

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT R. BEALE,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

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UNPUBLISHED  
March 25, 2014

No. 314581  
Tax Tribunal  
LC No. 00-419127

Before: RONAYNE KRAUSE, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Petitioner appeals as of right the Tax Tribunal's final opinion and judgment, which held that he was not entitled to the principal residence tax exemption (PRE) for his home under MCL 211.7cc for the tax years 2007, 2008, and 2009. We affirm.

In 1998, petitioner entered into a license agreement with Woodland Springs Club, Inc. (the Club). The agreement licensed petitioner to build a house on land provided by the Club. The agreement restricted petitioner's use and sale of his interest in the property. It provided that the Club would pay the taxes on the property, for which petitioner would reimburse the Club. It also stated that if the Club sold all of its assets or dissolved, petitioner would be entitled to the fair market value of the house. Finally, the agreement explicitly stated that it did not give petitioner title to the property. Petitioner thereafter built a house on a lot provided by the Club.

In 2008, the Club executed a condominium deed and by-laws, which allowed petitioner to turn in his license agreement for fee simple title to the property. Petitioner did not trade in the agreement for a deed to the property before the proceedings in this case began.

On October 29, 2009, respondent sent a notice to petitioner that is was denying his PRE for the tax years 2007, 2008, and 2009. Petitioner appealed the denial, arguing that he was the owner of the property at issue. Respondent upheld the denial following an informal conference. Petitioner then appealed to the Tax Tribunal, again arguing that he owned the property. The hearing referee found that petitioner remained subject to the license agreement, and therefore he did not own the property. The Tribunal adopted the hearing referee's proposed opinion and judgment.

Petitioner argues in this appeal, as he did below, that he was the owner of the property at issue and was therefore entitled to the PRE for the tax years at issue. We find that none of petitioner's arguments has merit.

"Review of decisions by the Tax Tribunal is limited." *Michigan Prop, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012) (citing *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007)). "The Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record." *Id.* (citing Const 1963, art 6, § 28; *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 482; 473 NW2d 636 (1991)). "If the facts are not disputed and fraud is not alleged," we review only "whether the Tax Tribunal made an error of law or adopted a wrong principle." *Id.* at 527-28 (citing *Meadowlanes*, 437 Mich at 482-83). We review de novo issues of statutory interpretation. *Id.* at 528. "[S]tatutes exempting persons or property from taxation must be narrowly construed in favor of the taxing authority." *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008).

MCL 211.7cc(1), which establishes the PRE, provides in pertinent part:

A principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section.

"Owner" as used in that section is defined in MCL 211.7dd(a). That section provides in pertinent part:

"Owner" means any of the following:

(i) A person who owns property or who is purchasing property under a land contract.

\* \* \*

(iv) A person who owns or is purchasing a dwelling on leased land.

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At issue is whether petitioner qualifies as an "owner" of the property under either definition. While it seems equitable that if a person is using a home as his/her principle residence and pays taxes on that home, albeit through a corporation, that person should be entitled to a PRE. However, the language of the pertinent statute constrains us to hold otherwise.

This Court recently addressed a very similar fact situation to this case in *Power v Dep't of Treasury*, 301 Mich App 226; 835 NW2d 622 (2013). In that case, a corporation was the record owner of the property at issue, which "contain[ed] at least one house." *Id.* at 228. "From 2002 to 2007, petitioner held a 'lot lease'" to the property. *Id.* "As of January 1, 2008, this lease was superseded by a license agreement, granting petitioner a license to use and occupy the property . . . . The license agreement explicitly stated that it did not grant any legal or equitable

interest in or title in or to the lot.” *Id.* The tax arrangement was similar to the present case, as the corporation paid the taxes on the property and the petitioner reimbursed the corporation. *Id.* In 2008, the petitioner was denied a PRE for that year and the preceding three years. *Power*, 301 Mich App at 228-229.

This Court found that the petitioner was not the owner of the property under MCL 211.7dd(a)(i). *Id.* at 230-33. This Court stated:

The lease agreement provided by petitioner does not purport to convey the land to petitioner or any building to petitioner; in fact, it requires the leaseholder to seek corporation approval to make any changes to the premises and restricts petitioner from conveying the property or assigning his leasehold interest. The licensing agreement goes further and explicitly states that it does not grant to petitioner any legal or equitable ownership interest in or title in or to the lot. [In addition,] the corporation was the owner of record. [*Id.* at 231-232].

This Court also found that the petitioner had presented no evidence that he owned the house on leased land under MCL 211.7dd(a)(iv). *Id.* at 232-233. This Court considered the petitioner’s argument that he had a homeowner’s insurance policy, this Court held that “the mere fact that someone has a homeowner’s policy insuring a dwelling does not render that person an owner under MCL 211.7dd(a).” *Id.* at 233. As well, this Court held that “evidence showing that all taxes were billed to the corporation and then apportioned to individual shareholders cuts against any claim by petitioner that he owns the dwelling house at issue because it supports the conclusion that all the property at issue was owned by the corporation, not petitioner.” *Id.* at 233.

In light of *Power*, the facts of the present case establish that petitioner was not entitled to a PRE during the taxable years at issue because he was not the owner of the property, nor did he own the house on leased land. The plain language of the agreement between the Club and petitioner granted petitioner a license, not a fee simple. The Club was referred to as “the Owner” in the agreement. The agreement explicitly stated that it did not give petitioner title to the property. Petitioner’s use of the property was restricted under the agreement. The agreement limited petitioner’s sale of his interest in the property. Finally, the Club paid the taxes on the property, for which petitioner reimbursed the Club. Petitioner presented no evidence that he owned the house on leased land. Under *Power*, these facts establish that petitioner was not an “owner” under MCL 211.7dd(a).

We find petitioner’s arguments to the contrary unpersuasive. Petitioner argues that with the amendment of the Club’s bylaws, which provided for an option to obtain a deed to the property, he had effectively acquired fee simple title, analogous to a land contract vendee who acquires equitable title. However, as the Tax Tribunal found, petitioner did not actually acquire a deed to the property during the tax years at issue. While petitioner had the right to the property at that point, seizing through an actual conveyance had not yet occurred. Consequently, he remained subject to the license agreement.

Petitioner next argues that he owned the house because he built it, maintained it, insured it, and had the sole right to occupy it. Petitioner fails to establish why any of these

considerations, together or standing alone, warrant the determination that he owned the house and the lot to which it was attached to the extent necessary to qualify for a PRE. That petitioner built the house does not necessitate the conclusion that he owned the property as that term is defined in the statute. The plain language of the License Agreement granted petitioner a license to build the house, not ownership of the land. As well, that petitioner maintained the house does not somehow elevate his license for use of the land to a title interest in it. Regarding petitioner's claim that he insured the house, as in *Power*, "the mere fact that someone has a homeowner's policy insuring a dwelling does not render that person an owner under MCL 211.7dd(a)." *Power*, 301 Mich App at 233. Petitioner's claim that he had the sole right to occupy the property also does not require the conclusion that he owned it, as the right to exclusive possession of property is also a hallmark of a leasehold or, in this case, a license. *Ann Arbor Tenants Union v Ann Arbor YMCA*, 229 Mich App 431, 443; 581 NW2d 794 (1998). Thus, these arguments are not persuasive.

Petitioner also argues that he was the owner of the property because he had the right to convey title to the property by sale or by will. However, the language of the license agreement states that petitioner had the right to sell "his interest" in the property. Prior his taking the fee simple interest pursuant to the bylaw change, petitioner's interest was a license in the land, coupled with an interest in the dwelling itself. The agreement also provided that petitioner could dispose by will of "the license hereby granted," not fee simple title. Thus, petitioner did not have the power to convey title by sale or by will.

Petitioner finally argues that if the Club had ever liquidated, he would have been entitled to the fair market value of the house. Again, petitioner does not state how this establishes his ownership of the property. Indeed, this provision cuts against petitioner's argument, as it shows that petitioner could be dispossessed of the property through no action of his own.<sup>1</sup> Such a possibility is inconsistent with the principle that a fee simple owner has the right to control the disposition of his property. *Eastbrook Homes, Inc v Treasury Dep't*, 296 Mich App 336, 348; 820 NW2d 242, 249 (2012). Consequently, petitioner has failed to show that he owned the property during the tax years at issue.

Affirmed.

/s/ Amy Ronayne Krause

/s/ E. Thomas Fitzgerald

/s/ William C. Whitbeck

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<sup>1</sup> Although arguably, he could retain the right to move the actual home.