

Report on Public Policy Position

Name of section:

Taxation Section

Contact person:

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Regarding:

Amicus Curiae Brief in *Klooster v. City of Charlevoix*

Date position was adopted:

September 3, 2010

Process used to take the ideological position:

Position adopted after an electronic discussion and vote.

Number of members in the decision-making body:

14

Number who voted in favor and opposed to the position:

10 Voted for position

0 Voted against position

0 Abstained from vote

4 Did not vote

Explanation of the position, including any recommended amendments:

This tax case presents an issue of the reach of the taxable value uncapping provision of MCL § 211.27a(3) and whether taxation in this case is beyond that provision's grasp by reason of the exception for certain transfers affecting joint tenancies under MCL § 211.27(7) (h). The Taxation Section has no personal interest or stake in the outcome of this litigation before the Court. Its interest in the subject of this litigation stems from its long and collective study of the laws and procedures pertaining to taxation and to promote the fair just and even-handed administration of the tax laws for all participants, the government and taxpayers alike. To this end, in addressing each of the six questions presented, the Taxation Section makes three fundamental points concerning the issues in this case.

First, because tax laws are highly rule oriented, reliance on the statutory text, or "ruleness," is essential. "Ruleness" is essential because it permits taxpayers to predict their tax obligations, and to plan their activities according to those predictions. In this case, Respondent argues against "ruleness" because the statutory text demands an outcome that is different than what Respondent wants that outcome to be. To produce the outcome it wants, Respondent asks this Court to reinvent the statute superimposing new requirements that are not present in the statute's plain language. The danger of Respondent's argument is that using such a purposive approach to depart from "ruleness" shifts tax law toward an elitist orientation. Such a departure will cast doubt on the value of statutory text in tax law and erode the public's confidence in Michigan's taxation system.

The second point is that deciding whether or not to impose a tax or, perhaps more apt in this case, the reach of a particular tax, is a political question whose resolution rests solely with the Legislature – it is not a judicial decision. Statutes are inherently conservative mechanisms in that they reflect historical determinations that may be resistant to change. Limiting judicial discretion in interpreting and applying the tax law preserves the statutes' constraining power, as well as their predictive utility. The fact that the taxpayer in this case used an exemption that the Legislature condoned should not be suspect in the eyes of the law. Yet, even if the language of section 27a(7)(h) were flawed, the Legislature must make that correction - not this Court.

Finally, this case holds the potential to upset the balance between taxpayers and the tax administrator in future tax controversies by lowering the tax administrator's hazards to litigation. Whether real or perceived, such an unfortunate outcome will ultimately erode the public's confidence in the idea that the courts of Michigan provide an independent and fair forum for the review of tax adjustments