

STATE OF MICHIGAN
COURT OF APPEALS

ENTRE BUILDING,

Petitioner-Appellant,

v

TOWNSHIP OF WEST BLOOMFIELD,

Respondent-Appellee.

UNPUBLISHED

March 6, 2003

No. 238550

Tax Tribunal

LC No. 00-274675

Before: Kelly, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Petitioner appeals as of right from a tax tribunal judgment finding that there was a transfer of ownership of the property at issue, thus permitting respondent to “uncap” its taxable value pursuant to MCL 211.27a(3). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Morris Margulies, J. Leonard Hyman, and Hyman’s wife, Virginia, apparently owned the property at issue. In May 1999, they conveyed it by quitclaim deed to Morlen Investment Company, a partnership between Margulies and Leonard Hyman only. Petitioner contended that the conveyance did not constitute a “transfer of ownership” as defined by statute and thus was exempt from the lifting of the property tax cap. The tribunal found that there was a change in percentage of ownership by one-third and lifted the tax cap to one-third of the state equalized value.

“Absent fraud, this Court’s review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle.” *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). The tribunal’s factual findings will be upheld if they are supported by competent, material, and substantial evidence on the whole record. *Id.* Substantial evidence is that which a reasonable mind would accept as sufficient to support the decision; it must be more than a scintilla of the evidence, but may be substantially less than a preponderance of the evidence. *Great Lakes Div of Nat’l Steel Corp v Ecorse*, 227 Mich App 379, 388-389; 576 NW2d 667 (1998). “Failure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal.” *Meijer, Inc, supra* at 5. Statutory interpretation is a question of law that is reviewed de novo on appeal, although this Court will “generally defer to the Tax Tribunal’s interpretations of the statutes it administers and enforces.” *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002).

A transfer of ownership is generally defined as “the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest.” MCL 211.27a(6). A transfer of ownership of property includes a conveyance by deed and a transfer of property held as a tenancy in common. MCL 211.27a(6)(a), (i). There is no dispute that Margulies, Leonard Hyman, and Virginia Hyman conveyed the property to Morlen by a quitclaim deed, and the parties contend that the three individuals owned it jointly. Nevertheless, petitioner contends that the conveyance was not a transfer of ownership under two exceptions.

Petitioner first contends that the conveyance was not a transfer of ownership under MCL 211.27a(6), which provides that a transfer of ownership of property includes:

(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. . . . [MCL 211.27a(6)(h).]

Petitioner contends that the property was owned by one, unnamed partnership composed of Margulies and the Hymans and was transferred to another partnership, Morlen. By its terms, this statute refers to an ownership interest in a partnership itself, not in an asset of a partnership. Because petitioner has not presented any argument or authority in support of its tacit premise that the two are interchangeable, the issue is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Petitioner next contends that the conveyance was not a transfer of ownership under MCL 211.27a(7), which provides that a transfer of ownership does not include:

(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. . . . [MCL 211.27a(7)(l).]

“A partnership is an association of 2 or more persons, which may consist of husband and wife, to carry on as co-owners a business for profit” MCL 449.6(1). The individuals involved need not have the subjective intent to form a partnership. *Byker v Mannes*, 465 Mich 637, 638-639, 646; 641 NW2d 210 (2002). “[I]n determining the existence of a partnership, the focus of inquiry is on the parties’ actual conduct in their business arrangements, as opposed to whether the parties subjectively intend that such arrangements give rise to a partnership. Thus, one analyzes whether the parties acted as partners, not whether they subjectively intended to create, or not to create, a partnership.” *Id.* at 649.

The gist of a partnership is mutual agency and joint liability. *Moore v Du Bard*, 318 Mich 578, 594; 29 NW2d 94 (1947). Some indicia of a partnership are a common authority in the administration and control of the business, a common interest in the capital employed, and a sharing in the profits and losses of the enterprise. *Barnes v Barnes*, 355 Mich 458, 462; 94 NW2d 829 (1959). One of the most important indicia of a partnership is the filing of a certificate of partnership as required by statute. *Moore, supra* at 592; MCL 449.101. Petitioner bears the

burden of proving the existence of a partnership. *Klein v Kirschbaum*, 240 Mich 368, 371; 215 NW 289 (1927).

Margulies' and Leonard Hyman's tax returns showed that they treated the property as an asset of Morlen before the 1999 conveyance. Petitioner contends that it was not an asset of Morlen but of another unnamed and undocumented partnership composed of Margulies and the Hymans. The only evidence of this is their apparent joint ownership of the property, as shown by the 1999 deed, and joint ownership of property does not, in itself, establish a partnership. *Lobato v Paulino*, 304 Mich 668, 676; 8 NW2d 873 (1943). Therefore, petitioner has not established that the tribunal committed an error of law in holding that the property was not wholly exempt under MCL 211.27a(7)(1).

In light of the above ruling, we need not consider petitioner's remaining issue.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Joel P. Hoekstra