conveys property but grants a life estate to another person such as a family member, that is a transfer of ownership that will result in uncapping. Likewise, if the grantor conveys property subject to a life estate for the grantor in only a portion of the property, the remaining portion of the property has been transferred and that portion of the property may have its taxable value uncapped. Notably, a grantor that reserves a life estate for himself or herself may convey the life estate to another person without the property subject to the life estate experiencing a transfer. But the other person's interest will terminate when the grantor dies, and at that time the property may experience a transfer under MCL 211.27a(6). For a property that is not transferred because it is subject to a life estate in a grantor, the property will transfer when the grantor dies, subject to the applicability of other exclusions from the definition of a transfer of ownership. *See Transfer Guidelines,* at 11–12.

#### k. Foreclosures and Forfeitures

**§2.40** The exemption from transfer for conveyances resulting from forfeitures or foreclosures applies to transfers to banks and other lenders; but when the bank or lender conveys the property to a third party, that is a transfer of ownership subject to uncapping. MCL 211.27a(7)(d). In addition, there is no provision for "re-capping" a property that has forfeited. Therefore, if property is uncapped when it is conveyed to a land contract buyer but the buyer forfeits to the owner, the forfeiture does not uncap the property; the cap that remains in place is the cap that resulted from the transfer to the buyer. In other words, while the forfeiture to the land contract seller does not uncap the property, it does not "undo" the transfer that occurred when the seller conveyed the property to the buyer under the land contract. *See Transfer Guidelines,* at 14.

#### l. Conveyances Pursuant to Court Order

**§2.41** The specific exclusion for conveyances pursuant to orders from a court of record does not apply when a court order specifies or directs that a party must pay some money to the other party. MCL 211.27a(7)(g). But if a judgment of divorce directs one spouse to pay money to the other spouse for a property that they had owned as husband and wife, the court order provision would be subject to the GPTA's more specific provision exempting conveyances that solely terminate a tenancy by the entireties. MCL 211.27a(7)(b). In any event, courts of record include the "supreme court, the court of appeals, the circuit court, the probate court and other courts designated as such by the legislature." Mich Const 1963 art 6, §19. The legislature has provided that the court of claims, MCL 600.1416, the cyber court, MCL 600.8001, and the district courts, MCL 600.8181, are courts of record. Absent a provision for specific monetary payment for a property, a conveyance pursuant to an order from one of these courts will not be a transfer of ownership that results in uncapping.

#### m. Joint Tenancies

**§2.42** The exclusion from transfers of ownership for conveyances that create or terminate a joint tenancy has been one of the most litigated and explained exclusions in the GPTA. It has spawned several decisions from the court of appeals and the supreme court, as well as multiple explanations from the STC. Practitioners should ensure that they have a thorough understanding of joint tenancies and the workings of the GPTA's exclusion from the definition of transfer of ownership for conveyances involving joint tenancies.

Joint tenancy is a form of concurrent ownership in which each cotenant owns an equal undivided share of the property. The cotenants enjoy rights of survivorship, such that on the death of a cotenant, the property belongs to the surviving cotenants in equal undivided shares. Accordingly, the supreme court has described a joint tenancy with rights of survivorship as a joint life estate with a dual contingent remainder that vests the fee simple in whichever cotenant outlives the others. The contingency is each cotenant surviving the other cotenants, and the final surviving cotenant will own fee simple title to the property. *Albro v Allen*, 434 Mich 271, 274–275, 454 NW2d 85 (1990). Joint tenancies with rights of survivorship are often used to avoid devising a property through a will or an estate, as they allow a means for title to a property to pass immediately and without further requirements on one person's death into another person's ownership.

Although the death of a joint cotenant qualifies as a conveyance under the GPTA, *see Klooster v City of Charlevoix*, 488 Mich 289, 304, 795 NW2d 578 (2011), MCL 211.27a(7)(h) excludes from the definition of transfer of ownership those conveyances that create or terminate joint tenancies and involve "original owners" in certain circumstances:

> A transfer creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. For purposes of this subdivision, a person is an original owner of property owned by that person's spouse.

As the supreme court acknowledged in *Klooster,* "this is not the simplest provision to understand at first reading." 488 Mich at 298. But the language establishes the requirements for excluding certain conveyances from the GPTA's definition of transfer of ownership. *Id.* The STC has explained several steps in determining whether a conveyance involving a joint tenancy qualifies for this exclusion.

*Identify the conveyance at issue.* The first step is determining whether the "conveyance at issue" involves a joint tenancy. In *Klooster,* the supreme court applied MCL 211.27a(7)(h), explaining that although the term *conveyance at issue* is not used in the statute, that the term provides a means to focus on the proper conveyance in the instance of multiple conveyances. *Klooster,* 488 Mich at 300 n8. Without multiple conveyances, identifying the conveyance at issue may be straightforward. Nevertheless, the STC advises to identify the conveyance at issue as the first step in applying the exclusion:

> The determination of whether a "conveyance at issue" is a transfer of ownership that uncaps the taxable value of the property must be separately determined *after* identification of the "conveyance at issue." A conveyance will not constitute a transfer of ownership under the General Property Tax Act if it is excluded under MCL 211.27a(7)(a) through (q).

*STC Memorandum* (June 9, 2011), p 2.

*Determine whether joint tenancy is created.* Step two is determining whether the conveyance creates a joint tenancy. The creation of an "initial" joint tenancy occurs when a "property held by a sole owner, by a husband and wife holding as tenants by the entireties, or by tenants in common, is conveyed to two or more persons as joint tenants." *STC Memorandum* (June 9, 2011), p 2. Otherwise, the conveyance may create a "successive" joint tenancy, which refers to "transfers conveying property from one joint tenancy directly into another joint tenancy." *Klooster,* 488 Mich at 301 n9. When dealing with successive joint tenancies, there must be an analysis of whether one of the persons conveying the interest and one of the persons receiving the interest in the joint tenancy was an "original owner."

The supreme court in *Klooster* explained that under MCL 211.27a(7)(h), to determine who is a property's "original owner," the last transfer of ownership that resulted in an uncapping must be analyzed. The result is that there can be three types of person that is a property's "original owner" under the joint tenancy exclusion:

> To determine who is an "original owner of the property" within the narrow context of the joint-tenancy exception, one must first identify the most recent transfer of ownership that uncapped the property and then determine who owned the property as a result of that uncapping conveyance. The joint-tenancy exception provides that "[a] joint owner at the time of the last transfer of ownership … is an original owner" and that "[f]or purposes of this subdivision, a person is an original owner of property owned by that person's spouse." MCL 211.27a(7)(h). There are thus three possibilities for who may constitute an "original owner" under the joint-tenancy exception: (1) a sole owner at the time of the last uncapping event, (2) a joint owner at the time of the last uncapping event, and (3) the spouse of either a sole or joint owner of the property at the time of the conveyance at issue (i.e., the conveyance that may uncap the property).

*Klooster,* 488 Mich at 299–300 (footnotes omitted). Once the "original owner" is identified, the analysis is as follows:

> If the person creating the joint tenancy held title to the interest being conveyed either as a sole owner, as husband and wife, tenants by the entirety, or as tenants in common, then the creation of a joint tenancy is not a transfer of ownership, if, at least one of the persons conveying the interest and one of the persons receiving the interest was an "original owner."

*STC Memorandum* (June 9, 2011), p 2 (emphasis omitted). If the conveyance satisfies these requirements, it is not a transfer of ownership and no further analysis is necessary.

*Determine whether a joint tenancy is terminated.* A joint tenancy terminates when a property that is held as a joint tenancy is conveyed in a manner that does not result in a successive joint tenancy. Terminating a joint tenancy will result in a transfer of ownership if the resulting owner is not a person who obtained an interest in the property as a co-owner when the initial joint tenancy was created and is not a person who has held an interest in the property continuously since the initial joint tenancy was created. Such a person is identified in the STC's materials as an initial joint tenant. *STC Memorandum* (June 9, 2011), p 2, 3. Therefore, the termination of a joint tenancy is not a transfer of ownership if both of the following are true:

- at least one of the joint tenants in the joint tenancy being terminated was as “original owner” before the joint tenancy was initially created and
- at least one of the joint tenants in the joint tenancy being terminated was an “initial joint tenant” and has remained a joint tenant in successive joint tenancies.

*Id.* at p 3.

*Determine whether the conveyance at issue created a successive joint tenancy.* Finally, the creation of a successive joint tenancy may or may not be excluded from the definition of transfer of ownership depending on the presence of an original owner and an initial joint tenant. Again, a successive joint tenancy refers to “transfers conveying property from one joint tenancy directly into another joint tenancy.” *Klooster,* 488 Mich at 301 n9. The creation of a successive joint tenancy is excluded from the GPTA’s definition of transfer of ownership if both of the following are true:

- at least one of the individuals in the “successive” joint tenancy was an “original owner” and
- at least one of the joint tenants in the previous joint tenancy was an “initial joint tenant” and has remained a joint tenant in successive joint tenancies.

*STC Memorandum* (June 9, 2011), p 3.

Michigan’s courts have decided several cases applying the exclusion from transfer of ownership for certain joint tenancies. These decisions provide examples of the exclusion’s workings and results.

*Klooster.* In *Klooster,* the supreme court applied the exclusion to two transfers that involved the death of one joint tenant and the creation of another joint tenancy. Specifically, *Klooster* involved a husband and wife who had owned property as tenants by the entireties since the 1950s. During 2004, the husband and wife quit-claimed to the husband, who then quit-claimed to himself and his son as joint tenants. The next year, the husband died, leaving the son as the property’s sole owner. Later during 2005, the son quit-claimed the property to himself and his brother as joint tenants. The City of Charlevoix uncapped the property effective for the 2006 tax year, and the son appealed to the Michigan Tax Tribunal. The tax tribunal approved the uncapping, then the court of appeals reversed, and the supreme court reversed, approving the uncapping based on the son’s conveyance to himself and his brother. First, the court held that the conveyance from the husband to himself and his son as joint tenants fell into the exclusion under MCL 211.27a(7)(h). Because the husband was the sole owner of the property at the time he conveyed the property to himself and his son, the GPTA’s provision that, “ ‘if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created,’ ” which *Klooster* referred to as the “continuous tenancy” requirement, did not apply.

Instead, the court focused on the provision it called the "original ownership requirement," which excludes " 'transfer[s] creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner … before the joint tenancy was initially created' " from being considered a transfer of ownership. *Klooster*, 488 Mich at 301. The husband " 'was an original owner of the property before the [August 2004] joint tenancy was initially created.' " *Id.* at 302. He obtained the status of an original owner when he and his wife acquired the property during the 1950s; that conveyance to them was the most recent transfer of ownership that would have uncapped the property had Proposal A existed then. Under the joint-tenancy exclusion, an original owner may convey property into a joint tenancy without uncapping the property provided the original owner is also a cotenant in the resulting joint tenancy. The husband was an original owner and remained a joint tenant after creating the joint tenancy with his son in 2004, so that conveyance was not an uncapping event.

When the husband died in 2005, the joint tenancy terminated by operation of law and rendered the son the property's sole owner. The court concluded that rendering the son the sole owner was a conveyance under the GPTA. But because the son was a joint tenant when the husband initially created the joint tenancy in 2004 and "remained a joint tenant since the joint tenancy was initially created," the conveyance resulting from the husband's death fell also into the exclusion under MCL 211.27a(7)(h) and did not uncap the property.

The court then considered the son's 2005 conveyance to himself and his brother as joint tenants. When the son conveyed the property to himself and his brother in 2005, the property was transferred from sole ownership into a new joint tenancy. This was not a successive joint tenancy because the property was conveyed from the son's sole ownership into a joint tenancy between the son and his brother. In the context of a conveyance creating a nonsuccessive joint tenancy, the court had to apply the original-ownership requirement and not the continuous tenancy requirement because the continuous-tenancy requirement applies only if the property was held in a joint tenancy at the time of the conveyance. As applied to the creation of a nonsuccessive joint tenancy, the joint-tenancy exception provides that "[t]ransfer of ownership does not include … [a] transfer creating … a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created." MCL 211.27a(7)(h). But the only original owners were the husband and wife, who owned the property as of the last event that would have resulted in an uncapping, which was their acquisition in the 1950s. Because the conveyance from the husband to himself and his son and the conveyance resulting from the husband's death were both excluded by MCL 211.27a(7)(h) from the definition of transfer of ownership, neither conveyance constituted an uncapping event and the son never became an original owner. The son's conveyance to himself and his brother was therefore a transfer of ownership that uncapped the property. After that conveyance, both the son and his brother are original owners because each is a joint owner and "[a] joint owner at the time of the last transfer of ownership of the property is an original owner of the property." MCL 211.27a(7)(h).

*Moshier*. In *Moshier v Whitewater Township*, 277 Mich App 403, 745 NW2d 523 (2007), the court of appeals addressed the termination of a joint tenancy. There, a husband and wife quit-claimed property to themselves and their son as joint tenants with rights of survivorship. After the husband died, the wife quit-claimed her interest in the property to the son. Based on the wife's conveyance to the son, Whitewater Township concluded that the property's ownership transferred and uncapped the property's taxable value. The court of appeals explained that the plain language in MCL 211.27a(7)(h) excludes from the definition of transfer of ownership a conveyance that creates or terminates a joint tenancy when at least one person involved in the transfer was an original owner of the property before the joint tenancy was created, the property was held as a joint tenancy at the time of the transfer, and "at least 1 of the persons" involved in the transfer was a joint tenant at the time the joint tenancy was originally created and has remained a joint tenant since that time. *Moshier,* 277 Mich App at 410. The wife was an "original owner" of the property and remained a joint tenant since the joint tenancy was created. Because the statute requires that only one of the people involved in the conveyance at issue was a joint tenant at the time the joint tenancy was originally created, and that the person remained a joint tenant for the entirety of the joint tenancy, the transfer that occurred in *Moshier* was exempt from uncapping. *Id.*

*Schwass*. In *Schwass v Riverton Township*, 290 Mich App 220, 800 NW2d 758 (2010), the court of appeals held that conveyances of property owned by tenants in partnership do not qualify for the exclusion from the definition of transfer of ownership under the joint tenancy provisions in MCL 211.27a(7)(h). There, two partnerships owned several properties. Two men were the partners in both partnerships, and the partnerships conveyed the properties to one or the other of the two men and their respective spouses. When Riverton Township uncapped the properties' taxable values, the men and their wives argued that the exclusion under MCL 211.27a(7)(h) applied because the men were tenants in partnership in the properties and "there is no functional difference between a tenancy in partnership … and a joint tenancy." *Schwass,* 290 Mich App at 223. The court of appeals acknowledged that "joint tenancies and tenancies in partnership are similar," but because tenancies in partnership are not identified in MCL 211.27a(7), and Michigan law has long distinguished tenancies in partnership from joint tenancies, the court would not effectively place a new exclusion into the statute. *Schwass,* 290 Mich App at 224.

#### n. Security Interests

**§2.43** The GPTA's exclusion under MCL 211.27a(7)(i) for transfers for security or discharges of security interests means that a mortgage being granted, terminated, discharged, or assigned or the assignment of a seller's interest in a land contract or equitable mortgages qualify as a transfer of ownership that would uncap the property's taxable value. *See Transfer Guidelines,* at 19.

### o. Public Trading of Ownership Interests

**§2.44** The exclusion for changes in ownership of a corporation or other legal entity that occur through normal public trading applies when the ownership interests are traded in multiple transactions and involve unrelated individuals, institutions, or other legal entities. MCL 211.27a(7)(k). The STC has explained that six types of trades do not qualify as normal public trading:

1. The merger of two or more companies
2. The acquisition of one company by another company or an individual
3. A company's initial public offering
4. A company's secondary public offering
5. Stock trades of a privately held company
6. A takeover involving a public offer to buy stock from a company's present stockholders to obtain control of the company

*Transfer Guidelines,* at 20.

### p. Conveyances Among Commonly Controlled Entities

**§2.45** The STC has issued directives for applying the GPTA's exclusion from the definition of transfer of ownership for conveyances among entities in common control. MCL 211.27a(7)(*l*). Under the STC's directions, Michigan Revenue Administrative Bulletin 1989-48 should be used to determine whether entities are commonly controlled. This bulletin details three types of common control: parent-subsidiary groups, sibling groups, and combined groups including both parent-subsidiary and sibling relationships.

However, for entities to be commonly controlled, they must be engaged in business or trade activities. Therefore, for example, if a husband and wife conveyed their residence to a limited liability company for estate planning or other purposes and the wife was the company's only member, that would not be a conveyance among commonly controlled entities, would not be excluded from the definition of transfer of ownership, and would result in an uncapping. *See Transfer Guidelines,* at 21.

The STC has identified certain circumstances when entities that would not qualify as under common control according to Michigan Revenue Administrative Bulletin 1989-48 nevertheless would qualify for the exclusion under MCL 211.27a(7)(*l*). One example that the STC identifies is when property or an ownership interest is conveyed from one entity to another and both entities are owned by the same person or persons with the same ownership percentages. Another is when property or ownership is conveyed into an entity for the first time, and the person or persons conveying the property into the entity had the same ownership percentages before the conveyance that they have after the conveyance. Thus, if a husband and wife convey their only real property into a limited liability company in which they are equal members, the STC views the husband, the wife, and the limited liability company as commonly controlled such that the conveyance to the company would not be a transfer of ownership that would result in uncapping. *See Transfer Guidelines,* at 21.

Although the STC's policies treat these conveyances as falling within the exclusion for entities under common control, the policies have not been addressed in Michigan's appellate courts. The STC's policy of treating transfers between individuals and limited liability companies, for example, could be vulnerable to arguments that the policy expands the statutory exclusion. The GPTA's language grants the exclusion to conveyances between "corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities" under common control. MCL 211.27a(7)(*l*). Under the principle of ejusdem generis, the general term "legal entities" in the GPTA could be interpreted to mean entities "of the same kind, class, character, or nature as those specifically enumerated." *Sands Appliance Servs v Wilson*, 463 Mich 231, 242, 615 NW2d 241 (2000). Accordingly, the "other legal entities" that could be under common control may be limited to other "artificial persons," i.e., corporate forms, and not natural persons. A taxing jurisdiction could use such an argument to demonstrate that the STC's policy expands the exclusion for entities under common control beyond the statute's language. Practitioners should therefore use caution when relying on the common control exclusion for conveyances between natural persons and artificial persons.

### q. Tax-Free Reorganizations

**§2.46** The exclusion under MCL 211.27a(7)(m) for conveyances that result from transactions that qualify as tax-free reorganizations under 26 USC 368 can cover a number of situations, including corporate acquisitions, corporate mergers, corporate divisions, and so forth. However, 26 USC 368 applies only to corporations and corporate reorganizations. It does not apply to individuals or other legal entities like limited liability companies. *See Transfer Guidelines,* at 22.

### r. Qualified Agricultural and Qualified Forest Properties

**§2.47** The STC has addressed varying situations for transfers of qualified agricultural properties under MCL 211.27a(7)(n). For example, properties with partial qualified agricultural property status are excluded if the property maintains the same partial use after the conveyance. If a qualified agricultural property is split, the new parcel resulting from the split can be uncapped if its use changes, but the remainder would remain capped if its agricultural use did not change. Practitioners addressing qualified agricultural property are encouraged to review the STC's guidelines, which deal with a variety of scenarios for such property. *See Transfer Guidelines,* at 22–25.

The exclusion for transfers of qualified forest properties is similar to that for qualified agricultural properties, *compare* MCL 211.27a(7)(n) *with* MCL 211.27a(7)(o), although the STC has provided less explanation for qualified forest properties.

#### 4. Property Transfer Affidavits and Retrospective Uncapping

**§2.48** When a property is transferred, the GPTA requires that the transferee, or the entity in the case of a change in the entity's ownership, to notify the local assessing office of the transfer. The transferee must file with the local assessor a form prescribed by the STC, known as a property transfer affidavit (Michigan Department of Treasury Form 2766, formerly L-4260), within 45 days of the transfer. MCL 211.27a(10). The affidavit must include certain information such as the identity of the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description.

If the transferee does not file a property transfer affidavit within 45 days of the transfer, a $5 per day penalty will apply, with a maximum penalty equaling $200. MCL 211.27b(1)(c). Notably, the penalty is not a lien against the property, but is a personal fine against the transferee. The penalty will also apply if the affidavit is filed but does not include all the required information. *See Transfer Guidelines,* at 31.

A transferee's failure to submit a property transfer affidavit can result in a delayed uncapping, which involves a taxing jurisdiction uncapping a property retrospectively when it learns that a property was transferred in an earlier year. For example, if a property is transferred in year one, its taxable value could be uncapped in year two. MCL 211.27a(3). But if the taxing jurisdiction does not learn of the transfer until year four, the GPTA nevertheless authorizes the uncapping, but the uncapping must be retrospective. There is no limit on the number of years that a property's taxable value can be retrospectively uncapped if the transferee fails to file a property transfer affidavit, and all taxes, as well as interest and penalties, will apply retrospective to the date that the property's taxable value could have been uncapped. MCL 211.27b.

The court of appeals held in *Michigan Props, LLC v Meridian Township*, No 289174, 2011 Mich App LEXIS 607 (Apr 5, 2011), *leave granted,* No 143085, 2011 Mich LEXIS 1724 (Sept 28, 2011), that a taxing jurisdiction cannot uncap a property's taxable value in a year that is later than the first year after the transfer. In *Michigan Props,* the properties were transferred during 2004. The owner timely filed a property transfer affidavit, but Meridian Township did not uncap the properties' value for the 2005 tax year. Instead, the township sought to revise the 2005 and 2006 values during late 2006. The taxpayer appealed those changes to the tax tribunal and the parties entered a consent judgment. However, the township then uncapped the properties' taxable values for the 2007 tax year based on the 2004 transfer. The taxpayer again filed in the tax tribunal, which permitted the uncapping, but the court of appeals reversed and held that the township could not uncap the properties' taxable values.

In reaching that conclusion, the court of appeals explained that the

> formula provided in MCL 211.27a(2) applies unless the property was transferred in the previous year, in which case MCL 211.27a(3) provides that "the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer."

*Michigan Props,* 2011 Mich App LEXIS 607, at *9. The 2007 tax year was at issue, and "because the property in question was not transferred in 2006, the unambiguous language of MCL 211.27a(2)" provided the means to calculate the property's 2007 taxable value. *Michigan Props,* 2011 Mich App LEXIS 607, at *10. Accordingly, the township could not uncap the property's taxable value to account for a transfer that had taken place several years before.

### 5. Challenging an Uncapping

**§2.49** Whether a property is uncapped is generally stated on the notice of assessment that the taxing jurisdiction sends to the property owner early in each tax year. MCL 211.24c(2)(f) provides that if "the assessor believes that a transfer of ownership has occurred in the immediately preceding year, the statement shall state that the ownership was transferred." The notice must be mailed to the owner or taxpayer at least 10 days before the board of review meets, which means that the notice is generally mailed during February or March each year. Under MCL 211.24c(1), the notice of assessment must state the assessed and taxable values that the jurisdiction has established for the property. If the taxing jurisdiction has uncapped the property, the notice will state that the property was transferred in the preceding year. MCL 211.24c(2)(f). As a result of the transfer, the property's taxable value will have been uncapped and will equal the property's assessed value. MCL 211.27a(3).

Because the taxpayer learns of the uncapping when it receives its notice of assessment stating the property's assessed and taxable values, the procedures for challenging the uncapping are the same as the procedures for challenging the values that the taxing jurisdiction placed on the property. That is, the taxpayer may have to appear before the board of review depending on the property's classification and must file a petition in the Michigan Tax Tribunal by the applicable deadline. See §3.15. The significant differences involve the taxpayer alleging that the taxing jurisdiction incorrectly concluded that the property experienced a transfer of ownership and therefore increased the property's taxable value without the proper legal basis. A taxpayer wishing to challenge an uncapping must therefore be sure to allege that the taxable value assigned to its property is improper.

If a taxpayer believes that a property's taxable value has been improperly uncapped, the taxpayer must appeal the taxable value in the first year of the uncapping or lose the right to challenge the taxable value. This is the consequence of the court of appeals decision in *MJC/Lotus Group v Township of Brownstown*, No 295732, 2011 Mich App LEXIS 1001 (May 31, 2011), *leave granted,* No 143281, 2011 Mich LEXIS 1723 (Sept 28, 2011), where the properties' taxable values were uncapped to include the value of certain public service improvements for the 2005 tax year. The taxpayer did not appeal the properties' taxable values for 2005, instead waiting until the 2006 tax year to file an appeal. The 2006 appeal was held in abeyance for *Toll Northville, Ltd v Township of Northville*, 480 Mich 6, 743 NW2d 902 (2008), which held that uncapping a property's taxable value to account for public service improvements is unconstitutional. In an appeal after remand, the taxpayer in *MJC/Lotus Group* argued that the properties' 2006 taxable values were based on the 2005 taxable values because of the taxable value formula set forth in MCL 211.27a(2). The taxpayer argued that because the 2005 taxable values were invalid, the tax tribunal was authorized to correct the 2006 taxable values by disregarding the improper component of the 2005 taxable values that had been used in the taxable value formula.

The court of appeals disagreed. It held that even though unconstitutional statutes are void ab initio, that "does not nullify the limitation on the Tribunal's jurisdictional authority, that it may only review the accuracy of taxable values in years properly under appeal." 2011 Mich App LEXIS 1001, at *10. Likewise, the court explained that although MCL 211.27a(2) provides that a property's taxable value in the prior year is the basis for the calculation of the property's taxable value in the subsequent year, that does not authorize the tribunal to review the "accuracy, constitutional or otherwise, of such taxable value." 2011 Mich App LEXIS 1001, at *12. Accordingly, the court of appeals held that the tax tribunal lacked jurisdiction to review whether the properties' taxable values for 2006 were somehow improper because the 2005 taxable values were improperly uncapped.

Although the *MJC/Lotus Group* court addressed uncapping a taxable value to include improper public service improvements, its reasoning applies with equal force to uncapping because of a transfer. If the tribunal lacks jurisdiction to review a property's taxable value in a year subsequent to an uncapping, the basis for the uncapping will likely be immaterial. As the court of appeals stated, the fact that taxable values are based on a statutory formula does not authorize the tribunal to review the taxable value that is the basis for the formula for errors, "constitutional or otherwise." Therefore, a property owner that wishes to challenge the uncapping of its property's taxable value based on a transfer must file an appeal with the Michigan Tax Tribunal in the first year that the property's taxable value is uncapped, which is the year after the transfer occurred. MCL 211.27a(3).

### 6. Challenging a Retrospective Uncapping

**§2.50** If a transferee fails to file a property transfer affidavit and a property is retrospectively uncapped, the GPTA does grant the owner a right to appeal. However, the appeal is limited to whether a transfer occurred and whether the taxing jurisdiction's arithmetic is correct:

> A buyer, grantee, or other transferee may appeal any increase in taxable value or the levy of any additional taxes, interest, and penalties under subsection (1) to the Michigan tax tribunal within 35 days of receiving the notice of the increase in the property's taxable value. An appeal under this subsection is limited to the issues of whether a transfer of ownership has occurred and correcting arithmetic errors.

MCL 211.27b(6). Moreover, the GPTA provides that a "dispute regarding the valuation of the property is not a basis for appeal under this subsection." *Id.*

### 7. The Nonrelationship Between Uncapping and Transfer Taxes

**§2.51** Even though there is similar nomenclature involved, whether a property experiences a transfer under the GPTA such that its taxable value can be uncapped is wholly distinct from whether transfer tax may apply. Compare MCL

211.27a(6) and (7) to the State Real Estate Transfer Tax Act, MCL 207.521 et seq., and the Real Estate Transfer Tax Act, MCL 207.501 et seq. For example, the State Real Estate Transfer Tax Act provides exemptions for transfers from the transfer tax when the consideration for the property is less than $100, MCL 207.526(a), for conveyances from an individual to the individual's child, MCL 207.526(j), and for conveyances between any limited liability company and its members or creditors, MCL 207.526(p)(i). The GPTA contains no exclusions based on the value of consideration, a parent-child relationship, or for transfers between limited liability companies and their members. *See* MCL 211.27a(7). The transfer tax exemptions are much broader than the exclusions from the definition of transfer of ownership in the GPTA. Practitioners should not assume that a transfer that does not require payment of transfer tax also will not result in a transfer and uncapping for property tax purposes. See chapter 5 for a full discussion of transfer taxes.

## D. Real Property Tax Exemptions

### 1. Introduction

**§2.52** The Michigan Constitution permits ad valorem taxation only of real property and tangible personal property that is "not exempt by law." Mich Const 1963 art 9, §3. The GPTA establishes a number of complete and partial exemptions for both real and personal property, which variously depend on the property's use, ownership, or some other factors.

Real property exemptions most commonly depend on the property's use, such as use as a principal residence, or ownership, such as ownership by the state or federal government. The exemptions fall into several categories. The elements of several exemptions are discussed here, while other exemptions are identified.

### 2. State and Federal Property

**§2.53** The GPTA exempts governmentally owned property, although the exemptions can depend on more than just ownership status. Several exemptions require particular uses in addition to governmental ownership.

*Federal Property.* Under MCL 211.7, "[p]ublic property belonging to the United States is exempt from taxation under [the GPTA]. This exemption shall not apply if taxation of the property is specifically authorized by federal legislative action or federal administrative rule, regulation, or lease."

*State Property.* Similarly, under MCL 211.7*l*, "[p]ublic property belonging to the state … is exempt from taxation under this act." To qualify for this exemption, the state must record a deed or other memorandum of conveyance in the county where the property is located for all property that the state acquired after 1966.

### 3. Municipal Property

**§2.54** MCL 211.7m exempts property that belongs to, or is being acquired under an installment purchase agreement, by "a county, township, city, village, or school district," and "an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state," if the land is used for a public purpose. Although MCL 211.7m addresses school district land, school districts receive a more extensive exemption under the Revised School Code. MCL 380.1141. Community college property is granted an exemption under the Community College Act. MCL 389.145.

Unlike the state and federal exemptions, for which ownership is determinative, municipal ownership of property is not sufficient to qualify for this exemption. Rather, for a property to be exempt under this section, the municipality must actually use the property for public purposes. The supreme court addressed this point in *City of Mt Pleasant v State Tax Comm'n*, 477 Mich 50, 56, 729 NW2d 833 (2007):

> The language chosen by the Legislature indicates that to be tax-exempt, the property must be "*used* for public purposes." Thus, during each tax year in question, the [exemption claimant] must have made a present use of the land that qualifies as a "public purpose" so that the [claimant] will have "used" the land for that purpose.

Thus, a future intended use is not sufficient to qualify for exemption. *See Rural Agric Sch Dist v Blondell*, 251 Mich 525, 527, 232 NW 377 (1930). On the other hand, "public purpose" is given a broad reading in this context and includes any purpose that promotes "public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation." *Gregory Marina, Inc v City of Detroit*, 378 Mich 364, 396, 144 NW2d 503 (1966).

Municipal parks are addressed in both MCL 211.7m and .7x. First, MCL 211.7m provides that "[p]arks shall be open to the public generally." MCL 211.7x similarly provides that "[l]and dedicated to the public and used as a park open to the public generally … [is] exempt from taxation under this act. As used in this subdivision, 'public' means all the residents of this state." Michigan courts have held that these provisions do not require a park to be open to the public generally, but that if a park is not open to the public generally, then it is not tax exempt. *See Balogh v Flat Rock*, 152 Mich App 517, 522, 394 NW2d 1 (1985).

### 4. Other Governmental Exemptions

**§2.55** The GPTA also provides tax exemptions for properties that belong to a Land Bank Fast Track Authority, MCL 211.7gg, which may take title to property that has tax reverted, MCL 124.751 et seq., and for land made available to municipal water authorities, MCL 211.7aa.

### 5. Principal Residence Exemption

**§2.56** Generally, the principal residence exemption provides that a taxpayer's principal residence is not subject to the "tax levied by a local school district for school operating purposes." MCL 211.7cc. This amounts to a partial exemption for a taxpayer's principal residence, resulting in the application of a lower millage rate to that property than the rate that applies to property that does not receive the exemption. Under the statutory definition, *principal residence* means "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).

The GPTA sets forth a number of provisions governing the principal residence exemption, including a requirement that the taxpayer own the property by May 1 of the tax year involved, prohibiting the taxpayer from claiming any similar exemption on property in another state, and prohibiting the taxpayer from filing a nonresident Michigan income tax return. MCL 211.7cc.

To claim the exemption, a property owner must file a form known as the principal residence exemption affidavit with the taxing jurisdiction, generally not later than May 1 of the tax year. The affidavit is Michigan Department of Treasury Form 2368, available on the department's Web site at http://www.michigan.gov/PRE.

If a property owner uses a property as his or her principal residence by May 1 of a tax year, but does not receive the principal residence exemption for that property, the owner may petition to the taxing jurisdiction's July or December board of review to obtain the exemption for that year and as many as three subsequent years. MCL 211.7cc(19). See §§3.11 and 3.13, respectively, for a further discussion of the July and December boards of review, and §§3.14–3.25 for more information about boards of review in general. To do so, the owner must generally present the July or December board of review with a completed principal residence exemption affidavit and a petition to the board of review, which should be available from the taxing jurisdiction. Notably, any application to the December board of review must be submitted at least five days before the board begins to meet. *Id.*

Several amendments adopted as a result of falling property values in Michigan have affected the principal residence exemption. Effective April 10, 2008, in addition to a property owner's current principal residence, a property owner may claim an exemption for up to three years on property previously exempt as the owner's principal residence if that property is not occupied, is for sale, is not leased, and is not used for any business or commercial purpose. To claim this exemption, the property owner must submit to the taxing jurisdiction a conditional rescission form (Form 4640), prescribed by the Michigan Department of Treasury (available at http://www.michigan.gov/treasury) on or before May 1. The property owner must annually verify to the taxing jurisdiction on or before December 31 that the property is retained, is not occupied, is for sale, is not leased, and is not used for any business or commercial purpose. Property is eligible for conditional rescission if it is offered for lease; but once it is leased, the conditional rescission will be denied retroactively effective December 31 of the year immediately preceding the year in which the property is leased. MCL 211.7cc(5).

Other amendments provide exemptions for active duty military personnel. The legislature amended MCL 211.7dd(c) during 2008 to allow members of the military deployed on active duty to rent their homes without jeopardizing their principal residence exemptions:

> Property that qualified as a principal residence shall continue to qualify as a principal residence for 3 years after all or any portion of the dwelling or unit included in or constituting the principal residence is rented or leased to another person as a residence if all of the following conditions are satisfied:
>
> (i) The owner of the dwelling or unit is absent while on active duty in the armed forces of the United States.
>
> (ii) The dwelling or unit would otherwise qualify as the owner's principal residence.
>
> (iii) Except as otherwise provided in this subparagraph, the owner files an affidavit with the assessor of the local tax collecting unit on or before May 1 attesting that it is his or her intent to occupy the dwelling or unit as a principal residence upon completion of active duty in the armed forces of the United States ….

Any party seeking or involved in a dispute over the principal residence exemption should review the GPTA's provisions in detail.

### 6. Poverty Exemption

**§2.57** The GPTA allows a local taxing jurisdiction to grant an exemption for persons that the taxing jurisdiction concludes are impoverished such that they cannot contribute to the public charges. MCL 211.7u. A person must own and occupy property to qualify for the exemption and must apply to the taxing jurisdiction for the exemption. The taxing jurisdiction must adopt poverty guidelines that cannot exceed the federal poverty guidelines and establish an asset-level test to determine whether applicants may receive the exemption. *Id.*

To receive the poverty exemption, the property owner must apply for the exemption each year after January 1, but before the close of the March board of review, on a form that the taxing jurisdiction provides. MCL 211.7u(2)(b). In addition, the property owner must provide a number of items in support of the application, including proof of the property's ownership and federal income tax returns for the preceding year for the owner and all other persons occupying the property. *Id.* A person that intentionally falsifies statements on a poverty exemption application can be charged with perjury. MCL 211.116.

### 7. Nonprofit Organizations

**§2.58** Under varying circumstances, the GPTA exempts real property that belongs to, or is used by, charitable, educational, cultural, and other nonprofit organizations. Again, the elements of the exemptions vary according to use and ownership.

*Cultural and educational organizations.* Under Mich Const 1963 art 9, §4, "[p]roperty owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes." The GPTA supplements this, providing an exemption for property owned and occupied by nonprofit theater, library, educational, scientific, and artistic organizations:

> Real estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act. In addition, real estate or personal property owned and occupied by a nonprofit organization organized under the laws of this state devoted exclusively to fostering the development of literature, music, painting, or sculpture which substantially enhances the cultural environment of a community as a whole, is available to the general public on a regular basis, and is occupied by it solely for the purposes for which the organization was incorporated is exempt from taxation under this act.

MCL 211.7n. In *Engineering Soc'y of Detroit v City of Detroit*, 308 Mich 539, 550, 14 NW2d 79 (1944), the Michigan Supreme Court explained four requirements for this exemption to apply:

> (1) The real estate must be owned and occupied by the exemption claimant.
>
> (2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution.
>
> (3) The claimant must have been incorporated under the laws of this State.
>
> (4) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

The U.S. Supreme Court subsequently held in *WHYY, Inc v Glassboro*, 393 US 117, 120 (1968), that conditioning a tax exemption to an otherwise qualified entity on incorporation within the taxing state violates the Fourteenth Amendment. Michigan courts have recognized this, *see American Youth Found v Benona*, 37 Mich App 722, 724, 195 NW2d 304 (1972), rendering the third element identified in *Engineering Society* inapplicable.

As for educational institutions, the courts have analyzed whether the education provided relieves the burden on the government. This test is different than the test for exemption from federal income taxation for the charitable purpose of education under IRC 501(c)(3), providing the educational institutions exemption to a narrow group of entities. To qualify for the property tax exemption, an organization must provide education that fits "into the general scheme of education provided by the state and supported by public taxation." *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 755, 298 NW2d 422 (1980). When the education provided does not "sufficiently relieve the government's educational burden," the exemption is not applicable. *Id.* There is a significant body of law discussing the exemption of various types of educational institutions that should be consulted to address issues arising under MCL 211.7n.

*Charitable organizations.* MCL 211.7o provides an exemption for "[r]eal or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated." The exemption is also available for nonprofit charitable trusts, as well as nonprofit charitable institution or trust property that is made available to another nonprofit charitable institution or trust, and used by that other nonprofit charitable institution or trust for the purposes for which it was incorporated.

The Michigan Supreme Court clarified the requirements for an institution to be a charitable institution for purposes of qualifying for a tax exemption:

> (1) A "charitable institution" must be a nonprofit institution.
>
> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
>
> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
>
> (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
>
> (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
>
> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

*Wexford Med Group v City of Cadillac*, 474 Mich 192, 215, 713 NW2d 734 (2006). Notably, an institution that experiences a "net gain" is not disqualified as a charitable institution. "[I]t is what the institution does with the gain that is relevant." 474 Mich at 218. The definition of charitable institution under the GPTA covers most, but not necessarily all, entities considered charitable organizations under IRC 501(c)(3).

Likewise, the court recently emphasized that the property must be owned and occupied by the nonprofit charitable institution to qualify for the exemption. In *Liberty Hill Hous Corp v City of Livonia*, 480 Mich 44, 746 NW2d 282 (2008), the court held that the right to occupy a property is insufficient. Instead, a charitable institution must "maintain a regular physical presence on the property" to "occupy" the property under MCL 211.7o.

*Religious organizations.* As mentioned, the constitution itself exempts "[p]roperty owned and occupied by non-profit religious" organizations that is "used exclusively for religious" purposes. Mich Const 1963 art 9, §4. The GPTA supplements this, providing that, "[h]ouses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and any parsonage owned by a religious society of this state and occupied as a parsonage are exempt from taxation under this act." MCL 211.7s. The GPTA then goes on to define *houses of public worship* to include "buildings or other facilities owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the society." *Id; see also Christian Reformed Church v Grand Rapids*, 104 Mich App 10, 303 NW2d 913 (1981).

*Housing for the elderly and disabled.* Under MCL 211.7d, housing owned and operated by a nonprofit corporation or association "for occupancy or use solely by elderly or disabled families is exempt from the collection of taxes."

*Other cultural and nonprofit organizations.* The GPTA contains other exemptions for nonprofit organizations, such as "real property owned by a boy or girl scout or camp fire girls organization, a 4-H club or foundation, or a young men's Christian association or young women's Christian association," subject to certain limitations, MCL 211.7q; "real estate and building of a clinic erected, financed, occupied, and operated by a nonprofit corporation or by the trustees of health and welfare funds," MCL 211.7r; and tombs, monuments, and burial grounds, MCL 211.7t.

### 8. Low-Income Housing

**§2.59** The Michigan State Housing Development Authority Act (MSHDAA) addresses exemptions for certain types of low-income housing:

> If a housing project owned by a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association is financed with a federally-aided or authority-aided mortgage or advance or grant from the authority, then, except as provided in this section, the housing project is exempt from all ad valorem property taxes imposed by this state or by any political subdivision, public body, or taxing district in which the project is located.

MCL 125.1415a(1). But the MSHDAA also provides that municipalities may preempt this exemption through a local ordinance. If the exemption applies, the low-income housing property's owner must pay an "annual service charge for public services in lieu of all taxes." The MSHDAA provides a formula for the amount of the charge, which may not exceed the taxes that would otherwise be due. MCL 125.1415a.

Other exemptions for low-income housing properties include an exemption for nonprofit housing properties when the local taxing jurisdiction adopts a resolution approving the exemption, MCL 211.7kk, and an exemption for "supportive housing property," MCL 211.7nn, which must be owned by a charitable organization and make housing available to low-income persons, MCL 125.1459.

### 9. Soldiers and Veterans

**§2.60** The GPTA exempts the homestead of a soldier or sailor who was honorably discharged from the armed forces with a service-connected disability, if the soldier or sailor "is receiving or has received pecuniary assistance due to disability for specially adapted housing." MCL 211.7b. The exemption continues for the soldier or sailor's spouse after the soldier or sailor's death so long as the spouse does not remarry. *Id.*

In addition, the GPTA exempts veterans' memorial homes, which include "real estate and buildings owned and occupied solely by any veterans association, organization, or institution of the armed forces of the United States which is incorporated under the laws of this state and used solely for the purposes for which they were incorporated." MCL 211.7p. The exemption does not extend to "buildings or portions of buildings which are not restricted to members and guests and are used for commercial operations permitting the patronage of the general public." *Id.* But the GPTA also provides that "the legislative intent" behind the exemption is "that the making available of the exempt facilities for public assemblage or social affairs shall not be adequate cause to deny this exemption in whole or in part." *Id; see also American Legion Mem'l Home Ass'n v Grand Rapids*, 118 Mich App 700, 325 NW2d 543 (1982).

### 10. Business and Industrial Property

**§2.61** The GPTA provides several real property tax exemptions for business and industrial properties. In some instances, the exemptions are not automatic, but must be granted by the local taxing jurisdiction.

*Start-up businesses.* The GPTA allows local taxing jurisdictions to exempt property that belongs to a qualified start-up business as defined in the MBT Act. MCL 211.7hh. The MBT Act provides that a *qualified start-up business* is a business with fewer than 25 full-time equivalent employees, sales totaling less than $1 million in the tax year involved, devotes at least 15 percent of expenses to research and development, is not publicly traded, and meets certain requirements concerning contributions under the Employment Security Act. MCL 208.1415(6)(c).

*Other business and industrial exemptions.* The GPTA provides several additional exemptions for business property. They include an exemption for improvements on land that are the subject of an industrial facilities exemption certificate granted under the Plant Rehabilitation and Industrial Development Districts Act, MCL 207.551 et seq., otherwise known as the IFT Act. *See Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 418, 576 NW2d 667 (1998). Similarly, under MCL 211.7i and .7j, the GPTA grants a partial exemption for property that is the subject of a commercial housing facilities exemption certificate granted under the Commercial Housing Facilities Exemption Certificates Act, MCL 207.601 et seq. Other exemptions are available for properties with pollution control certificates, MCL 324.3701 et seq. (exempting certain property subject to a water pollution control certificate) and MCL 324.5901 et seq. (exempting certain property subject to an air pollution control certificate); oil and gas interests that are taxed under the severance tax, MCL 205.315; iron ore properties, MCL 207.279 and MCL 211.621 et seq.; metallic mineral resources that are newly discovered, MCL 211.24(2); solar, wind, and water energy conversion properties, on certification, MCL 211.7h; railroad property, MCL 211.7v; property belonging to corporations that pay some other specific tax, MCL 211.7v; aircraft landing areas, MCL 211.7y; certain material used to protect nursery stock in cold weather, MCL 211.7bb; and property located in a renaissance zone, MCL 211.7ff. Property in a certified technology park, as defined under the Local Development

Financing Act, MCL 125.2151 et seq., that is used as an innovations center is also exempt. An *innovations center* is property housing a high-tech business:

> "Innovations center" means real property that meets all of the following conditions:
>
> (i) Is a business incubator as that term is defined in section 2 of the local development financing act, 1986 PA 281, MCL 125.2152.
>
> (ii) Is located within a single building.
>
> (iii) Is primarily used to provide space and administrative assistance to 1 or more qualified high-technology businesses located within the building.

MCL 211.7ii(4)(c). In turn, *high-tech* businesses are those that primarily design and develop computer hardware and software, data communications, and information technology, as well as research and development, biotechnology, medical technology, and other similar activities, or devote at least 25 percent of their expenses to research and development. MCL 211.7ii(4)(d).

#### 11. Other Real Property Exemptions

**§2.62** The GPTA contains other exemptions, such as that for "deciduous and evergreen trees, shrubs, plants, bushes, and vines, whether annual or perennial, growing on agricultural land devoted to agricultural purposes," MCL 211.7e; a "seawall, jetty, groin, dike, or other structure whose primary purpose is to prevent or control" erosion, inundation, or flooding "on property affected by waters or levels of the Great Lakes or their connecting waters and tributaries," MCL 211.7g; property that belongs to agricultural societies used primarily for fairs, MCL 211.7w; qualified agricultural property, MCL 211.7ee; property that belongs to federally qualified health centers, as defined under the United States Code, MCL 211.7jj; and qualified forest property, MCL 211.7jj[1].

## IV. Taxation of Personal Property Under GPTA

### A. Introduction

**§2.63** Although the same general principles that apply to real property taxation also apply to personal property, such as taxation based on true cash value, there are important differences between the processes for real and personal property taxation. For example, real property assessments are generally established based on the local assessor's review of real property. MCL 211.24(1). But the GPTA requires that each person that possesses personal property must submit a statement of all personal property in that person's possession, regardless of whether they own the property, by February 20 of each year. MCL 211.19.

### B. Personal Property Statements

**§2.64** The statement that MCL 211.19 requires is generally known as a personal property statement and is a form that the STC prepares. MCL 211.19(5). The form is available on the STC's Web site (see http://www.michigan.gov/taxes/0,1607,7-238-43535_43537-154835--,00.html) and requires the person submitting it to include all tangible personal property that was located in the taxing jurisdiction on the tax day. MCL 211.13. The form includes a number of personal property categories, such as machinery and equipment; computer equipment; electronic, video, and testing equipment; and leasehold improvements, for example. Taxpayers must state the personal property's full acquisition cost, including sales tax, freight costs, and installation costs, in the year in which the property was acquired.

### C. Valuation Tables and True Cash Value

**§2.65** Like real property, personal property assessments are based on the property's true cash value. But in contrast with Michigan law governing the taxation of real property, the law governing the valuation of personal property includes a default valuation methodology. To value personal property, the person in possession reports the property's historical acquisition cost, as discussed; the taxing jurisdiction then applies a depreciation factor that the STC has developed. The court of appeals described the methodology:

> Personal property in Michigan has been valued through multiplier tables since the early 1960s. In general, taxpayers report the original (historical) installed cost of their property by year of acquisition and the [State Tax Commission] applies a multiplier that converts the original cost to a current true cash value for the property.

*County of Wayne v Michigan State Tax Comm'n*, 261 Mich App 174, 181, 682 NW2d 100 (2004). The STC's personal property statement form sets forth the depreciation multipliers for each of the categories of personal property, which are less than one in each instance, reflecting personal property's decreasing value over time. The multipliers were last updated for the 2000 tax year. *See* STC Bulletin No 12 (1999).

Although assessors are required to apply the depreciation multipliers when determining personal property assessments, the multipliers are not the last word on value. As the Michigan Tax Tribunal explained, "the STC multipliers are to be used as a guide in determining the true cash value of personal property, and need not be followed when overwhelming reliable evidence of market value is presented." *IBM Credit Corp v City of Detroit*, No 143885 (Mich Tax Trib Feb 26, 1993); *see also County of Wayne,* 261 Mich App at 197 ("The tables, as mass appraisal tools, supposedly provide an approximation of value that is not ultimately controlling in a dispute; the true cash value governs and a party may obtain a deviation … on the basis of a different theory of valuation that accurately and appropriately produces the true cash value.").

### D. Personal Property Exemptions

#### 1. Introduction

**§2.66** In addition to exemptions for real property, the GPTA provides a number of exemptions for personal property. Many are similar to the real property exemptions, but many are as different as personal property is from real property. The GPTA's personal property exemptions are generally set forth at MCL 211.9–.9k.

### 2. Industrial and Commercial Personal Property Exemptions

**§2.67** The GPTA establishes exemptions for personal property used in manufacturing and other businesses, as well as inventory, alternative energy businesses, high-tech businesses, and others.

*The special tools exemption. Special tools* means a "finished or unfinished device such as a die, jig, fixture, mold, pattern, special gauge, or similar device, that is used, or is being prepared for use, to manufacture a product and that cannot be used to manufacture another product without substantial modification of the device." MCL 211.9b(3)(b). The GPTA exempts special tools from ad valorem taxation.

*Inventory.* The GPTA provides that inventory is exempt from taxation. It defines *inventory* to mean goods held for resale, as well as raw materials, supplies, and earth-moving equipment:

> "Inventory" means 1 of the following:
>
> (i) The stock of goods held for resale in the regular course of trade of a retail or wholesale business.
>
> (ii) Finished goods, goods in process, and raw materials of a manufacturing business.
>
> (iii) Materials and supplies, including repair parts and fuel.
>
> (iv) On and after December 31, 2000, heavy earth moving equipment subject to 1 or more lease agreements with the same person totaling not more than 1 year and principally intended for sale rather than lease. A lease agreement used to support this exemption shall be made available to the assessor on request and shall be considered confidential information to be used for assessment purposes only.

MCL 211.9c(2)(b). The GPTA then specifies that personal property, other than heavy earth-moving equipment, under lease or principally intended for lease rather than sale, and personal property "for which a deduction or allowance for depreciation, depletion, or amortization is allowed or has been taken" under the federal Internal Revenue Code, IRC 167, does not fall within the definition of inventory. MCL 211.9c(3)(b)(iii).

*Alternative energy personal property.* A taxpayer that receives an alternative energy certification from the Michigan Next Energy Authority, MCL 207.821 et seq., may have its personal property exempted under the GPTA. MCL 211.9i. The exemption may apply to only a portion of the millage rate, or it may render the property entirely exempt, depending on the local school and taxing jurisdictions' actions in response to the certification. *Id.*

*Qualified high-tech business property.* The GPTA allows taxing jurisdictions to exempt the personal property of a qualified high-tech business that is located in an innovations center. The exemption is essentially identical to that for real property located in an innovations center that a high-tech business uses. See §2.61. As with the exemption for real property, the local taxing jurisdiction must grant the exemption.

*Other business personal property exemptions.* The GPTA provides other exemptions for business personal property, including computer software in general, MCL 211.9d; goods held in a warehouse that are designated for delivery outside the state of Michigan, MCL 211.9(1)(*l*); most bank and trust personal property, MCL 211.9(1)(m); aircraft, MCL 211.9(1)(t); mechanic's tools that do not exceed $500 in value, MCL 211.9(1)(h); all intangible personal property, MCL 211.9e; and personal property for which the local taxing jurisdiction grants an exemption, MCL 211.9f(1). Such an exemption may be granted only under certain circumstances and may be granted only for a "business engaged primarily in manufacturing, mining, research and development, wholesale trade, office operations, or the operation of a facility for which the business that owns or operates the facility is an eligible taxpayer." The exemption may not be granted for "a casino, retail establishment, professional sports stadium, or that portion of an eligible business used exclusively for retail sales." MCL 211.9f(8).

### 3. Agricultural Personal Property Exemptions

**§2.68** The GPTA exempts a number of kinds of agricultural personal property. First, the GPTA exempts "[p]roperty actually used in agricultural operations and farm implements held for sale or resale by retail servicing dealers for use in agricultural production." MCL 211.9(1)(j). *Agricultural operations* is defined to mean a broad array of farming activity:

> As used in this subdivision, "agricultural operations" means farming in all its branches, including cultivation of the soil, growing and harvesting of an agricultural, horticultural, or floricultural commodity, dairying, raising of livestock, bees, fur-bearing animals, or poultry, turf and tree farming, raising and harvesting of fish, collecting, evaporating, and preparing maple syrup if the owner of the property has $25,000.00 or less in annual gross wholesale sales, and any practices performed by a farmer or on a farm as an incident to, or in conjunction with, farming operations, but excluding retail sales and food processing operations.

*Id.* Similarly, the GPTA exempts "[f]arm products, processed or otherwise, the ultimate use of which is for human or animal consumption as food, except wine, beer, and other alcoholic beverages regularly placed in storage in a public warehouse, dock, or port facility while in storage are considered in transit and only temporarily at rest." MCL 211.9(1)(n). Beet sugar, whether solid or liquid, is also exempt. MCL 211.9(1)(o).

Wood harvesting equipment is also exempt. The GPTA provides an exemption for "[a]ll equipment used exclusively in wood harvesting, but not including portable or stationary sawmills or other equipment used in secondary processing operations." MCL 211.9(1)(q). *Wood harvesting* is defined to mean equipment used for "clearing land for forest management purposes, planting trees, all forms of cutting or chipping trees, and loading trees on trucks for removal from the harvest area." *Id.*

### 4. Educational, Charitable, Religious, and Cultural Personal Property Exemptions

**§2.69** The personal property exemptions for educational, charitable, religious, and cultural organizations are similar to those provided for real property. See §2.58. Thus, the personal property of "charitable, educational, and scientific institutions incorporated under the laws of this state," the "property of all library associations, circulating libraries, libraries of reference, and reading rooms owned or supported by the public and not used for gain," and the property "of posts of the grand army of the republic, sons of veterans' unions, and of the women's relief corps connected with them, of young men's Christian associations, women's Christian temperance union associations, young people's Christian unions, a boy or girl scout or camp fire girls organization, 4-H clubs, and other similar associations," are all exempt. MCL 211.9(1)(a)–(c).

Personal property exemptions for "nonprofit theater, library, educational, or scientific institutions" are actually provided with the real property exemptions, MCL 211.7n, as are the exemptions for furnishings and other material within "buildings or other facilities owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the society." MCL 211.7s. See §2.58 for more on the property tax exemptions for these entities.

### 5. Other Personal Property Exemptions

**§2.70** The GPTA provides several other personal property tax exemptions, including property owned by noncitizen Indians, MCL 211.9(1)(e); household personal property including "customary furniture, fixtures, provisions, fuel, and other similar equipment, wearing apparel including personal jewelry, family pictures, school books, library books of reference, and allied items," MCL 211.9(1)(f); the first $5,000 of personal property owned by "each social or professional fraternity, sorority, and student cooperative house recognized by the educational institution at which it is located," MCL 211.9(1)(g); the first $500 of personal property used in a home business or at a business location in the same city where the taxpayer resides, MCL 211.9(1)(k); the personal property of a parent cooperative preschool, MCL 211.9(1)(p); petroleum tanks for residential or agricultural use, MCL 211.9(1)(r); water conditioning systems in a residence, MCL 211.9(1)(s); methane digester systems used for agricultural operations, MCL 211.9(1)(j)(i); and leased bottled water coolers, MCL 211.9g[1].

## V. Lessee-User Tax Act

### A. Used in Conjunction with For-Profit Business

**§2.71** As discussed above, the GPTA provides tax exemptions for a number of types of real property. But in some instances, the owner of a tax-exempt property may allow a private party to use the exempt property in conjunction with a for-profit business. If a for-profit business operating on a tax-exempt property had no obligation to pay property taxes, that business would obtain an advantage over its competitors that operate on property that is not tax exempt. To ensure that businesses operating on exempt property do not obtain this "unfair advantage," the legislature adopted the LUTA. *See Skybolt P'ship v City of Flint*, 205 Mich App 597, 517 NW2d 838 (1994).

The LUTA provides that when a property that is exempt from taxation under the GPTA is used in connection with a for-profit business, the property's user may be taxed as if it owned the property:

> [I]f real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

MCL 211.181(1). The Michigan Court of Appeals has held that the "lessee or user" of the exempt real property is the person who has the direct relationship with the tax-exempt entity regarding the property's use. *See Greenberg v Madison Heights*, 124 Mich App 168, 171–172, 333 NW2d 614 (1983) (holding that when tenant leased space from management company, which in turn leased space from hospital, management company rather than tenant was responsible for LUTA tax). The person need not actually rent the space from the exempt entity; as long as the person is using tax-exempt property in a for-profit enterprise, LUTA tax will apply. *See Baker v Ann Arbor*, 395 Mich 151, 235 NW2d 322 (1975) (holding that tenants that used exempt property, even though they did not pay rent for use, were responsible for LUTA tax).

In determining whether a person using exempt property is engaged in a business conducted "for profit," Michigan courts have taken a narrow view. As the court of appeals explained, the phrase *business conducted for profit* has been "strictly construed in favor of the" taxpayer because the language imposes a tax and under longstanding principles of statutory construction, any language imposing a tax must be read narrowly. *See Nomads, Inc v Romulus*, 154 Mich App 46, 55, 397 NW2d 210 (1986). But if a business is in fact conducted for profit, it must pay the same tax for the property's use that would be due if the business actually owned the property.

### B. Nature of the Lessee-User Tax

#### 1. GPTA Specifics Apply

**§2.72** Because the tax that the LUTA imposes is the same tax that would apply if the user actually owned the property, the LUTA provides that taxes levied under it are assessed and levied "at the same time and in the same manner as taxes collected under the" GPTA. MCL 211.182(1). Accordingly, taxing jurisdictions apply the GPTA's provisions concerning the tax day, true cash value, taxable value, and so forth, when applying the LUTA.

#### 2. Lessee-User Tax Is Personal Tax

**§2.73** The LUTA's distinction from the GPTA is important. The GPTA imposes a tax on property and is enforceable against the property through foreclosure if necessary. *See, e.g.*, MCL 211.78a. On the other hand, the LUTA imposes a tax on the "right to the use of property which is not subject to taxation as such." *Rockwell Spring & Axle Co v Romulus*, 365 Mich 632, 637, 114 NW2d 166 (1962). The property's user, not the property itself, is subject to taxation under the LUTA, *see United States v Detroit*, 345 Mich 601, 607, 77 NW2d 79 (1956); so LUTA taxes must be collected from the user and cannot be collected through foreclosure, MCL 211.182. *See also Detroit v National Exposition Co*, 142 Mich App 539, 544, 370 NW2d 397 (1985) ("The lessee-user tax constitutes a personal debt on the part of certain lessees or users of tax-exempt realty.").

### 3. Does Not Apply to Personal Property

**§2.74** By its specific terms, the LUTA tax applies only where exempt real property is being used in conjunction with a for-profit business. MCL 211.181(1). Rather than addressing the possibility that a private business will use exempt personal property in the LUTA, Michigan law covers this topic in the GPTA. The GPTA provides that personal property may be assessed to a person that "is beneficially entitled to tangible personal property or has possession of tangible personal property," even if that person is not the property's owner. MCL 211.13(1). The LUTA therefore never applies to personal property.

## C. LUTA Exemptions

### 1. In General

**§2.75** The LUTA sets forth several exemptions. They include certain federal and state properties, "concessions" that are available for use by the general public at airports and other public facilities, properties used for county fairs and other similar functions, and most properties in a renaissance zone. The LUTA states that its tax "does not apply to all of the following" properties:

> (a) Federal property for which payments are made instead of ad valorem property taxes in amounts equivalent to taxes that might otherwise be lawfully assessed or property of a state-supported educational institution, …
>
> (b) Property that is used as a concession at a public airport, park, market, or similar property and that is available for use by the general public.
>
> (c) Property that is used by the lessee or user only in conjunction with a county fair, community fair, 4-H fair, or state fair of this state, or in conjunction with a special event for which the lessee or user pays a fee to the county fair, community fair, 4-H fair, or state fair. As used in this subdivision, "special event" means an event during which property is occupied by the lessee or user for not more than 14 consecutive days.
>
> * * *
>
> (e) Real property located in a renaissance zone, except a casino, to the extent and for the duration provided in the Michigan renaissance zone act … except a special assessment or a tax described in section 7ff(2) of the general property tax act.

MCL 211.181(2). Subsection (d) provides an exemption for horse racing properties but is limited to tax days before 1986. MCL 211.181(2)(d).

### 2. Start-Up Businesses

**§2.76** The LUTA provides that for tax years after 2004, property used by a "qualified start-up business is exempt" when the qualified start-up business applies for the exemption and the taxing jurisdiction where the property is located adopts a resolution approving the exemption. MCL 211.181a(1). *Qualified start-up business* is defined in the MBT Act, MCL 208.1415. A qualified start-up business may receive the exemption for only five years, which need not be consecutive. MCL 211.181a(5). Moreover, the exemption provided in this section will not exempt a qualified start-up business from special assessments and a limited number of other tax levies. MCL 211.181a(7).

### 3. Educational Institutions

**§2.77** Michigan courts have had limited opportunities to address the LUTA's first exemption applicable to federal property and property of state-supported educational institutions. MCL 211.181(2)(a). In *Chrysler Corp v Sterling*, 410 F2d 62, 68 (6th Cir 1969), the Sixth Circuit Court of Appeals held that a predecessor version of the exemption did not render the statute unconstitutionally discriminatory against the federal government's lessees. As for the exemption's application, the court explained that a state-supported educational institution is an educational institution sponsored by the state government that does not possess its own taxing powers. Therefore, state colleges and universities qualify, but community colleges, which possess their own taxing powers, do not. *Chrysler Corp; see* MCL 389.144 (authorizing community college districts to levy taxes). Reviewing testimony before the Michigan legislature when the LUTA's predecessor was adopted, the *Chrysler Corp* court reasoned that the legislature intended the exemption to ensure that the LUTA would not discourage gifts to colleges and universities:

> It is a fair inference from the record before us that the purpose of the Michigan Legislature in amending the bill so as to include this statutory exemption was to avoid discouraging gifts and bequests to the endowments of state-supported educational institutions. The Legislature also was concerned about the possible tax effect upon the University of Michigan as grantee of the Willow Run Airport from the United States. There is no showing on the record before us of any legislative purpose to discriminate against the United States in favor of state-supported educational institutions.

410 F2d at 68–69. Concluding that the legislation demonstrated no discriminatory purpose and otherwise did not violate the constitution, the court confirmed the statute's constitutionality without further comment on its application.

### 4. Concessions

**§2.78** The LUTA's second exemption is sometimes known as the "concession" exemption, as it applies to a property "that is used as a concession at a public airport, park, market, or similar property and that is available for use by the general public." MCL 211.181(2)(b). Michigan courts have emphasized that the concession exemption contains two requirements: (1) use as a concession and (2) availability to the general public:

> [I]t is apparent that in order for the exemption to apply, two requirements must be satisfied: (1) the property must be used as a concession, and (2) it must be available for use by the general public. The Legislature's use of the conjunctive "and" in subsection 2(b) must be given effect and indicates that both of these conditions must be satisfied before the exemption will apply.

*Skybolt P'ship v City of Flint*, 205 Mich App 597, 602, 517 NW2d 838 (1994). The *Skybolt* court went on to explain that "requiring the two conditions to be satisfied is consistent both with the purpose of the user-lessee statute and with tax exemption statutes in that it favors the taxing authority and discourages unfair advantage over lessees of private property." *Id.*

*Use as a concession.* The concession exemption has been the topic of a number of decisions. The Michigan Supreme Court first addressed the LUTA exemption's requirement that a property must be used as a "concession" in *Detroit v Tygard*, 381 Mich 271, 161 NW2d 1 (1968). There, a tenant leased hangars at Detroit City Airport where he operated a "fixed base," which is a business that offered piloting lessons, aircraft rental, and storage and service for small aircraft. To determine whether the tenant's use of the property as a fixed base was a concession, the supreme court began by observing that a concession must be more than a mere leasehold or permitted use; otherwise, the LUTA's designation for concessions would mean nothing. 381 Mich at 275.

For further guidance, the court turned to a dictionary definition, which explained that a *concession* is "a privilege or space granted or leased for a particular use within specified premises." *Id.* Based on the dictionary definition, the court concluded that the term *concession* includes a concept of exclusivity. The court explained that a use need not be completely exclusive to be a concession, although a higher level of exclusivity renders the use more likely to be a concession and "distinguishes it from the more general type of permissive use." *Id.*

More important, the court held that the agreement granting the privilege of using the space must also impose "specific obligations on the part of the privileged party to maintain particular services at specified times" for a use to be a concession. *Id.* The court noted that the Aeronautics Code, MCL 259.1 et seq., permits municipal airports to grant concessions to provide services at airports. To be a concession, the court held that the services provided must bear a reasonable relationship to the airport's purposes, and the agreements authorizing use of the property to provide the services must impose obligations on the concessionaire in exchange for the privilege of using airport property:

> We think that a further indication of legislative intent can be found in the related aeronautics code which specifically empowers political subdivisions with the right to "confer concessions * * * upon its airports", bespeaks an intention to assure that the services customarily and needfully required at airports will be assured. It follows that in return for the privilege granted, a corresponding obligation necessarily arises.

*Tygard*, 381 Mich at 276 (quoting the Aeronautics Code).

The court examined the use agreement in *Tygard* to determine whether this exchange had occurred. The agreement did not impose any specific obligations to maintain particular services, so the court concluded that the use of property in that instance was not use as a concession.

Michigan courts have explained other requirements necessary for a property to be used as a concession in addition to applying *Tygard*'s analysis. One such requirement is that the specific property's use must be subsidiary to the larger public use where the concession property is located. *See Golf Concepts v City of Rochester Hills*, 217 Mich App 21, 27 n3, 550 NW2d 803 (1996). Similarly, the court of appeals has held that the "notion of a 'concession' " is "of a *subsidiary* business related to a public-oriented operation." *Seymour v Dalton*, 177 Mich App 403, 409, 442 NW2d 655 (1989) (internal quotations omitted). *Seymour* explained that a concession is a use that is "incidental to and subsumed by" the larger public use. *Id.* A decision exempting a use that is not incidental to or subsumed by the larger public use, the *Seymour* court stated, would "be at odds with the broader purpose of the lessee-user tax, which is to eliminate the unfair advantage that private-sector users of tax-exempt property would otherwise wield over their competitors leasing privately owned property." *Id.* at 410.

Michigan courts have analyzed whether properties are "used as a concession" in a number of scenarios, coming to varying conclusions based on the factual circumstances in each case. Indeed, the Michigan Supreme Court in *Tygard* made explicit that different factual circumstances may result in differing conclusions about whether a given property is "used as a concession." *Tygard,* 381 Mich at 277. Accordingly, the courts have held that property used as a fixed base at an airport is not a concession, *id.,* and that property used as a fixed base at an airport is a concession, *see County of Kent v Grand Rapids*, 381 Mich 640, 167 NW2d 287 (1969). The courts have also held that a golf course is not used as a concession, *Golf Concepts; Seymour,* 177 Mich App at 409, and that a golf course is used as a concession, *City of Kalamazoo v Richland Township*, 221 Mich App 531, 562 NW2d 237 (1997). Michigan courts have also concluded that property used as an airport hotel and restaurant are used as a concession. *County of Kent.* Several decisions from the Michigan Tax Tribunal and unpublished court of appeals decisions address other uses of property and factual circumstances and similarly provide varying outcomes. Courts have described the reasoning in the concession cases as "elusive," *Seymour,* 177 Mich App at 408, so practitioners should review these cases in detail when seeking guidance on whether any given use of land has been held to be used as a concession.

*Available for general public use.* As the *Skybolt* court explained, in addition to being a concession, a public property that a tenant is using must also be "available for use by the general public" to be exempt from LUTA taxation. MCL 211.181(2)(b). *Skybolt* is the only published decision to address this requirement. In that case, *Skybolt* leased a hangar at an airport and subleased a portion of the hangar to an airline that used the hangar for aircraft maintenance. 205 Mich App at 603. The court of appeals observed that these areas used for maintenance were "not available for use by the public," so they could not qualify for the exemption without regard to whether they were used as a concession. *Id.*

Notwithstanding this component of the exemption, Michigan courts apparently have not been troubled by certain exclusions from public access. The restaurant that was held exempt in *County of Kent,* for example, would presumably have had a kitchen that was off limits to the public and any property would likely have "broom closets" and other restricted areas. Perhaps the courts have viewed such restrictions as *de minimis* components of any property, allowing them as part of the exemption as long as the property as a whole is "available for use by the general public." MCL 211.181(2)(b).

#### 5. Interpretation of Other Exemptions

**§2.79** Michigan courts have not had occasion to elaborate on the LUTA exemptions for properties used in conjunction with fairs or special events or renaissance zone properties. In reviewing the statutory language granting those exemptions, however, practitioners should bear in mind that any ambiguity or uncertainty regarding the exemption will be construed in favor of imposing the tax. *Nomads, Inc v Romulus*, 154 Mich App 46, 55, 397 NW2d 210 (1986) ("[T]ax exemptions are strictly construed against the taxpayer and in favor of the taxing authority. … Since taxation is the rule and exemption the exception, the intention to make an exemption must be expressed in clear and unambiguous terms."). The remaining LUTA exemptions' language should therefore be given a narrow application.