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Supreme Court Interprets Joint Tenancy Taxable Value Uncapping

The Michigan Supreme Court recently decided *Klooster v City of Charlevoix*. The Court interpreted the exemption from property tax (taxable value) uncapping for a transfer creating or terminating a joint tenancy between two or more persons. There were three relevant transactions in *Klooster* involving property previously acquired by a father in a non-exempt transfer of ownership:

- In 2004, the father transferred the property to himself and his son as joint tenants with rights of survivorship; the Supreme Court held that this transaction qualified for the joint tenancy exemption, and did not cause uncapping, because the father was an original owner of the property before creating this joint tenancy.
- In January 2005, the father died, causing the son to become sole owner of the property; the Supreme Court held that this was a transfer of ownership, even though occurring by operation of law and not by separate written instrument of conveyance, but that the transfer qualified for the joint tenancy exemption, and did not cause uncapping, because the father was an original owner of the property before the joint tenancy was created and continuously remained a joint tenant until termination of the joint tenancy.
- In September 2005, the son transferred the property to himself and his brother as joint tenants with rights of survivorship; the Supreme Court held that this transaction did not qualify for the joint tenancy exemption and, therefore, resulted in uncapping. The Court concluded that the transferor son did not meet the requirement of being an original owner of the property prior to creation of the joint tenancy with his brother, because the transferor son acquired his interest in the property through exempt transfers that did not cause uncapping (e.g., the first and second transactions).

While the Supreme Court found the third transaction in *Klooster* to be a non-exempt transfer of ownership, its exemption of the first two transactions leaves flexibility for effecting exempt transfers from parents to children and among siblings (and even among third parties). The manner in which a transfer is structured is critical to the uncapping consequences. Certain transaction structures will result in taxable value uncapping but, as *Klooster* demonstrates, other transaction structures that have the same end result can avoid or limit uncapping. Honigman is available to discuss transfer (taxable value uncapping) issues and assist you in planning in that regard.

In addition, under *Klooster*, previous assessor uncappings in joint tenancy transactions may have been improper. Where that occurs, it may be possible to get the taxable value recapped. Honigman is available to evaluate the propriety of previous uncappings and assist in obtaining corrective relief.