

SPECIAL ALERT

A GOOD UNCAPPING DECISION, FINALLY

A transfer of property creating or terminating a joint tenancy between two or more persons does not uncap taxable value if two conditions are satisfied. First, at least one of the joint tenants must have been an owner of the property immediately before the joint tenancy was created. The second requirement is not totally clear but was held broad enough to cover the situation described below.

In *Moshier v White Water Twp.*, a husband and wife transferred ownership of property to themselves and their son as joint tenants. The husband died and thereafter the wife transferred her interest in the property to her son, making her son the sole owner of the property.

The Court of Appeals overturned the Tribunal in *Moshier*, holding that the wife's transfer of her joint tenancy interest in the property to her son satisfied the statutory requirements for this "joint tenancy" uncapping exception.

The Court of Appeals decision in *Moshier* appears to create a significant planning opportunity. In this latest decision, the manner in which the transfer was structured was critical to the uncapping consequences. Certain transaction structures will result in uncapping but, as *Moshier* shows, other transaction structures that have the same end result can avoid or limit uncapping. Please contact Jeff Hyman (listed below) if you have transfer issues or contemplate buying or selling property and want to discuss **possible** ways to avoid the uncapping of taxable value.

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