Transfer of Ownership Guidelines

PREPARED BY THE MICHIGAN STATE TAX COMMISSION

Issued December 2014

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Background Information

The State Tax Commission has issued several Bulletins and memoranda pertaining to transfer of ownership and taxable value uncapping issues:

Bulletin No. 16 of 1995 addresses the implementation of the uncapping of an individual property's taxable value for a transfer of ownership when the assessor is aware of the transfer prior to the adjournment of the March Board of Review.

Bulletin No. 8 of 1996 addresses procedures to use when a transfer of ownership is discovered after the close of the March Board of Review.

A portion of Bulletin No. 3 of 1997 constitutes a supplement to Bulletin No. 16 of 1995. Another portion of Bulletin No. 3 of 1997 covers changes to the prescribed treatment of delayed uncapping situations and constitutes a supplement to Bulletin No. 8 of 1996.

Bulletin No. 7 of 2006 addresses the transfer of ownership exemption for qualified agricultural property allowed by Public Act 260 of 2000. Bulletin No. 7 of 2006 constitutes another supplement to Bulletin No. 16 of 1995. These Bulletins are available on the State Tax Commission website, www.michigan.gov/statetaxcommission.

Bulletin 15 of 2014 addresses P.A. 497 of 2012 and P.A. 310 of 2014 regarding exempt conveyances and transfers to individuals related by blood or affinity.

STC Memorandum issued June 9, 2011 addresses issue related to the Supreme Court decision in the Klooster Case.

Why is a transfer of ownership significant with regard to property taxes?

In accordance with the Michigan Constitution as amended by Michigan statutes, a transfer of ownership causes the taxable value of the transferred property to be uncapped in the calendar year following the year of the transfer of ownership.

What is meant by “taxable value”?

Taxable value is the value used to calculate the property taxes for a property. In general, the taxable value multiplied by the appropriate millage rate yields the property taxes for a property.

What is meant by “taxable value uncapping”?

Except for additions and losses to a property, annual increases in the property’s taxable value are limited to 1.05 or the inflation rate, whichever is less. In the year following a statutory transfer of ownership, that limitation is eliminated and the property’s taxable value is set at 50% of the property’s true cash value (i.e., the state equalized value). This is what is meant by “taxable value uncapping”. See MCL 211.27a(3).

Note: A property's true cash value is usually not the same as its sale price for a variety of reasons. An assessor must determine the true cash value of a property which has sold in the same manner that the assessor determines the true cash values of properties which have not sold. ***Therefore, an assessor may not automatically set an assessed value or a taxable value at half of a property's selling price.*** *See State Tax Commission Bulletin No. 19 of 1997 and State Tax Commission Memorandum dated October 25, 2005 that describes the illegal and unconstitutional practice of "following sales."*

Can an assessor disregard a statutory transfer of ownership (i.e., can an assessor decide not to uncap a property's taxable value in the year following a transfer of ownership)?

No. By statute an assessor must uncap a property's taxable value in the year following the transfer of ownership of that property. The assessor shall set the property's taxable value for the calendar year following the year of the transfer of ownership as the property's state equalized valuation for the calendar year following the transfer. *See MCL 211.27a(3).*

If two sections of MCL 211.27a(6) or (7) appear to be in conflict, how should that conflict be resolved?

MCL 211.27a(6) includes a non-exhaustive list of conveyances that will constitute a transfer of ownership, and MCL 211.27a(7) lists conveyances that do not constitute such a transfer. When two statutory provisions conflict and one is specific while the other is only generally applicable, the specific provision prevails.

Transfer of Ownership Definitions

What is a transfer of ownership?

Central to the concept of transfer of ownership is a **change in the beneficial use** of the property. Michigan statute defines "transfer of ownership" generally 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. Michigan Complied Laws (MCL) 211.27a(6) (a-j) provides a variety of examples of what constitutes a transfer of ownership for taxable value uncapping purposes. If a transfer of property (or ownership interest) meets one of these definitions and does not fall under one of the exceptions or exemptions noted in the law, that transfer is a transfer of ownership. Transfer of ownership definitions and transfer of ownership exceptions are contained in MCL 211.27a.(6)(a)-(j) (*See appendix*). Transfer of ownership exemptions are contained in MCL 211.27a(7)(a)-(s). (*See appendix*)

Deeds and Land Contracts

Is a conveyance of a property by deed a transfer of ownership?

A transfer of property by deed is a transfer of ownership. *See MCL 211.27a(6)(a).*

Is a sale by land contract a transfer of ownership?

A transfer of property by land contract is a transfer of ownership. *See MCL 211.27a(6)(b).*

If a property is sold by land contract, when does the transfer of ownership occur?

The transfer of ownership occurs on the date the land contract is entered into—not the date the land contract is recorded, nor the date the land contract is completed (paid in full) and not the date a deed conveying title to the property is recorded in the office of the register of deeds in the county in which the property is located.

Does a second transfer of ownership occur when a land contract is paid in full and a deed in fulfillment of the land contract is given?

No. The law specifically states that a property's taxable value is not to be uncapped when a deed conveying title to the property is subsequently recorded with the register of deeds.

Is the assignment of a seller's interest in a land contract a transfer of ownership?

No, this is considered a transfer of a security interest and is exempt by law from being a transfer of ownership.

Is the assignment of a buyer's interest in a land contract a transfer of ownership?

Yes, the assignment of a land contract buyer's interest in a property conveys equitable title to the property and a change in the beneficial use of the property occurs resulting in a transfer of ownership.

Trusts

Is a conveyance of property to a trust a transfer of ownership?

Yes, pursuant to MCL 211.27a(6)(c), a conveyance to a trust after December 31, 1994 is a transfer of ownership. However, if the grantor stated on the deed is the settlor (creator) of the trust or the settlor's spouse or both **and** the sole present beneficiary of the trust is the settlor of the trust or the settlor's spouse or both, the conveyance is not a transfer of ownership. *See MCL 211.27a(6)(c)(i).*

Beginning with conveyances on or after December 31, 2014, if the settlor or the settlor's spouse, or both, conveys residential real property to the trust and the sole present beneficiary or beneficiaries are the settlor's or settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance, the conveyance is not a transfer of ownership. See MCL 211.27a(6)(c)(ii).

What or who is a present beneficiary of a trust?

A present beneficiary of a trust is the person who has the enjoyment and beneficial use of the property during the life of the trust.

What or who is a trustee of a trust?

A trustee of a trust is the person or agent who is appointed to administer the trust. Note that banks are often trustees.

Is the trustee (or successor trustee) of a trust the same as the beneficiary of that trust?

Not necessarily. The trustee (or successor trustee) of a trust can be, and often is, a completely different individual than the trust's beneficiary. The beneficiary of a trust is best determined from an examination of the trust instrument.

Is a transfer of property by a husband and wife to a trust on December 20, 2014 with the husband and wife and their child as present beneficiaries a transfer of ownership?

Yes. The child is a present beneficiary and is not the settlor of the trust or the settlor's spouse. MCL 211.27a(6)(c)(ii) does not apply as the conveyance occurred prior to December 31, 2014 when this exception went into effect.

Is a transfer of residential real property by a husband and wife to a trust on January 14, 2015 with their child, John Smith, as the sole present beneficiary a transfer of ownership?

No. Since the child is the settlor's son and the conveyance of residential real property occurs after December 31, 2014, the conveyance to the trust is not a transfer of ownership provided the property is not used for any commercial purpose following the conveyance. This conveyance falls within the exception outlined at MCL 211.27a(6)(c)(ii) and is not a transfer of ownership.

Is a transfer of property by a husband and wife to a trust with the husband and wife as present beneficiaries and their child as a contingent beneficiary a transfer of ownership?

No. The child is not a present beneficiary. The only present beneficiaries are the settlor of the trust and the settlor's spouse. The husband and wife are the sole present beneficiaries and fall within the exception outlined at MCL 211.27a(6)(c)(i).

What or who is a contingent beneficiary of a trust?

A contingent beneficiary of a trust is a person who does not currently have the enjoyment and beneficial use of the property held in trust. The trust document names the contingent event, such as, the beneficiary's attaining a certain age, or death of the settlor. If and when the contingent event occurs, the contingent beneficiary changes status to present beneficiary, and gains *beneficial use* of the property held in trust.

Is a conveyance of property which constitutes a distribution from a trust a transfer of ownership?

Yes. However, there are two exceptions when a distribution from a trust is not a transfer of ownership. A conveyance of property which is a distribution from a trust is not a transfer of ownership if the distributee is also the sole present beneficiary of the trust or the spouse of the sole present beneficiary or both. *See MCL 211.27a(6)(d)(i).*

Beginning December 31, 2014, a distribution of residential real property to a distributee who is the trust's settlor or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance is not a transfer of ownership. See MCL 211.27a(6)(d)(ii).

Note: Not all transfers of property from trusts are distributions from the trusts. A transfer of property from a trust to someone other than a beneficiary (or contingent beneficiary) of that trust is ***not*** *a distribution from that trust. It is simply a transfer of property from a legal entity (the trust) to a person and the transfer should be considered in that context.*

What happens if the sole present beneficiary of a trust changes?

A change in the sole present beneficiary of a trust is a transfer of ownership, unless the following occur: (i) the change merely adds or substitutes the spouse of the sole present beneficiary (and provided that no other statutory exception or exemption applies)*; or (ii) the change in the sole present beneficiary or beneficiaries of a trust occurred on or after December 31, 2014, for residential real property, and the change in beneficiaries adds or substitutes the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance See MCL 211.27a(6)(e)(i) and MCL 211.27a(6)(e)(ii).*

Is a conveyance of property to a trust a transfer of ownership if: The grantor is the settlor (creator) of the trust or the settlor's spouse or both. The sole present beneficiary of the trust is the settlor of the trust or the settlor's spouse or both.

No. If the grantor stated on the deed is the settlor (creator) of the trust or the settlor's spouse or both **and** the sole present beneficiary of the trust is the settlor of the trust or the settlor's spouse or both, the conveyance is not a transfer of ownership. *See MCL 211.27a(7)(f).*

If the present beneficiary of a trust changes on March 1, 2015 to the settlor's daughter, Jill, and her neighbor, Sarah, is the change in the present beneficiaries a transfer of ownership?

Yes. A change in beneficiaries of a trust is a transfer of ownership. Beginning December 31, 2014, conveyances would not be a transfer of ownership if the property were residential real property, the property was not used for any commercial purpose following the conveyance, and the change adds or substitutes the settlor's or settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter. The exception under

MCL 211.27a(6)(e)(ii) does not apply for the reason that the change adds the neighbor, who does not meet any of the family members qualified for this exception under this subsection. The real property should uncap 100% in the year following the change in the beneficiaries.

What is "residential real property"?

Residential real property as used in this section means real property classified as residential real property under MCL 211.34c. *See MCL 211.27a(11)(g).*

Can the assessor request the sole present beneficiary or the beneficiaries of a trust furnish proof that there has been a conveyance, distribution or change in beneficiaries of a trust that qualifies as an exempt transfer under MCL 211.27a(6)(c)(ii), MCL 211.27a(6)(d)(ii) or MCL 211.27a(6)(e)(ii) ?

Yes. The assessor or the Department of Treasury can request the sole present beneficiary or beneficiaries furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements to allow the conveyance to be an exempt transfer of ownership. *See MCL 211.27a(6)(c)(ii), MCL 211.27a(6)(d)(ii) and MCL 211.27a(6)(e)(ii).*

Is there a deadline for the sole present beneficiary or beneficiaries to furnish proof that the conveyance is not a transfer of ownership under MCL 211.27a(6)(c)(ii), MCL 211.27a(6)(d)(ii) or MCL 211.27a(6)(e)(ii)?

Yes. The law requires that the sole present beneficiary or beneficiaries are required to furnish proof that the conveyance is not a transfer of ownership within 30 days of the Department of Treasury or assessor's request.

Is there a fine if the sole present beneficiary or beneficiaries do not furnish proof?

Yes. If a present beneficiary fails to comply with a request by the Department of Treasury or the assessor, that present beneficiary is subject to a fine of $200.00.

<u>Distributions Under Wills or By Courts</u>

Is a conveyance of a deceased person's property as directed by a will or as directed by a court (when there is no will) a transfer of ownership?

Yes. Subject to any probate administration that may occur if real property assets are needed to satisfy debts of the decedent's estate, title to a decedent's real property generally passes at the time of his or her death to any devisees or heirs.

However, the conveyance is not a transfer of ownership if the person receiving the property is the deceased person's spouse, *See MCL 211.27a(6)(f)(i); or beginning December 31, 2014, for residential real property, if the distribute is the decedent's or the decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or*

granddaughter and the residential real property is not used for any commercial purpose following the conveyance. See MCL 211.27a(6)(f)(ii).

*Note: An exemption from an uncapping exists for judgments or orders of a court of record (without specific monetary consideration for the transfer) are not a transfer of ownership. However, the transfer of ownership definition regarding distributions under a will or by intestate succession is considered more specific than—**and therefore overrides**—this transfer of ownership exemption (even though both statutory provisions may apply).*

Can the assessor request the sole present beneficiary or the beneficiaries to furnish proof that the conveyance by distribution by will or by intestate succession is not a transfer of ownership under MCL 211.27a(6)(f)(ii)?

Yes. The assessor or the Department of Treasury can request the sole present beneficiary or beneficiaries furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements to allow the conveyance to be an exempt transfer of ownership. *See MCL 211.27a(6)(f)(ii).*

Is there a deadline for the sole present beneficiary or beneficiaries to furnish proof that the conveyance is not a transfer of ownership under MCL 211.27a(6)(f)(ii)?

Yes. The law requires that the sole present beneficiary or beneficiaries are required to furnish proof that the conveyance is not a transfer of ownership within 30 days of the Department of Treasury or assessor's request.

Is there a fine if the sole present beneficiary or beneficiaries do not furnish proof?

Yes. If a present beneficiary fails to comply with a request by the Department of Treasury or the assessor, that present beneficiary is subject to a fine of $200.00.

In the case of a distribution of a property under a will or by a court, when does the transfer of ownership (if any) occur? (Does the transfer of ownership occur upon the death of the individual involved, upon the distribution of the property, or at some other time?)

The transfer of ownership, if any, typically occurs when the property is probated and conveys the decedent's title to real property as of the time of death, whether by will or by intestate succession. However, it is possible for a significant amount of time to pass between an individual's death and the distribution of that person's property under a will or by a probate court. If the distribution process has not proceeded in a typically timely manner and after a person's death but before the distribution of that person's property, the person's heir exercises dominion over the property, a transfer of ownership to the heir is considered to have occurred when dominion was first exercised by the heir. (Provided no statutory exception or exemption applies.) *See MCL 211.27a(6)(f)(ii).*

Dominion in this context means control or beneficial use of a property, including occupancy, receipt of rents, etc. The relevant considerations when there is a delay in distribution of the

decedent's estate are whether the distribution process has advanced in a typically timely manner and whether/when the heir had dominion over the property. Additional information regarding the progression of the probate estate may best be obtained by reviewing the probate court files.

Jane Doe dies on January 3, 2015 and her real property, which is classified as industrial real property, is conveyed by distribution under a will to her daughter Sally. Is this conveyance a transfer of ownership?

Yes, this is a conveyance by distribution under a will and is a transfer of ownership. No exception or exemption applies to this conveyance. MCL 211.27a(6)(f)(ii) does not apply because this exception is only applicable to residential real property that is distributed to the decedent's or decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. "Residential real property" is defined as real property classified as residential real property under MCL 211.34c. See MCL 211.27a(6)(f)(ii) and MCL 211.27a(11)(g). Assessors should review the classification of the real property in the year of the conveyance.

Leases

Can the execution of a lease be a transfer of ownership?

Yes. A lease of real property, entered into after December 31, 1994, is a transfer of ownership if one or both of the following conditions exists:

1. The lease term exceeds 35 years, including all options to renew the lease. OR

2. The lessee has a bargain purchase option. A bargain purchase option is defined by law as the right to purchase the leased property at the end of the lease for 80 percent or less of what the property's projected true cash value at the end of the lease. Even if the lease agreement qualifies as a "transfer of ownership" under MCL 211.27a(6)(g), the lessee is still required to follow the notification requirements under 211.27a(10), which states the transferee must notify the assessing officer on the proscribed form within 45 days of the transfer of ownership, to qualify as a transfer of ownership by the taxing unit. (Walgreen's Co. v. Macomb Twp. (2008) 760 N. W.2d 594, 280 Mich. App. 58).

Can the leasing of personal property be considered a transfer of ownership?

Generally, no. However, the leasing of personal property that a leasehold improvement, or a leasehold estate can be a transfer of ownership.

When a lease is initiated covering only a portion of a real property parcel, and the lease is for more than 35 years (or contains a bargain purchase option), does a transfer of ownership occur?

Yes. However, only the taxable value for that part of the property subject to the lease is uncapped in the year following the transfer of ownership. In other words, a partial uncapping of the parcel's taxable value occurs.

If a lessee assigns the lessee's interest in a lease which had an original term of more than 35 years and which has a remaining term of more than 35 years at the time of the lease assignment, does a transfer of ownership occur?

Yes, this is a conveyance by lease of a property with a lease term of more than 35 years and is a transfer of ownership.

If a lessee assigns the lessee's interest in a lease which had an original term of more than 35 years and which has a remaining term of 35 years or less at the time of the lease assignment, does a transfer of ownership occur?

No, since the remaining term of the lease is not more than 35 years.

<u>Ownership Changes of Legal Entities (Corporations, Partnerships, Limited Liability Companies, etc.)</u>

Can the conveyance of an ownership interest of a legal entity (such as a corporation, a partnership, etc.) which owns property be a transfer of ownership—even though title to the property remains unchanged?

Yes, a conveyance of an ownership interest in a legal entity (such as a corporation, a partnership, etc.) which owns property is a transfer of ownership of that property provided that the ownership interest conveyed is more than 50 percent of the total ownership interest. *See MCL 211.27a(6)(h).* However, this is not applicable to cooperative housing corporations (discussed separately).

A limited liability company owns real property and conveys of 25.0 percent of the ownership interest in 2011. In January of 2012, a conveyance of 25.1 percent of the ownership interest of the limited liability company occurred. Did a transfer of ownership of the real property occur? If so, when?

A transfer of ownership of the property owned by the limited liability company occurred in January of 2012 since at that point; more than 50.0 percent of the ownership interest in the limited liability company had been conveyed. The property's taxable value is to be 100% uncapped for 2013.

As of January of 2011, 50.1 percent of the ownership interest of a limited liability company was been conveyed and the taxable value of the property was uncapped for 2012. If, in March of 2013, 50.0 percent of the ownership interest in the limited liability company is conveyed, does another transfer of ownership occur?

No. The percentage of ownership interest conveyed is cumulative from the date of the last transfer of ownership. Between January of 2011 and March of 2013, not more than 50.0 percent of the ownership interest is conveyed. Therefore, no transfer of ownership occurs as of March of 2013.

Company A owns all the membership interest in a limited liability company. The limited liability company owns a piece of real property. In 2011, Company A sells and conveys its ownership interest in the limited liability company to Company B. Did a transfer of ownership of the property occur?

A transfer occurred when Company A sold and transferred its membership interest in the limited liability company to Company B. Therefore, the property's taxable value shall be uncapped for 2012. *See Signature Villas, L.L.C. v. City of Ann Arbor, 269 Mich. App 694, 714 NW2d 392 (2006).*

Tenancies in Common

What is a tenancy in common?

A tenancy in common is a form of property co-ownership in which two or more persons own the property with no right of survivorship between them. When one tenant in common dies, her interest passes to her heirs or devisees. In this type of shared ownership arrangement title does **not** automatically to the surviving tenant(s) in common.

Does a tenancy in common require that the tenants in common have equal ownership shares of the property involved?

No. A tenancy in common does not require equal shares. A different, unequal percentage of ownership interest may be established for each tenant in common under a tenancy in common.

Is a conveyance of an ownership interest of property held as a tenancy in common a transfer of ownership?

Yes. However, the transfer of ownership is only for that portion of the property ownership which is conveyed; meaning a partial uncapping of the property's taxable value in the year following the transfer of ownership is possible with tenancies in common. *See MCL 211.27a(6)(i).*

Example: Individuals A, B, and C owned a property as tenants in common. Individual A had a 50 percent undivided interest in the property and individuals B and C each had a 25 percent undivided interest. In 2012, individual A conveyed his/her interest to individual B (and this

conveyance was a transfer of ownership). Under these circumstances, a partial, 50% uncapping of the property's taxable value occurs for 2013.

How is a tenancy in common established?

A tenancy in common is generally established by means of a deed or land contract conveyance. The language relating to the grantees of the deed or land contract establishes the tenancy in common.

Examples: If John Doe conveys property to John Doe and Jim Smith "as tenants in common" a tenancy in common is created and Mr. Doe and Mr. Smith are the tenants in common. Likewise, if John Doe conveys property to John Doe and Jim Smith and no language is provided regarding the nature of their ownership, a tenancy in common is created between Mr. Doe and Mr. Smith.

If a property is conveyed to a man and a woman and no information is provided regarding the nature of their ownership, a tenancy in common is formed, unless the man and the woman are married at that time, in which case a tenancy by the entireties is created.

How can the percentages of undivided ownership interest of the tenants in common be determined?

Often the deed or land contract establishing the tenancy in common will specify the percentages of undivided ownership interest of the tenants in common. In the absence of language on the deed or land contract specifying the percentages of ownership interest of the tenants in common, assessors are advised that it is presumed to be divided equally between the owners unless evidence to the contrary is presented by the grantor.

Cooperative Housing Corporations

What is a cooperative housing corporation?

A cooperative housing corporation is a type of property ownership in which the corporation holds title to a housing complex and individual stock holders in the corporation have the right to occupy an individual dwelling in that housing complex.

Is a conveyance of an ownership interest in a cooperative housing corporation a transfer of ownership?

Yes. However, the taxable value of that portion of the property not subject to the ownership interest conveyed is not uncapped in the year following the conveyance. In other words, a partial taxable value uncapping can occur for a cooperative housing corporation. *See MCL 211.27a(6)(j).*

Note: The law states that a transfer of ownership occurs when more than 50 percent of the ownership interest of a corporation changes. Beginning in 1997, this law was no longer applicable to cooperative housing corporations.

What happens if a cooperative housing corporation, during 2012, conveys 15 out of 100 shares of stock?

A transfer of ownership occurs. Since 15 of 100 shares transferred in 2012, 15 percent of the taxable value of the cooperative housing corporation is to be uncapped for 2013.

Transfer of Ownership Exemptions

What is a transfer of ownership exemption?

Michigan law specifies that certain transfers of property and ownership interests are not transfers of ownership for taxable value uncapping purposes. These types of transfers are known as exempt transfers and the statutes that provide for these exempt transfers are known as transfer of ownership exemptions. Transfer of ownership exemptions are contained in MCL 211.27a.(7)(a)-(s).

It is a solidly established principal that property tax "exemption statutes are to be **strictly construed** in favor of the taxing unit and against the exemption claimant." Association of Little Friends, Inc. v City of Escanaba, 138 Mich. App 302; 362 NW2d 602 (1984); Town & Country Dodge Inc. v Department of Treasury, 420 Mich. 226; 362 NW2d 618 (1984); Inter Co-op Council v Tax Tribunal Dept. of Treasury, 257 Mich. App 219; 668 NW2d 181 (2003).

It is also well established that a person or entity seeking a property tax exemption must demonstrate entitlement to the exemption by a preponderance of the evidence and that a property tax exemption cannot be inferred or implied. *Holland Home v City of Grand Rapids*, 219 Mich. App 384, 394; 557 NW2d 118 (1996); *Michigan United Conservation Clubs v Lansing Township*, 129 Mich. App 1, 11 (1983).

Since a transfer of ownership exemption is simply a form of property tax exemption, it is the opinion of the State Tax Commission that the principals which apply to general property tax exemptions also apply to transfer of ownership exemptions. Therefore, transfer of ownership exemption statutes must be strictly interpreted against the person or entity claiming the exemption and in favor of the local taxing unit. Assessors **must not** infer a transfer of ownership exemption or grant a transfer of ownership exemption based on implication.

Spouses

Is a transfer of property from one spouse to the other spouse a transfer of ownership?

No, generally a transfer of property from one spouse to another spouse is not a transfer of ownership. *See MCL 211.27a(7)(a) and MCL 211.27a(7)(s).*

Is a transfer of property from a deceased spouse to a surviving spouse a transfer of ownership? *See MCL 211.27a(7)(a).*

As a general rule, a transfer of property from a deceased spouse to a surviving spouse is not a transfer of ownership.

Is a transfer of property between former (divorced) spouses a transfer of ownership?

Yes. No transfer of ownership exemption exists for property transfers between divorced spouses. However, oftentimes recently divorced spouses must convey property to one another as part of the divorce proceedings and these transfers of property may be exempt transfers if the conveyances are solely to terminate a tenancy by the entireties (covered later in this publication).

Is a transfer of property from one spouse to a limited liability company with the other spouse as the only member of the limited liability company a transfer of ownership?

Yes. Even though the second spouse completely controls the limited liability company, the limited liability company is not the second spouse. A limited liability company is a separate and distinct legal entity, different from a person. Therefore, such a situation is not a transfer between spouses and is a transfer of ownership applies.

Children and Other Relatives

Is a transfer of property from a parent to a child a transfer of ownership?

No. From December 31, 2013 through December 30, 2014 this would be an exempt conveyance only if the property conveyed was classified residential real and if the use of the real property does not change following the transfer of ownership.

Transfers from a parent to a child occurring on or after December 31, 2014, would also not be a transfer of ownership provided the property is classified residential real property and the residential real property is not used for any commercial purpose following the conveyance.

Does this include adopted children for transfers occurring from December 31, 2013 to December 30, 2014?

See MCL 211.27a(7)(s). Yes, P.A. 497 of 2012 indicated that beginning December 31, 2013, a transfer of residential real property is not a transfer of ownership if the transferee is related to the transferor by blood or affinity to the first degree and the use of the property does not change following the transfer of ownership. A transfer of residential real property is not a transfer of ownership if the transferee has one of the following relationships to the transferor: spouse, father or mother, father or mother of the spouse, son or daughter, including adopted children, son or daughter of the spouse and stepchildren, stepmother or stepfather.

What is the definition of relationship by blood?

The State Tax Commission offers the following definition: a first degree blood relative is a person who shares approximately 50% of their genes with another member of the family. First degree blood relatives include parents, children or siblings.

Does MCL 211.27a(7)(s) apply to a trust, corporation, limited liability company or to distribution from probate?

No, due to the blood or affinity to the first degree relationship clause, the State Tax Commission has defined transferee and transferor as both being individuals. The transfer must be a conveyance of a present interest in real property that occurs during the transferor's lifetime.

Is a change in use under MCL 211.27a(7)(s) limited to a change in property classification?

No, there are numerous changes that could be considered a change in use and a change in use is not limited to a change in property classification.

When does MCL 211.27a(7)(s) go into effect?

P.A. 497 of 2012 indicates that this provision is effective beginning December 31, 2013. Therefore, it is in effect only for transfers that occur from December 31, 2013 to December 30, 2014. .

Is a transfer of residential real property on January 15, 2015 to the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter a transfer of ownership?

No, provided that the transfer occurred after December 31, 2014, is a transfer of residential real property and the residential real property is not used for any commercial purpose following the conveyance. The transferee must be the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter to qualify for this exemption. *See MCL 211.27a(7)(t).*

When does MCL 211.27a(7)(t) go into effect?

P.A. 310 of 2014 indicates that this provision is effective beginning December 31, 2014. Therefore, it is in effect only for transfers that occur after December 31, 2014.

What is "residential real property"?

Residential real property as used in this section means real property classified as residential real property under MCL 211.34c. This provision is not limited to homestead property, meaning any residential real property regardless of residency, the application of a principal residence exemption or how many residential real parcels the taxpayer owns. *See MCL 211.27a(11)(g).*

John and Jane Doe transfer their residential real property to their daughter Judy on December 1, 2013. Is this a transfer of ownership?

Yes, as long as no other exemption provisions apply because the transfer was prior to the effective date of the Act.

John and Jane Doe transfer their residential real property to their daughter Judy on January 15, 2014. Is this a transfer of ownership?

No, as long as Judy maintains the same use of the property. MCL 211.27a(7)(s).

John and Jane Doe transfer their residential real property to their son Jack on March 1, 2014. Jack decides he wants to turn the house into a vacation rental home. Is this a transfer of ownership?

Yes, as long as no other exemption provisions apply because Jack has not maintained the use of the property.

John and Jane Doe transfer their residential real property to their granddaughter Sally on January 15, 2015. Is this a transfer of ownership?

No, as long as Sally does not use the residential real property for any commercial purpose following the conveyance. *See MCL 211.27a(7)(t).*

John and Jane Doe transfer their commercial real property to their granddaughter Sally on January 15, 2015. Is this a transfer of ownership?

Yes, this conveyance is a transfer of ownership. MCL 211.27a(7)(t) does not apply as the property is classified commercial real property and this exemption only applies to residential real property.

Can the assessor request the transferee to furnish proof that the conveyance is not a transfer of ownership under MCL 211.27a(7)(t)?

Yes. The assessor or the Department of Treasury can request the transferee to furnish proof within 30 days that the transferee meets the requirements of this provision to be an exempt transfer of ownership. *See MCL 211.27a(7)(t).*

Is there a deadline for the transferee to furnish proof that the conveyance is an exempt transfer of ownership under MCL 211.27a(7)(t)?

Yes. The law requires that the transferee is required to furnish proof that the conveyance is not a transfer of ownership within 30 days of the Department of Treasury or assessor's request.

Is there a fine if the transferee does not furnish proof?

Yes. If the transferee fails to comply with a request by the Department of Treasury or the assessor, that transferee is subject to a fine of $200.00.

Tenancies by the Entireties

What is a tenancy by the entireties and how are they established?

A tenancy by the entireties is a form of concurrent ownership that can be created only between a husband and wife, holding as one person. When the husband or wife dies, the surviving spouse automatically becomes the sole owner of the property. In a tenancy by the entireties, neither the husband nor the wife may sell the property unless the other consents to the sale. Tenancies by entireties enjoy the same rights of survivorship as joint tenancy.

A tenancy by the entireties is established by means of a deed or land contract conveyance. The language relating to the grantees on the deed or land contract establishes the tenancy by the entireties.

Example: If John Doe conveys property to John Doe and Jane Doe "his wife", a tenancy by the entireties is created. Likewise, if Jane Doe conveys property to John Doe and Jane Doe "husband and wife" or "as tenants by the entireties", a tenancy by the entireties is created. Similarly, if John Doe conveys property to John Doe and Jane Doe and no language is provided regarding the nature of their ownership, a tenancy by the entireties is formed—provided that John Doe and Jane Doe are, in fact, husband and wife.

Is a property conveyance completed solely to create or end a tenancy by the entireties a transfer of ownership?

No. A transfer from a husband, a wife, or both whose sole purpose is to create or disjoin (terminate) a tenancy by the entireties is not a transfer of ownership. *See MCL 211.27a(7)(b)*.

John Doe and Jane Doe are married. They acquire property from a third party, creating a tenancy by the entireties. Is this acquisition of property a transfer of ownership?

Yes. Although a tenancy by the entireties is created by the Does when they acquire the property, the creation of the tenancy by the entireties is not the sole purpose of the transaction (the main purpose of the transaction is for the Does to acquire the property) and a transfer of ownership occurs.

John Doe and Jane Doe were married and owned property as husband and wife. They divorce and (directly associated with the divorce) they deed the property from themselves as husband and wife to Jane Doe, a single woman. Is this conveyance a transfer of ownership?

No, since its purpose was solely to terminate the tenancy by the entireties.

John Doe owns a parcel and then marries Jane Smith who decides to take the surname "Doe". John Doe then conveys the parcel to John Doe and Jane Doe, as husband and wife. Is this conveyance a transfer of ownership?

No, since its purpose is solely to create a tenancy by the entireties in the Does.

John Doe and Jane Doe are married and own a property as husband and wife. They sell the property to a third party. Is this sale a transfer of ownership?

Yes, the purpose of the conveyance is to sell the property and not solely to end the tenancy by the entireties.

If a divorce occurs in a tenancy by the entireties situation, does the form of ownership change?

Yes. If two people own property as husband and wife, become divorced, and continue to own the property, the form of ownership is converted to a tenancy in common. A conveyance from a former spouse to a former spouse is considered a transfer of ownership.

Example: John Doe and Jane Doe owned a lakefront cottage property as husband and wife. They divorce, but both John Doe and Jane Doe continued to own the lakefront cottage property for several years. The nature of their ownership was changed from a tenancy by the entireties to a tenancy in common by the fact of their divorce. Under these circumstances, a transfer of John Doe's undivided (tenant in common) interest to Jane Doe would be a transfer of ownership and a partial uncapping of the lakefront cottage property's taxable value would result.**If a man and woman who are not married own property and subsequently become married, is the nature of their ownership of the property automatically converted to a tenancy by the entireties?**

No. Based on court decisions and the Michigan Land Title Standard, a tenancy by the entireties cannot be created by a conveyance to two people who later marry. *See William v Dean, 365 Mich. 426; 97 NW2d 42 (1959).*

Life Leases/Life Estates

What is a life lease?

A life lease generally occurs when an owner transfers ownership of his/her property to someone else but keeps the right to use, occupy, and control the property during his/her lifetime. A life lease must be in writing.

What is a life estate?

A life estate is an estate that has the potential duration of one or more human lives. The usual life estate is measured by the grantee's life. Where the estate is measured by the life of someone other than the owner of the life estate, it is classified as a life estate pur autre vie. For taxable

value uncapping purposes, a life estate is treated the same as a life lease. A life estate must also be in writing.

Is a conveyance of a property with the grantor retaining a life lease a transfer of ownership?

Generally, a conveyance of a property subject to a life lease retained by the grantor is not a transfer of ownership. However, this transfer of ownership exemption only applies to that portion of the property conveyed that is subject to the life lease. Any portion of the property conveyed that is not subject to the life lease does experience a transfer of ownership upon the conveyance of the property. A partial uncapping can, therefore, occur with conveyances involving life leases. *See MCL 211.27a(7)(c).*

In 2012 Jane Doe conveys her residential property to her neighbor, John Smith, retaining a life estate on the entire parcel. Is this a transfer of ownership?

No. A life estate was retained by the grantor, Jane Doe, and this life estate covers the entire property.

In 2011 Jane Doe conveys her residential property to her neighbor, John Smith, retaining a life estate on the entire parcel. In 2012, Jane Doe dies. Does the death of Jane Doe result in a transfer of ownership?

Yes. A transfer of ownership occurs upon the death of Jane Doe since her death terminated the life estate. The taxable value of the property must be uncapped for the 2013 tax year.

In 1983 Jane Doe conveyed her residential property to her neighbor, John Smith, retaining a life estate on the entire parcel. In 2011 Jane Doe dies. Does the death of Jane Doe result in a transfer of ownership?

Yes. A transfer of ownership occurs upon the death of Jane Doe since her death terminated the life estate. The fact that the life estate was established prior to Proposal A is not relevant. Beneficial use and full ownership of the property changed to Jane Doe's neighbor upon her death. The taxable value of the property must be uncapped for the 2012 tax year.

In 2011 Jane Doe conveys 80 acres to her neighbor, John Smith, retaining a life estate on 2 of the 80 acres and a house located on the 2 acres. Is this conveyance a transfer of ownership?

Yes and no. A transfer of ownership occurs with regard to the 78 acres which are not subject to the life estate. No transfer of ownership occurs, however, with regard to the 2 acres and the house which are subject to the life estate (until termination of the life estate). Therefore, a partial transfer of ownership occurs and a partial uncapping must occur for tax year 2012.

John and Sandy Smith own property and grant John Smith's best friend, Sam Doe, a life estate for this property. Is the conveyance of the life estate to John Smith's best friend a transfer of ownership?

Yes. In this case, the life estate was not retained by the grantors as required by the law. Beneficial use of the property changed from John and Sandy Smith to John Smith's best friend and a transfer of ownership occurred.

In 2013 Sandy Smith owns property and conveys the property to her son, Noah, retaining a life estate over the entire parcel. Sandy dies in 2014 and the life estate is terminated. Does the death of Sandy Smith result in a transfer of ownership?

Yes. A transfer of ownership occurs upon the death of Sandy Smith since her death terminated the life estate. No other exceptions or exemptions apply.

Can an individual who has retained a life estate convey that life estate to someone else?

Yes. All privileges granted by the life estate will transfer to the new holder of the life estate. **This is not a transfer of ownership.** The life estate remains in effect until mutually terminated by the owner of the property and the new life estate holder or until the death of the individual who had originally retained the life estate—**not** the death of the new life estate holder. The life estate would come to an end when the measuring life ends.

Can a life estate be retained for other than residential purposes? If so, does a life estate retained by the grantor for other than residential purposes result in a taxable value uncapping?

A life estate can be retained for a specific purpose other than a residential purpose. The types of specific purposes (other than residential purposes) are almost limitless. A life estate retained by the grantor for other than residential purposes does not result in a taxable value uncapping for the portion of the property covered by the life estate, until termination of the life estate—or until use of the property for the stated purpose of the life estate is not possible. Any portion of the property not covered by the life estate is subject to taxable value uncapping.

If circumstances preclude the possible use of a property for the purpose of a life estate (whatever that may be), the life estate is to be disregarded by a local assessor when considering transfer of ownership issues—even though the life estate may legally be in effect.

<u>Example</u>: John Doe conveys an unimproved 80 acre parcel in the northern Lower Peninsula to his son, Joe and retains a life estate over half of the parcel for the stated purpose of grazing cattle. Under these circumstances, a partial transfer of ownership occurs upon the conveyance, with the taxable value of the portion of the property covered by the life estate remaining capped and the taxable value of the portion of the property not subject to the life estate being uncapped (provided no statutory exception or exemption applies). This is the same treatment the property would receive if the life estate were for residential purposes. If two years later the son, Joe Doe, constructs a convenience store on 2 acres of the 40 acres covered by the life estate, a transfer of

ownership occurs for those 2 acres (provided no statutory exception or exemption applies). The reason for this is that the construction of the convenience store precludes the use of that portion of the property by the father, John Doe, for grazing cattle (the specified purpose of the life estate). Therefore, the life estate no longer applies to this portion of the property with regard to transfer of ownership issues (even though it may still legally be in effect) and another partial transfer of ownership occurs.

Foreclosures and Forfeitures

Is a transfer of property due to a foreclosure or forfeiture a transfer of ownership?

Generally, no. It is not a transfer of ownership when a financial institution or a land contract seller takes a property back through foreclosure or forfeiture of a recorded mortgage or land contract. *See MCL 211.27a(7)(d).* This response applies to foreclosures of mortgages and land contracts through circuit court proceedings, the foreclosure of mortgages by advertisement, and the forfeiture of property by summary proceedings.

A Sheriff's Deed is utilized in foreclosure by advertisement and will be recorded with the register of deeds. A redemption affidavit will also be recorded with the register of deeds and will contain information regarding the redemption period and rights should the homeowner redeem and recover his/her rights to the property. During the redemption period, the purchaser holds equitable title to the property but the original homeowner continues to have legal title and possession. Consequently, should the homeowner redeem the property during the redemption period this would not be considered a transfer of ownership.

Is a transfer of property through a deed or a conveyance in lieu of foreclosure or forfeiture a transfer of ownership?

No. Such transfers and conveyances are to be treated in the same way as a foreclosure or forfeiture.

When the entity or person (bank, land contract seller, etc.) that has taken a property back through foreclosure or forfeiture later transfers the property, is that transfer a transfer of ownership?

Yes.

Is there a time limit that a mortgagee (usually a bank) can hold a property, after acquiring it through foreclosure, without a transfer ownership occurring?

Yes. If a mortgagee which has received a property through foreclosure does not transfer or convey the property within one year of the expiration of the redemption period, the taxable value of the property must be uncapped for the following assessment year.

The redemption period is the period during which the former owner may pay the debt due and reclaim the property and is established by statute. The redemption period varies in length and can range from one month to one year, but is usually six months.

The one-year time limit discussed does not apply to a land contract seller who has reacquired property due to a foreclosure or forfeiture. A land contract seller who has reacquired property through foreclosure or forfeiture may hold the property indefinitely without a transfer of ownership occurring.

A property was sold on land contract in 2010. This sale was a transfer of ownership and the property's taxable value was uncapped for tax year 2011. In 2012 the land contract seller takes the property back through foreclosure or forfeiture, because the land contract buyer defaulted on the land contract payments. Should the taxable value for 2011 and subsequent years be recapped as if the 2010 transfer of ownership never occurred?

No. The 2010 transfer of property was a transfer of ownership. At that point, beneficial use of the property transferred to the land contract buyer and the land contract buyer acquired equitable title to the property. It should also be noted that the equitable title held by the land contract buyer could have been mortgaged or conveyed to someone else (subject to valid terms of the land contract). This transfer of ownership is not undone when the land contract seller takes the property back. No statutory authority exists to allow the recapping to be performed. The uncapped taxable value must remain in place for 2011 and the 2011 taxable value must be used as the base for subsequent taxable value determinations.

Redemptions of Tax-Reverted Properties

Public Act 123 of 1999 significantly altered the property tax reversion process and establishes a three-year tax-reversion process. Annual tax-lien sales were eliminated in favor of an annual forfeiture and judicial foreclosure process. Due process and notification procedures were significantly strengthened and changes were made to expedite the handling of abandoned tax-reverted properties.

What are tax-reverted properties?

Tax-reverted properties are properties with property taxes which have not been timely paid and therefore the property owner no longer has clear title to the property.

What is meant by "redemption"?

Redemption occurs when the owner of a tax-reverted property buys back (redeems) the tax-reverted property by paying appropriate delinquent taxes and related fees.

If the original owner redeems the tax-reverted property, has a transfer of ownership occurred?

No. *See MCL 211.27a(7)(e).*

Example: Taxes have not been paid on a property for two years, delinquent tax notices have been sent to taxpayer, and a judicial foreclosure hearing for delinquent taxes is schedule to be held on the last day of March. Prior to the last day in March, the owner then redeems (pays the needed sum to clear the tax lien) within the redemption period. The lien is removed from the property. Transfer by redemption by the owner is not a transfer of ownership.

Trusts

Is a conveyance of property to a trust a transfer of ownership when:
(1) The grantor is the settlor (creator) of the trust or the settlor's spouse or both.
(2) The sole present beneficiary of the trust is the settlor of the trust or the settlor's spouse or both.

No. If the grantor stated on the deed is the settlor (creator) of the trust or the settlor's spouse or both **and** the sole present beneficiary of the trust is the settlor of the trust or the settlor's spouse or both, the conveyance is not a transfer of ownership. *See MCL 211.27a(7)(f)(i).*

Is a conveyance of property to a trust a transfer of ownership when the following conditions are satisfied:

(1) The conveyance of property to a trust occurs on or after December 31, 2014.
(2) The property transferred is residential real property.
(3) The sole present beneficiary of the trust to whom the residential real property conveyed is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter.
(4) The residential real property is not used for any commercial purpose following the conveyance.

No. Beginning December 31, 2014, conveyances to a trust if the sole present beneficiary of the trust to whom the residential real property is conveyed is the settlor's or settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter and the property is not used for any commercial purpose following the conveyance. *See MCL 211.27a(7)(f)(ii).*

Is a conveyance of property from a trust a transfer of ownership when:

(1) The conveyance of property from a trust occurs on or after December 31, 2014.
(2) The property transferred is residential real property.
(3) The person to whom the residential real property conveyed is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter.
(4) The residential real property is not used for any commercial purpose following the conveyance.

No. Beginning December 31, 2014, conveyances from a trust if the person to whom the residential real property is conveyed is the settlor or settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter and the property

is not used for any commercial purpose following the conveyance are not considered a transfer of ownership. *See MCL 211.27a(7)(u).*

Can the assessor request the sole present beneficiary or the beneficiaries of a trust furnish proof that there has been a conveyance to or from a trust that qualifies as an exempt transfer under MCL 211.27a(7)(f)(ii) or MCL 211.27a(7)(u)?

Yes. The assessor or the Department of Treasury can request the sole present beneficiary or beneficiaries furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements to allow the conveyance to be an exempt transfer of ownership. *See MCL 211.27a(7)(f)(ii) and MCL 211.27a(7)(u).*

Is there a deadline for the sole present beneficiary or beneficiaries to furnish proof that the conveyance is not a transfer of ownership under MCL 211.27a(7)(f)(ii) or MCL 211.27a(7)(u)?

Yes. The law requires that the sole present beneficiary or beneficiaries are required to furnish proof that the conveyance is not a transfer of ownership within 30 days of the Department of Treasury or assessor's request.

Is there a fine if the sole present beneficiary or beneficiaries do not furnish proof?

Yes. If a present beneficiary fails to comply with a request by the Department of Treasury or the assessor, that present beneficiary is subject to a fine of $200.00.

Note: See also the information regarding trusts contained in this publication.

Court Orders

Is a transfer of property made due to an order of a court of record a transfer of ownership?

No, a transfer of property pursuant to a judgment or order of a court of record (any court which has been designated as a court by the legislature is a court of record) making or ordering the transfer is not a transfer of ownership—provided that no money is specified or ordered by the court for the transfer. If a specific amount of money is noted in the order or judgment for the transfer, a transfer of ownership occurs. *See MCL 211.27a(7)(g).*

If, as part of divorce proceedings, a court of record orders that a husband must pay his wife $25,000 (or any other specific sum) for a property owned by them as husband and wife, would this be a transfer of ownership?

Generally, no. Even though the court order specifies an amount for the transfer, this is generally not a transfer of ownership since the purpose of the transfer is to undo a tenancy by the entireties (see also information under tenancies by the entireties contained in this publication). The section of law dealing with court ordered transfers of property does not apply to this transfer, but the

tenancy by the entireties transfer of ownership exemption does. Therefore, the transfer is not a transfer of ownership.

Joint Tenancies

What is a joint tenancy?

A joint tenancy is a form of concurrent ownership wherein each co-tenant owns an undivided share of property and the surviving co-tenant has the right to the whole estate. On the death of each joint tenant, the property belongs to the surviving joint tenants, until only one individual is left.

Example: Five people own a property as joint tenants. Each joint tenant has a 20 percent interest in the property (100/5 = 20). If one of the five dies, his/her interest is divided equally among the remaining four joint tenants, giving each of the remaining four a 25 percent interest in the property.

Does a joint tenancy require that the joint tenants have equal ownership interests in the property involved?

Yes. A joint tenancy requires that the joint tenants have equal ownership interests.

How is a joint tenancy formed?

A joint tenancy is formed by means of a deed or land contract conveyance with an express declaration of the joint tenancy. The language relating to the grantees on the deed or land contract establishes the joint tenancy.

When is there a transfer of ownership involved in a joint tenancy situation?

On March 10, 2011, the Michigan Supreme Court issued a decision in the case of *Klooster v City of Charlevoix,* Michigan Supreme Court Docket No. 140423 (2011), regarding the interpretation of MCL 211.27a(7)(h) and specifically which conveyances involving a joint tenancy are or are not transfers of ownership.

James Klooster, the father, quit-claimed his property to himself and to his son, Nathan as joint tenants with rights of survivorship, on August 11, 2004. James died on January 11, 2005, leaving Nathan as the sole owner. On September 10, 2005, Nathan quit-claimed the property to himself and his brother, Charles, as joint tenants with rights of survivorship. The assessor uncapped the taxable value for the 2006 assessment year. The taxpayer appealed and the Tax Tribunal ruled that the taxable value should have uncapped for the 2006 assessment year because Nathan was not an "original owner," or an already existing joint tenant before the August 11, 2004 joint tenancy was created.

The Michigan Court of Appeals reversed the Tax Tribunal. The Court found the property should not have uncapped because the death of a joint tenant does not constitute a transfer of ownership,

even if the joint tenant who dies was the sole original owner. The Court concluded that a "conveyance" within the meaning of MCL 211.27a(7)(h) could not occur unless there was a transfer of title by a written instrument.

The Michigan Supreme Court reversed the Michigan Court of Appeals decision. The Supreme Court found that the death of the only other joint tenant is a conveyance under the GPTA and does not require a written instrument beyond the deed initially creating the joint tenancy. The Court also determined that MCL 211.27a(7)(h) establishes requirements for an exception from the definition of transfer of ownership in three separate and distinct types of conveyances: termination of a joint tenancy, creation of a joint tenancy where the property was not previously held in joint tenancy or the creation of a successive joint tenancy.

Definitions:

Joint Tenancy: A joint tenancy is a form of concurrent ownership wherein each co-tenant owns an undivided share of property and the surviving co-tenant has the right to the whole estate. On the death of each joint tenant, the property belongs to the surviving joint tenants, until only one individual is left.

Initial Joint Tenant: A person whose interest in the property was obtained because he or she was one of the joint tenants who became a co-owner as a result of the "initial" joint tenancy **and** who has continuously held an interest in the property as a co-owner in joint tenancy since the creation of the "initial" joint tenancy.[1]

Original Owner: A sole owner at the time of the last uncapping event; a joint owner at the time of the last uncapping event; or, the spouse of the either a sole or joint owner of the property at the time of the last uncapping event.

How to Determine if a Property Should Uncap:

Step 1: Identify the "Conveyance at Issue"

The first step is to determine if the "conveyance at issue" is the creation of an *"initial"* joint tenancy, the creation of a *"successive"* joint tenancy or the *"termination"* of a joint tenancy. The determination of whether a "conveyance at issue" is a transfer of ownership that uncaps the taxable value of the property must be separately determined *after* identification of the "conveyance at issue." A conveyance will not constitute a transfer of ownership under the General Property Tax Act if it is excluded under MCL 211.27a(7)(a) through (q).

Step 2: Determine if the Conveyance is the Creation of a Joint Tenancy

The creation of an "initial" joint tenancy occurs when a property held by a sole owner, by a husband and wife holding as tenants by the entirety, or by tenants in common, is conveyed to two or more persons as joint tenants.

[1] This phrase "initial joint tenant" is not specifically used in the Supreme Court's decision, but is helpful in explaining the decision.

If the person creating the joint tenancy held title to the interest being conveyed either as a sole owner, as husband and wife, tenants by the entirety, or as tenants in common, then the creation of a joint tenancy is not a transfer of ownership, if, at least one of the persons conveying the interest **and** one of the persons receiving the interest was an "original owner."

If you determine the conveyance meets the requirements defined above, STOP. No further review is necessary and the conveyance is not a transfer of ownership. If the conveyance does not meet both requirements defined above, move to Step 3 and/or Step 4.

Step 3: Determine if the Conveyance "Terminates" a Joint Tenancy

A joint tenancy terminates when there is no "successive" joint tenancy. The termination of joint tenancy **is** a transfer of ownership if the resulting owner is not an "initial joint tenant."

The termination of a joint tenancy **is not** a transfer of ownership if both of the following are true:

- At least one of the joint tenants in the joint tenancy being terminated was an "original owner" before the joint tenancy was initially created; **and**
- At least one of the joint tenants in the joint tenancy being terminated was an "initial joint tenant" and has remained a joint tenant in successive joint tenancies.

Step 4: Determine if the "Conveyance at Issue" is the creation of a "Successive" Joint Tenancy

A "successive" joint tenancy occurs when the conveyance is from one joint tenancy directly into another joint tenancy. The creation of a "successive" joint tenancy may, or may not, be a transfer of ownership.

The creation of a "successive" joint tenancy is **not** a transfer of ownership if both of the following are true:

- At least one of the individuals in the "successive" joint tenancy was an "original owner" **and**
- At least one of the joint tenants in the previous joint tenancy was an "initial joint tenant" and has remained a joint tenant in successive joint tenancies.

Conclusion:

- If a joint tenancy is created by an "original owner" and if that "original owner" or their spouse are also co-tenants in the joint tenancy, then the taxable value does not uncap.
- If a "successive" joint tenancy is created and an "original owner" or their spouse continue as co-tenants in the "successive" joint tenancy, then the taxable value does not uncap.
- If a joint tenancy is terminated by the death of an "original owner" or by the "original owner" making a conveyance, resulting in the ownership again being a sole ownership, and if that sole owner is an "initial joint tenant," then the taxable value does not uncap.

- If a joint tenancy is terminated by conveyance and the sole owner after the termination is an "initial joint tenant" then the taxable value does not uncap.

Several examples of each of the scenarios described above are listed below. The list should not be considered all inclusive. The State Tax Commission advises assessors that taxpayers are protected by a right of appeal, and therefore, when in doubt if a transfer of ownership should result in an uncapping, an assessor should consider uncapping the property.

Assessors are directed to MCL 211.27a(4) and Bulletin 9 of 2005 for the procedures to follow if they determine the taxable value has mistakenly uncapped for a past assessment year.

Example # 1: Creation of a Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, John conveyed Blackacre to himself and his son, Michael, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

No, there was not a transfer of ownership. Since there was a transfer of ownership which uncapped the taxable value when John purchased the property in 2004, John was an “original owner” who continued to have an interest after the creation of the joint tenancy. Michael became an “initial joint tenant” but he was not an “original owner.” John’s status as an “original owner” who continued to be a co-tenant as part of the “initial” joint tenancy provides an exception to uncapping. Michael’s status as an “initial joint tenant” is not a factor in the analysis.

Example # 2: Termination of a Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Did the taxable value uncap in 2006?

No, there was not a transfer of ownership. Since John had previously held title as a sole owner, the joint tenancy he created with Michael was an “initial” joint tenancy. Further, since there was a transfer of ownership which uncapped the taxable value when John purchased the property in 2004, John was an “original owner.” John was an “original owner” and an “initial joint tenant” when the joint tenancy was initially created in 2005. Further, John remained a joint tenant from the creation of the “initial” joint tenancy until the joint tenancy was terminated by the death of John. Since John was an “original owner” who continued to be a co-tenant after the creation of the “initial” joint tenancy and since Michael became a joint tenant when the “initial” joint tenancy was created, and Michael’s interest continued uninterrupted until the death of John, the taxable value did not uncap when John died.

Example # 3: Termination and a Non-Successive Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Michael immediately conveyed to himself and his brother, Peter, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

Yes, there was a transfer of ownership when Peter was added as a joint tenant. These facts are, in substance, those in the *Klooster* case itself. Since John was an "original owner" who continuously held his interest as a co-tenant in the joint tenancy since the joint tenancy was initially created and since Michael became an "initial joint tenant" when the "initial" joint tenancy was created, the taxable value did not uncap when John died. However, when Michael, as the sole surviving co-tenant, created the joint tenancy with his brother, Peter, the creation of the joint tenancy itself was an uncapping event for the reason that Michael was not an "original owner" at the time of the creation of the "initial" joint tenancy with Peter. The reason that Michael was not an "original owner," was that he had not acquired his ownership interest in a transaction that resulted in an uncapping of the taxable value.

Example # 4: Successive Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. In 2006, John and Michael conveyed to themselves and Michael's brother, Peter, as an additional joint tenant, thereby expanding the joint tenancy by making John, Michael and Peter, joint tenants, with rights of survivorship. Did the taxable value uncap in 2007?

No, there was not a transfer of ownership. John was an "original owner" arising from the fact that he obtained his interest in the property by a conveyance that resulted in the uncapping of the taxable value. John and Michael became "initial joint tenant" when the "initial" joint tenancy was created in 2005. Since John was an "original owner" whose ownership interest has continued in the "successor" joint tenancy that added Peter, and since both John and Michael were "initial joint tenants" whose interests as co-tenants was continuous from the time of the "initial" joint tenancy, the taxable value did not uncap when Peter was added.

Example # 5: Life Estate

John and Mary purchased Blackacre, as tenants by the entireties, in 2004. In 2005 John and Mary conveyed to themselves and Michael, using language which indicated that "all three (held title) as joint tenants." However, in addition to creating the joint tenancy among the three of them, John and Mary also reserved a life estate for their joint lives. In 2006, both John and Mary died. Did the taxable value uncap in 2007?

Yes, there was a transfer of ownership. Although John and Mary were "original owners" in Blackacre, arising from the fact that the taxable value uncapped in 2005, the year following their purchase, no "present" joint tenancy was created by the 2005 conveyance. Instead, the

instrument, by reservation, created a Life Estate during their joint lives, with a remainder interest, in joint tenancy, among John, Mary and Michael. MCL 211.27a(7)(c) provides an exception to uncapping for a conveyance of property subject to a retained Life Estate "until the expiration or termination of the life estate…" Therefore, it is the State Tax Commission's interpretation that a separate and distinct uncapping event, the expiration or termination of a retained life estate, occurred prior to the joint tenancy becoming a present interest and that this uncapping event took precedence over the exception to uncapping contained in MCL 211.27a(7)(h). MCL 211.27a(6) provides that a "transfer of ownership means 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." In this example, by the time the remainder interest becomes a present interest, Michael was the sole owner of the property, not an "initial joint tenant." It should also be noted that upon the death of John and Mary, Michael becomes an "original owner."

Example # 6: Partial Interest

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Michael immediately conveyed a 1% interest in the property to his daughter, Roberta, as a tenant in common. At the time, Roberta was a Michigan resident who resided on the property, and the conveyance was made for the purpose of allowing her to claim the Principal Residence Exemption. In 2007, Michael and Roberta conveyed to themselves, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2008?

Yes, there was a transfer of ownership as to an undivided 99% interest in the property. The original 1% conveyed to Roberta in 2005 resulted (or should have resulted) in an uncapping of the undivided 1% interest which she received as a tenant in common. This uncapping made Roberta an "original owner." However, she was an "original owner" of *only an undivided 1% interest*, as a tenant in common, with her father. When the joint tenancy interest was created, the effect was that Michael, as the sole surviving co-tenant of the previous joint tenancy with his father, John, could not rely on the fact that he was an "initial joint tenant" to exempt the conveyance of the undivided 99% interest he still held, for the reason that when the previous joint tenancy terminated, he was not an original owner. He was not an "original owner" for the reason that he had not acquired his remaining 99% undivided ownership interest in a transaction that resulted in an uncapping of the taxable value.

Please note, however, if multiple grantors hold as tenants-in-common, each tenancy-in-common interest must be analyzed separately, and it is possible for a partial uncapping to occur, for the reason that a person may be an "original owner" as to one tenancy-in-common interest, but not an "original owner," as to the remainder of the tenancy-in-common interests in the property.

Security Interests

What is a security interest?

A security interest is an interest in a property that is granted to ensure that a debt will be paid. An example of a security interest is a mortgage to a bank, where the owner of a property gives a security interest to the bank which allows the bank to foreclose on the mortgage and eventually take the property involved if the required mortgage payments are not made.

Is a transfer to establish, assign, or release a security interest a transfer of ownership?

No. A transfer to establish, assign, or relinquish a security interest is not a transfer of ownership. *See MCL 211.27a(7)(i).*

The following are not transfers of ownership since these transactions establish, assign, or relinquish a security interest:

- A beginning of a mortgage
- An end of a mortgage
- An assignment of a mortgage by one financial institution to another financial institution
- An assignment of a seller's interest in a land contract (see also the information on land contracts)
- An equitable mortgage

What is an equitable mortgage?

An equitable mortgage resembles a deed but is, in fact, a mortgage.

Example: A land owner holds title to a parcel of vacant land and desires to have a builder construct a home on the parcel. To ensure that the builder (or the bank financing the home construction) can obtain title to the property if necessary due to nonpayment, the land owner deeds the vacant land to the builder—with the expectation that the property will be deeded back upon completion of construction. The builder then constructs a home on the parcel for the land owner. The builder then conveys the property (land and house) back to the land owner. This scenario is an example of an equitable mortgage (since it would be recognized as a mortgage by a court even though it differs from what may be commonly considered to be a typical mortgage).

Is a transfer of property involving a relocation company a transfer of ownership (to the relocation company)?

Generally, no. A transfer of property (typically a residence) involving a relocation company is generally not a transfer of ownership (to the relocation company). Such a transaction may establish a security interest by the relocation company. It may take a significant amount of time for a relocation company to find a final buyer for a property. The amount of time the relocation company holds the property is not normally relevant to a determination regarding transfer of

ownership. Occasionally, the relocation holds the property so long that it actually purchases the property and relocated previous owner transfers the beneficial use and all his or her interest in the property. When this unusual scenario comes to the attention of the assessor, it should be treated as a transfer of ownership.

Affiliated Groups

What is an affiliated group?

An affiliated group is one or more corporations connected by stock ownership to a common parent corporation.

Does an entity have to be a corporation to be part of an affiliated group?

Yes. Entities which are not corporations cannot be part of an affiliated group.

Is a transfer of a property between members of an affiliated group a transfer of ownership?

No. *See MCL 211.27a(7)(j).* Upon request by the State Tax Commission, a corporation shall furnish proof within 45 days that the transfer meets the requirements of MCL 211.27a(7)(j). Failure to comply with a request by the STC under this subsection is subject to a fine of $200.00.

Normal Public Trades

What is normal public trading?

Normal public trading of shares of stock includes the usual day-to-day trading of publicly held stock.

Can normal public trading of stocks or other ownership interests be a transfer of ownership?

No. Normal public trading of shares of stock or other ownership interests in a corporation or other legal entity is not a transfer of ownership if the ownership interests are both:

(1) Traded in multiple transactions and
(2) Involve unrelated individuals, institutions, or other legal entities. *See MCL 211.27a(7)(k).*
This transfer of ownership exemption applies even if the trading cumulatively totals more than 50 percent of the total ownership interest of the entity.

Are certain types of trading transactions considered not to be normal public trading?

Yes. The six trading situations listed below are not normal public trading. Any of these six trading situations could result in a transfer of ownership (provided that no statutory exception or exemption applies):

1. The merger of two or more companies
2. The acquisition of one company by another or by an individual
3. The initial public offering (IPO) of the stock of a company
4. A secondary public offering of the stock of a company (a secondary public offering occurs when a company whose stock is already publicly traded issues additional new stock for sale to the public)
5. The trading of the stock of a privately held company (a privately held company is a company whose stock is not available for sale to the public)
6. A takeover involving a public offer by someone to buy stock from present stockholders in order to gain control of a company

<u>Commonly Controlled Entities</u>

If entities are commonly controlled, is a transfer of property (or ownership interests) among the entities a transfer of ownership?

No. *See MCL 211.27a(7)(l).*

With regard to entities under common control, what is meant by "entities"?

"Entities" in this context means corporations, partnerships, limited liability companies, limited liability partnerships, or any other legal entity.

When are entities considered to be commonly controlled?

The State Tax Commission has directed that Michigan Revenue Administrative Bulletin 1989-48 is to be used in determining whether entities are commonly controlled. This bulletin is available on the Internet at www.michigan.gov/treasury. This bulletin details three categories of common control:

1. A parent-subsidiary group of trades or businesses
2. A brother-sister group of trades or businesses
3. A combined group of trades or businesses (a specific combination of a parent-subsidiary group and a brother-sister group of trades or businesses)

For entities to be commonly controlled under Michigan Revenue Administrative Bulletin 1989-48, the entities must be engaged in a business or trades activity. See C & J investments of Grayling, LLC v City of Grayling, aff'd Michigan Court Appeals, November 3, 2007 (Unpublished). The term "common" is defined as "belonging equally to, or shared alike by, two

or more or all in question." Entities which are not engaged in a business activity cannot be entities under common control under Michigan Revenue Administrative Bulletin 1989-48.

Example: A husband and wife own their personal residence together as tenants by the entireties. For estate planning and other purposes, they convey the property to a limited liability company of which the wife is the only member. The entities involved (the husband and wife and the limited liability company) cannot be considered entities under common control under Michigan Revenue Administrative Bulletin 1989-48 since no business activity exists in this situation.

Note: Michigan Revenue Administrative Bulletin 1989-48 refers to Internal Revenue Service regulations concerning constructive ownership (also commonly known as ownership attribution). It is the opinion of the State Tax Commission that, although Michigan Revenue Administrative Bulletin 1989-48 is to be used in determining entities under common control, the Internal Revenue Service regulations concerning constructive ownership are to be disregarded. Application of the regulations regarding constructive ownership (ownership attribution) would result in transfer of ownership exemptions that were clearly not intended by the legislature.

Is it possible for entities not to qualify as entities under common control under Michigan Revenue Administrative Bulletin 1989-48 but still be considered entities under common control?

Yes. If there is a business purpose, there are two circumstances that constitute a common control situation—even though the entities involved may not qualify as entities under common control under Michigan Revenue Administrative Bulletin 1989-48:

1. Initial transfers by individuals of a fee simple interest in a property, made to an entity such as a corporation, a limited liability company or a partnership, are considered to be transfers between commonly controlled entities and not transfers of ownership, if the ownership interests and extent of control which the individuals have in the entity are identical to the ownership interest and extent of control which each of the individuals had in the property prior to the initial transfer. Transfers to limited partnerships would not qualify for the reason that such transfers involve a change in control.

2. Transfers where the fee simple interest in a property is conveyed (retransferred) from an initial transferee entity, as described in 1 above, to the individuals who made the initial transfer to that entity, if the ownership interests and extent of control which those individuals have in the entity at the time of the retransfer are identical to the ownership interests and extent of control which each of the individuals had in the property prior to the initial transfer and those interests have not changed the between the time of the initial transfer and the time of the retransfer.

In the Sebastian J. Mancuso Family Trust v City of Charlevoix COA, unpublished February 5, 2013 where the court held that Trustees between trusts do not equate to the trusts being commonly controlled. The Court stated: "property is transferred from one owner to a wholly new owner. Exceptions are made for transfers from a trust settlor where the settlor is the sole present beneficiary because ownership in such a situation does not change. See MCL

211.27a(6)(c). Exceptions are also made for transfers of property that substitute the transferor for the transferor's spouse. See MCL 211.27a(6)(d), (e), and (f). The exceptions in § 7 are similar in nature; they are triggered when property is transferred from one owner to a wholly new owner. Reading the statute as a whole, it is apparent that petitioner simply does not fall within the definition of "commonly controlled" by virtue of having the same trustees for both the transferring trust and the receiving trust."

Tax-Free Reorganizations

If a transfer of real property (or other ownership interest) results from a transaction that qualifies as a tax-free reorganization under section 368 of the Internal Revenue Code, 26 USC 368, is that transfer a transfer of ownership?

No. *See MCL 211.27a(7)(m).*

What is meant by "reorganization"?

"Reorganization" in this context can cover a number of situations such as the following: corporate acquisitions, corporate mergers, corporate divisions, etc.

What types of entities (individuals, partnerships, limited liability companies, corporations, etc.) are covered by section 368 of the Internal Revenue Code, 26 USC 368**?**

Section 368 of the Internal Revenue Code, 26 USC 368, applies solely to corporations and corporate reorganizations. This section of the Internal Revenue Code does not apply to individuals, partnerships, limited liability companies, or any type of entity other than corporations. Therefore, the transfer of ownership exemption for tax-free reorganizations applies only to tax-free reorganizations solely involving corporations. A tax-free reorganization that involves an entity that is not a corporation is a transfer of ownership.

Qualified Agricultural Properties

What is qualified agricultural property?

Qualified agricultural property is (1) unoccupied property and related buildings classified as agricultural by the local assessor or (2) unoccupied property and related buildings located on that property devoted primarily to agricultural use as defined by law. *(See MCL 211.7dd for the definition of qualified agricultural property and the STC Q and A on Qualified Agricultural Property for more information*).

Is a transfer of qualified agricultural property a transfer of ownership?

A transfer of qualified agricultural property is not a transfer of ownership if (1) the property remains qualified agricultural property after the transfer and (2) the person to whom the qualified agricultural property is transferred files an affidavit (form 3676, Affidavit Attesting That

Qualified Agricultural Property Shall Remain Qualified Agricultural Property) with the assessor and the register of deeds. *See MCL 211.27a(7)(n).*

Must an assessor verify that the affidavit has been filed with the appropriate register of deeds before granting this transfer of ownership exemption?

It is a requirement of the law that this affidavit be filed with the appropriate register of deeds in order for the transfer of ownership exemption to be granted.

Is a property which is transferred and has a partial exemption (for example 75%) as qualified agricultural property eligible for the qualified agricultural property transfer of ownership exemption?

Yes, if the new owner maintains the parcel as 75% qualified agricultural property and files an affidavit with the assessor and the register of deeds attesting that the property will remain 75% qualified agricultural property. In this case, there would be a partial uncapping of 25 percent (for the portion of the property which is not qualified agricultural property) and the 75 percent which is qualified agricultural property would remain capped.

Is a property which is 100 percent qualified agricultural property but will be something less than 100 percent qualified agricultural property after a transfer (example 75 %) eligible for the qualified agricultural property transfer of ownership exemption?

No. The taxable value of the parcel will be completely (100 percent) uncapped for the following year. It is the opinion of the State Tax Commission that a reduction in the percentage of qualified agricultural property exemption results in a total uncapping of that parcel's taxable value in the situation described above. The qualified agricultural property transfer of ownership exemption does not provide for a partial uncapping in this situation.

What happens if a split occurs and the split parcel is converted by a change in use?

If part of the property is split from the parcel and then the split parcel is converted by a change in use, the taxable value of the split parcel is uncapped in the following year. The taxable value of the remainder of the parcel which has not been converted by a change in use remains capped. However, if part of the property is converted by a change in use prior to or not involving a split, the taxable value of the entire parcel is to be uncapped in the year following the change in use.

A parcel is 100% qualified agricultural property and could receive a 100% qualified agricultural property exemption. However, the owner, who lives on the parcel, claims the homestead exemption so that he can also claim a homestead exemption on contiguous vacant property. If this parcel is transferred, could the new owner benefit from the qualified agricultural property transfer of ownership exemption even though the property is not receiving the qualified agricultural property exemption?

Yes, provided that the new owner files the required affidavit with the local assessor and the register of deeds attesting that the property will remain qualified agricultural property. Statute

requires that a property be qualified agricultural property to be eligible for this transfer of ownership exemption. It is not required that the property be receiving the qualified agricultural property exemption to be eligible for this transfer of ownership exemption.

What happens if a property receives the qualified agricultural property transfer of ownership exemption and later is converted by a change in use?

If property is granted the qualified agricultural property transfer of ownership exemption and is later converted by a change in use, all of the following must occur:

1. The taxable value must be uncapped in the year after the year of the conversion by a change in use.
2. The property is subject to the recapture tax associated with PA 261 of 2000, MCL 211.1001 to 211.1007.
3. The assessor must remove the qualified agricultural property exemption in the year following the conversion by a change in use.

How is a property converted by a change in use?

A property can be converted by a change in use in either of two ways:

1. The actual use of the property changes and the assessor determines that the property is no longer qualified agricultural property.
2. A purchase is about to occur and prior to the purchase the future purchaser files a Notice of Intent to Rescind the Qualified Agricultural Property Exemption (form 3677) with the local tax collecting unit indicating the purchaser's intent to rescind the qualified agricultural property exemption.

Note: If the sale is not consummated within 120 days of the notice in item 2, the property is not converted by a change in use.

When does the conversion by a change in use occur in the case of a future purchaser filing a notice indicating the purchaser's intent to rescind the qualified agricultural property exemption?

In such a case, the property is converted by a change in use on the date that the proper notice is filed with the local tax collecting unit, provided that the sale is consummated within 120 days of the notice.

If someone acquired a property that qualified for the qualified agricultural property transfer of ownership exemption but neglected to file the required affidavit, can that person still qualify for the exemption several years later?

Yes, MCL 211.27a(8) allows for the recapping of taxable value, for uncappings which occurred after 2001 and when all five of the following conditions exist:

1. The property qualified for the qualified agricultural property exemption from uncapping but the purchaser failed to timely file the required affidavit.
2. The assessor uncapped the property's taxable value in the year following the transfer.
3. The purchaser later discovered the error.
4. The purchaser then filed the required affidavit under MCL 211.27a(7)(n).
5. The property was qualified agricultural property for each year back to, and including, 1999.

If all of these five conditions are met, the property is recapped beginning with the year the affidavit is filed. The taxable value will be changed to the taxable value the property would have if it had not been uncapped after the transfer. This requires recalculation of the property's capped values from the year that the property was uncapped to the year that the affidavit was finally filed.

However, the owner of the property is not entitled to a refund of taxes already paid on the taxable value being recapped. If a tax bill has not been paid and the due date for the bill occurs after the recapping, the recapped taxable value is to be used for that bill.

Who authorizes a taxable value recapping for a transfer involving qualified agricultural property?

The local unit can authorize a taxable value recapping for a transfer involving qualified agricultural property. The assessor implements this recapping by completing form 3675 Assessor Affidavit Regarding the Recapping of the Taxable Value of Qualified Agricultural Property. It is not necessary a recapping be approved by the July or December Board of Review, the Michigan Tax Tribunal, or the State Tax Commission. In fact, in most instances, these bodies do not have the legal authority to process a taxable value recapping of qualified agricultural property.

Conservation Easements

What is a conservation easement?

A conservation easement is an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.

Is a transfer of land that qualifies as a conservation easement, or is eligible for a qualified conservation contribution under 170(h) of the internal revenue code, 26 USC 170, a transfer of ownership?

No. A transfer of land is not a transfer of ownership if the transfer of land is either subject to:
(1) a conservation easement under subpart 11 of part 21 of the natural resources and environmental protection act, 1994 PA 451 or
(2) a transfer of ownership of the land or a transfer of an interest in the land is eligible for a deduction as a qualified conservation contribution under section 170(h) of the internal revenue code, 26 USC 170. *See STC Bulletin 11 of 2007 and MCL 211.27a(7)(p.)*

Is the conservation easement transfer of ownership exemption applicable to buildings or structures located on the land?

No, the conservation easement transfer of ownership exemption only applies to the transfer of land and does not apply to buildings or structures located on the land.

<u>Boy Scout, Girl Scout, Camp Fire Girls, 4-H Clubs or Foundations, YMCA and YWCA</u>

Are Boy Scout, Girl Scout, Camp Fire Girls, 4-H Clubs or Foundations, YMCA and YWCA eligible for a transfer of ownership exemption?

Yes, if the transfer of real property (or other ownership interest):

(1) results from a consolidation or merger of a domestic nonprofit corporation that is a boy or girl scout or camp fire girls organization, a 4-H club or foundation, a YMCA, or a YWCA **and**
(2) at least 50% of the members of that organization or association being residents of the State of Michigan then these organizations qualify for the transfer of ownership exemption. *See MCL 211.27a(7)(q).*

Note: Other lawful transfer of ownership exceptions or exemptions may apply. Additionally, a provision is given for waiver of the residency requirement by a County Board if the property is used solely for the purposes for which the organization was established. *See MCL 211.7d and STC Bulletin 1 of 2009.*

Are there any limitations on the amount of acreage that is exempt for eligible Boy Scout, Girl Scout, Camp Fire Girls, 4-H Clubs or Foundations, YMCA and YWCA for a transfer of ownership exemption?

Yes, if these organizations reorganize, merge, affiliate or in some other manner consolidate with another Boy or Girl Scout or Camp Fire Girls Organization, 4-H club or Foundation or YMCA or YWCA after December 30, 2007, then the exemption is limited to 480 acres times the number of individual organizations that took part in the reorganization, merger, affiliation or consolidation.

Property Transfer Affidavits

What is a Property Transfer Affidavit?

Michigan statutes require that the buyer, grantee, or transferee of a property notify the local assessing office when a transfer of ownership occurs. The **Property Transfer Affidavit**, form 2766, (formerly L-4260) is available on the STC website at www.michigan.gov/statetaxcommission.

Is there a deadline for filing the Property Transfer Affidavit?
Yes. The law requires that the Property Transfer Affidavit shall be filed with the local assessing office for the local unit of government in which the property is located within 45 days of a transfer of ownership. *See MCL 211.27a(10)*

Is there a penalty for failure to file a Property Transfer Affidavit?

Yes. Michigan law provides for the following penalties:

For real property classified other than industrial real or commercial real, Michigan law provides a penalty of $5.00 per day for each separate failure to file a Property Transfer Affidavit up to a maximum of $200.00 for each parcel.

For property classified commercial real or industrial real with a sales price of $100 million or less the penalty is $20 per day up to a maximum of $1,000.

For property classified commercial real or industrial real with a sales price over $100 million the penalty is $20,000 unless the taxpayer can demonstrate that the failure to file was due to reasonable cause and not due to willful neglect. If the taxpayer can make that demonstration then the penalty is $20 per day up to a maximum of $1,000. Penalties begin to accrue after the 45-day filing deadline has passed. However, the governing body of a local unit of government may adopt a resolution waiving this penalty.

Who receives the penalties?

This penalty is distributed to the local tax collecting unit.

Does the penalty become a lien on the property?

No. Because it is not a lien on the property, penalties for failure to file a property transfer affidavit will not cause a parcel to go to tax sale.

If a Property Transfer Affidavit does not contain all required information or contains incorrect information, has the Property Transfer Affidavit been timely filed? If not, can the penalty be levied?

It is a statutory requirement that certain information (e.g., the parties to the transfer, the date of the transfer, the actual consideration for the transfer, parcel identification number or legal description) be reported to the local assessor when reporting a transfer of ownership. If information is missing from these required sections or if these required sections do not contain correct information, the Property Transfer Affidavit has not been properly filed. If a Property Transfer Affidavit has not been properly filed, the penalty is to be levied unless waived by local unit resolution.

The State Tax Commission expects that assessors will make reasonable efforts to work with property owners to correct inadequate filings of Property Transfer Affidavits. However, the ultimate responsibility for filing a properly completed Property Transfer Affidavit rests with the purchaser.

Is the Property Transfer Affidavit (or any of the information provided on the Property Transfer Affidavit) confidential?

No.

Who is required to file the Property Transfer Affidavit?

Michigan law specifies two possibilities for the party responsible for filing the Property Transfer Affidavit.

1. Under a transfer of more than a 50 percent ownership interest in a legal entity (such as a corporation, partnership, etc.) which owns property, the Property Transfer Affidavit must be timely filed by either that legal entity or by the buyer, grantee, or other transferee of the property.
2. In all other transfer of ownership situations, Michigan law specifies that the buyer, grantee, or other transferee of the property must timely file the Property Transfer Affidavit.

Must a Property Transfer Affidavit be filed when a transfer of property (or ownership interest) is not a transfer of ownership?

No. A Property Transfer Affidavit must only be filed when a transfer of property (or ownership interest) is a transfer of ownership. However, the Property Transfer Affidavit was designed to be filed even in situations where no transfer of ownership has occurred. The form was designed to allow parties involved in transactions which were not transfers of ownership but which may appear to have been transfers of ownership to alert the local assessor that the transactions were not transfers of ownership (and should not result in taxable value uncappings). Property owners are therefore encouraged to submit Property Transfer Affidavits even in situations where no transfer of ownership has occurred in order to avoid an incorrect taxable value uncappings.

Can notification of a transfer of ownership be made by means other than a Property Transfer Affidavit?

Under the law, a transfer of ownership must be reported using a Property Transfer Affidavit. No substitute reporting means is permitted. However, it is permissible to submit additional documentation, along with a Property Transfer Affidavit. Property owners are encouraged to submit additional documentation as needed to inform local assessors of relevant circumstances associated with transfers of property (or ownership interests).

Can a local assessor require documentation in addition to a Property Transfer Affidavit to make a decision whether a transfer of property (or ownership interest) was a transfer of ownership?

Local assessors have the responsibility to determine whether transfers of property (or ownership interests) are transfers of ownership under the law. To make this determination, local assessors will sometimes need more information than is contained on the Property Transfer Affidavit. Although a local assessor cannot require documentation in addition to a Property Transfer Affidavit, a local assessor can request that additional documentation (e.g., copies of trust instruments, partnership agreements, articles of incorporation, limited liability company operating agreements, etc.) be submitted.

Often the documentation needed by an assessor to make a transfer of ownership determination is sensitive in nature. Assessors are advised to treat sensitive documents which come into their possession with discretion, even if the documents could be considered to be public records.

Partial Uncapping Situations

What is a partial uncapping situation?

A partial uncapping situation is one where a transfer of ownership has occurred but the prescribed treatment for the property's taxable value in the year following the transfer of ownership does not involve setting the property's entire taxable value at the property's state equalized value (50% of the property's true cash value) as is usually required. Instead, only a portion of the property's taxable value is set at (a corresponding portion of) the property's state equalized value; the remainder of the property's taxable value remains subject to capped value limitations.

Example: Jane Doe and her sisters, Mary Doe and Sally Doe, own a parcel of property together as tenants in common, each with an undivided 1/3 interest. In 2010 Jane Doe transfers her undivided 1/3 interest in the parcel to Mary Doe and this transfer is a transfer of ownership (assumed for this example). The 2011 taxable value of the parcel is to be partially uncapped due to this (partial) transfer of ownership i.e., the 2011 taxable value of the parcel is to be 1/3rd uncapped to match the undivided ownership interest conveyed from Jane Doe to her sister.

In accordance with State Tax Commission guidelines, the 2011 taxable value for this parcel would be determined as follows:

(0.333 x 2010 state equalized value)
+ (0.667 x 2010 capped value)
2010 taxable value

The above formula is in accordance with established State Tax Commission guidelines for partial taxable value uncapping in a tenancy in common (undivided interest) situation. **The mathematical procedures in other partial uncapping situations may differ from the above formula.** If, for instance, a life lease is retained by a grantor for a portion of a property, a partial transfer of ownership occurs. In this case, the taxable value corresponding to the true cash value of the portion of the property not covered by the life lease is uncapped, while the taxable value corresponding to the remainder of the true cash value of the property remains capped.

Under what circumstances can a partial taxable value uncapping occur?

Transfers of ownership will result in partial uncapping situations under the following:

1. Tenancy in common
2. Long-term (or bargain purchase option) lease of a portion of a parcel
3. Cooperative housing corporation
4. Life lease retained by the grantor for a portion of a parcel
5. Prior-year split of a parcel discovered after the close of the current year March Board of Review
6. A parcel with a partial qualified agricultural property exemption

These are the circumstances that will currently result in a partial taxable value uncapping due to a transfer of ownership. All other transfers of ownership will result in a complete taxable value uncapping.

It is specifically noted that transfers of ownership involving joint tenancies cannot result in a partial uncapping (unless one of the six sets of circumstances listed above also applies).

It is also specifically noted that transfers of ownership due to changes of ownership interest of a legal entity (e.g., a corporation, limited liability company, etc.) cannot result in a partial uncapping (unless one of the above sets of circumstances also applies).

Delayed Uncappings

What is a delayed uncapping?

For various reasons, it sometimes happens that the taxable value of a property is not uncapped in the year following a transfer of ownership as required by statute. At some later time (after the close of the March Board of Review in the year following the transfer of ownership), this

situation is discovered and the property's taxable value is uncapped. This later taxable value uncapping is called a delayed uncapping.

What are the causes of delayed uncappings?

There are two main causes of delayed uncapping situations:

1. A failure on the part of the transferee (buyer) of a property to file a Property Transfer Affidavit in a timely manner as required by law
2. A clerical error on the part of the assessor or a mutual mistake of fact

What happens if a delayed uncapping is the result of a failure on the part of the transferee (buyer) of a property to file a Property Transfer Affidavit in a timely manner?

If a local assessor becomes aware that a taxable value of a property was not uncapped in the year following a transfer of ownership of that property due to the failure of the transferee of the property to file a Property Transfer Affidavit in a timely manner (and the March Board of Review has closed for the year following the transfer of ownership), the assessor must uncap the taxable value of the property for the year following the transfer of ownership. The assessor must also then recalculate the taxable values of subsequent years, if any, using the uncapped taxable value as a base. The assessor must complete a separate form 3214, formerly known as form L-4054, Assessor Affidavit Regarding "Uncapping" of Taxable Value, for each year that the property's taxable value needs to be changed (i.e., if the taxable values for five years need to be changed, the assessor will need to complete five forms). Affected assessment rolls and tax rolls are updated accordingly as well. Ultimately, the property owner will be billed for taxes based on the uncapped and recalculated taxable values.

The answer provided above is not intended to be a complete listing of delayed uncapping procedures. See State Tax Commission Bulletin No. 8 of 1996 (and its supplement contained in State Tax Commission Bulletin No. 3 of 1997) for a more comprehensive discussion of delayed uncapping procedures and issues.

Is there a limit on the number of years of additional property taxes a property owner can be made to pay if that property owner failed to report a transfer of ownership in a timely manner?

No, there is no limitation. If a delayed uncapping is the result of a failure on the part of a transferee of a property to file a Property Transfer Affidavit in a timely manner, additional taxes, penalties, and interest must be levied for all years affected. The interest and penalties originate from the date the tax would have been originally levied if the property's taxable value had been uncapped at the proper time.

Example: In 2010 a property owner does not file a Property Transfer Affidavit to report a transfer of ownership that occurred in 2010 and the property's taxable value is not uncapped for 2011. In December of 2020 the property is still owned by the same individual and it is discovered by the assessor that a transfer of ownership occurred in 2010 and the property's

taxable value was not uncapped. A billing will occur for all additional taxes due to the delayed uncapping, along with associated penalties and interest. The additional taxes will be for the years 2011 through 2020.

Does a property owner who failed to file a Property Transfer Affidavit in a timely manner have any appeal rights when the property's taxable value is uncapped in a delayed manner?

Yes. MCL 211.27b specifies, however, that such "[a]n appeal…is limited to the issues of whether a transfer of ownership has occurred and correcting arithmetic errors."

When an assessor uncaps a taxable value under these circumstances (i.e., a delayed uncapping due to a failure on the part of a transferee to report a transfer of ownership in a timely manner), the assessor must immediately notify the transferee in writing that it is the assessor's determination that a transfer of ownership occurred and that the taxable value of the transferred property has been uncapped. At that time, the assessor must also advise the transferee of the transferee's right to appeal the matter to the Michigan Tax Tribunal. This appeal is to be made within 35 days of receiving the notice from the assessor.

Can a delayed uncapping due to the failure of a transferee to file a Property Transfer Affidavit in a timely manner be processed by a July or December Board of Review?

No. No legal authorization exists for a July or December Board of Review to process a delayed uncapping under these circumstances.

What happens if a delayed uncapping is the result of a clerical error on the part of an assessor or a mutual mistake of fact?

If a delayed uncapping is the result of a clerical error on the part of an assessor or a mutual mistake of fact, the delayed uncapping can be processed by the July or December Board of Review using the same procedures that are used to process other clerical errors and mutual mistakes of fact. These procedures include all notification procedures.

Is there a limit on the number of years of additional property taxes for which a property owner can be liable if a delayed uncapping is the result of a clerical error on the part of the assessor (or a mutual mistake of fact)?

Yes. As discussed above, such delayed uncappings are processed by the July or December Board of Review. The authority of the July or December Board of Review in such matters is limited to correction for the current tax year (the year the error or mistake is corrected) and the immediately preceding tax year. Although assessors are required to recalculate taxable values starting with the year following the transfer of ownership, only the taxable values for the current tax year and, if appropriate, the immediately preceding tax year can be corrected. *See MCL 211.27a(4) which refers to MCL 211.53b.*

Example: In May of 2011 a local assessor discovers that a transfer of ownership occurred in 2007 and that the taxable value of the property involved was not uncapped for 2008 (even though the transfer was timely reported by the buyer of the property using a Property Transfer Affidavit). The assessor also verifies that the reason for the failure to uncap the property's taxable value was a clerical error. Under these circumstances, the taxable values for the property for 2008 through 2011 will be recalculated, however only the 2011 and 2012 taxable values can be changed by the 2012 July or December Board of Review. The property owner will be billed for the additional taxes for these two years.

What happens if a local assessor becomes aware of a transfer of ownership which did not result in a taxable value uncapping due to a failure on the part of the transferee to file a Property Transfer Affidavit in a timely manner, but a subsequent transfer of ownership has occurred for this same property?

Under these circumstances, Michigan law allows the local taxing unit to sue the transferee who did not report the first transfer of ownership. The local taxing unit may sue for all of the following:

1. Any additional taxes that would have been levied from the date of transfer if the transfer of ownership had been reported as required
2. Interest and penalty from the date the tax would have been levied
3. The penalties as described in the Property Transfer Affidavit section

The taxable value(s) of the property are not actually changed due to the first transfer of ownership. Also, what would have been additional taxes, etc. do not become a lien on the property. It is the former owner, not the current owner, who can be sued. The current owner of the property is not held responsible for the additional taxes, etc. which are the result of a previous owner's failure to timely file a Property Transfer Affidavit.

APPENDIX

THE GENERAL PROPERTY TAX ACT (EXCERPT)
Act 206 of 1893

211.27a Property tax assessment; determining taxable value; adjustment; exception; "transfer of ownership" defined; qualified agricultural property; notice of transfer of property; applicability of subsection (10); definitions.

Sec. 27a. (1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.

(2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:

(a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.

(b) The property's current state equalized valuation.

(3) Upon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer.

(4) If the taxable value of property is adjusted under subsection (3), a subsequent increase in the property's taxable value is subject to the limitation set forth in subsection (2) until a subsequent transfer of ownership occurs. If the taxable value of property is adjusted under subsection (3) and the assessor determines that there had not been a transfer of ownership, the taxable value of the property shall be adjusted at the July or December board of review. Notwithstanding the limitation provided in section 53b(1) on the number of years for which a correction may be made, the July or December board of review may adjust the taxable value of property under this subsection for the current year and for the 3 immediately preceding calendar years. A corrected tax bill shall be issued for each tax year for which the taxable value is adjusted by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll. For purposes of section 53b, an adjustment under this subsection shall be considered the correction of a clerical error.

(5) Assessment of property, as required in this section and section 27, is inapplicable to the assessment of property subject to the levy of ad valorem taxes within voted tax limitation increases to pay principal and interest on limited tax bonds issued by any governmental unit, including a county, township, community college district, or school district, before January 1, 1964, if the assessment required to be made under this act would be less than the assessment as state equalized prevailing on the property at the time of the issuance of the bonds. This inapplicability shall continue until levy of taxes to pay principal and interest on the bonds is no longer required. The assessment of property required by this act shall be applicable for all other purposes.

(6) As used in this act, "transfer of ownership" means 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. Transfer of ownership of property includes, but is not limited to, the following:

(a) A conveyance by deed.

(b) A conveyance by land contract. The taxable value of property conveyed by a land contract executed after December 31, 1994 shall be adjusted under subsection (3) for the calendar year following the year in which the contract is entered into and shall not be subsequently adjusted under subsection (3) when the deed conveying title to the property is recorded in the office of the register of deeds in the county in which the property is located.

(c) A conveyance to a trust after December 31, 1994, except under any of the following conditions:

(*i*) If the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both.

(*ii*) Beginning December 31, 2014, for residential real property, if the settlor or the settlor's spouse, or both, conveys the residential real property to the trust and the sole present beneficiary or beneficiaries are the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(d) A conveyance by distribution from a trust, except under any of the following conditions:

(*i*) If the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.

(*ii*) Beginning December 31, 2014, a distribution of residential real property if the distributee is the settlor's

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or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(e) A change in the sole present beneficiary or beneficiaries of a trust, except under any of the following conditions:

(*i*) A change that adds or substitutes the spouse of the sole present beneficiary.

(*ii*) Beginning December 31, 2014, for residential real property, a change that adds or substitutes the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(f) A conveyance by distribution under a will or by intestate succession, except under any of the following conditions:

(*i*) If the distributee is the decedent's spouse.

(*ii*) Beginning December 31, 2014, for residential real property, if the distributee is the decedent's or the decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(g) A conveyance by lease if the total duration of the lease, including the initial term and all options for renewal, is more than 35 years or the lease grants the lessee a bargain purchase option. As used in this subdivision, "bargain purchase option" means the right to purchase the property at the termination of the lease for not more than 80% of the property's projected true cash value at the termination of the lease. After December 31, 1994, the taxable value of property conveyed by a lease with a total duration of more than 35 years or with a bargain purchase option shall be adjusted under subsection (3) for the calendar year following the year in which the lease is entered into. This subdivision does not apply to personal property except buildings described in section 14(6) and personal property described in section 8(h), (i), and (j). This subdivision does not apply to that portion of the property not subject to the leasehold interest conveyed.

(h) Except as otherwise provided in this subdivision, 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. Unless notification is provided under subsection (10), the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the assessing officer on a form provided by the state tax commission not more than 45 days after a conveyance of an ownership interest that constitutes a transfer of ownership under this subdivision. Both of the following apply to a corporation subject to 1897 PA 230, MCL 455.1 to 455.24:

(*i*) A transfer of stock of the corporation is a transfer of ownership only with respect to the real property that is assessed to the transferor lessee stockholder.

(*ii*) A cumulative conveyance of more than 50% of the corporation's stock does not constitute a transfer of ownership of the corporation's real property.

(i) A transfer of property held as a tenancy in common, except that portion of the property not subject to the ownership interest conveyed.

(j) A conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed.

(7) Transfer of ownership does not include the following:

(a) The transfer of property from 1 spouse to the other spouse or from a decedent to a surviving spouse.

(b) A transfer from a husband, a wife, or a husband and wife creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.

(c) A transfer of that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease. That portion of property transferred that is not subject

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to a life lease shall be adjusted under subsection (3).

(d) A transfer through foreclosure or forfeiture of a recorded instrument under chapter 31, 32, or 57 of the revised judicature act of 1961, 1961 PA 236, MCL 600.3101 to 600.3285 and MCL 600.5701 to 600.5759, or through deed or conveyance in lieu of a foreclosure or forfeiture, until the mortgagee or land contract vendor subsequently transfers the property. If a mortgagee does not transfer the property within 1 year of the expiration of any applicable redemption period, the property shall be adjusted under subsection (3).

(e) A transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes.

(f) A conveyance to a trust if the settlor or the settlor's spouse, or both, conveys the property to the trust and any of the following conditions are satisfied:

(*i*) If the sole present beneficiary of the trust is the settlor or the settlor's spouse, or both.

(*ii*) Beginning December 31, 2014, for residential real property, if the sole present beneficiary of the trust is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(g) A transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer.

(h) A transfer creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. For purposes of this subdivision, a person is an original owner of property owned by that person's spouse.

(i) A transfer for security or an assignment or discharge of a security interest.

(j) A transfer of real property or other ownership interests among members of an affiliated group. As used in this subsection, "affiliated group" means 1 or more corporations connected by stock ownership to a common parent corporation. Upon request by the state tax commission, a corporation shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A corporation that fails to comply with a request by the state tax commission under this subdivision is subject to a fine of $200.00.

(k) Normal public trading of shares of stock or other ownership interests that, over any period of time, cumulatively represent more than 50% of the total ownership interest in a corporation or other legal entity and are traded in multiple transactions involving unrelated individuals, institutions, or other legal entities.

(*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. Upon request by the state tax commission, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A corporation, partnership, limited liability company, limited liability partnership, or other legal entity that fails to comply with a request by the state tax commission under this subdivision is subject to a fine of $200.00.

(m) A direct or indirect transfer of real property or other ownership interests resulting from a transaction that qualifies as a tax-free reorganization under section 368 of the internal revenue code, 26 USC 368. Upon request by the state tax commission, a property owner shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A property owner who fails to comply with a request by the state tax commission under this subdivision is subject to a fine of $200.00.

(n) A transfer of qualified agricultural property, if the person to whom the qualified agricultural property is transferred files an affidavit with the assessor of the local tax collecting unit in which the qualified agricultural property is located and with the register of deeds for the county in which the qualified agricultural property is located attesting that the qualified agricultural property shall remain qualified agricultural property. The affidavit under this subdivision shall be in a form prescribed by the department of treasury. An owner of qualified agricultural property shall inform a prospective buyer of that qualified agricultural property that the qualified agricultural property is subject to the recapture tax provided in the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007, if the qualified agricultural property is converted by a change in use, as that term is defined in section 2 of the agricultural property recapture act, 2000 PA 261, MCL 211.1002. If property ceases to be qualified agricultural property at any time after being

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transferred, all of the following shall occur:

(*i*) The taxable value of that property shall be adjusted under subsection (3) as of the December 31 in the year that the property ceases to be qualified agricultural property.

(*ii*) The property is subject to the recapture tax provided for under the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007.

(o) A transfer of qualified forest property, if the person to whom the qualified forest property is transferred files a qualified forest taxable value affidavit with the assessor of the local tax collecting unit in which the qualified forest property is located and with the register of deeds for the county in which the qualified forest property is located attesting that the qualified forest property shall remain qualified forest property. The qualified forest taxable value affidavit under this subdivision shall be in a form prescribed by the department of agriculture and rural development. The qualified forest taxable value affidavit shall include a legal description of the qualified forest property, the name of the new property owner, the year the transfer of the property occurred, a statement indicating that the property owner is attesting that the property for which the exemption is claimed is qualified forest property and will be managed according to the approved forest management plan, and any other information pertinent to the parcel and the property owner. The property owner shall provide a copy of the qualified forest taxable value affidavit to the department. The department shall provide 1 copy of the qualified forest taxable value affidavit to the local tax collecting unit, 1 copy to the conservation district, and 1 copy to the department of treasury. These copies may be sent electronically. The exception to the recognition of a transfer of ownership, as herein stated, shall extend to the land only of the qualified forest property. If qualified forest property is improved by buildings, structures, or land improvements, then those improvements shall be recognized as a transfer of ownership, in accordance with the provisions of section 7jj[1]. An owner of qualified forest property shall inform a prospective buyer of that qualified forest property that the qualified forest property is subject to the recapture tax provided in the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036, if the qualified forest property is converted by a change in use, as that term is defined in section 2 of the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1032. If property ceases to be qualified forest property at any time after being transferred, all of the following shall occur:

(*i*) The taxable value of that property shall be adjusted under subsection (3) as of the December 31 in the year that the property ceases to be qualified forest property, except to the extent that the transfer of the qualified forest property would not have been considered a transfer of ownership under this subsection.

(*ii*) Except as otherwise provided in subparagraph (*iii*), the property is subject to the recapture tax provided for under the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036.

(*iii*) Beginning June 1, 2013 and ending November 30, 2013, owners of property enrolled as qualified forest property prior to January 1, 2013 may execute a new qualified forest taxable value affidavit with the department of agriculture and rural development. If a landowner elects to execute a qualified forest taxable value affidavit, that owner is not required to pay the $50.00 fee required under section 7jj[1](2). If a landowner elects not to execute a qualified forest taxable value affidavit, the existing affidavit shall be rescinded, without subjecting the property to the recapture tax provided for under the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036, and the taxable value of that property shall be adjusted under subsection (3).

(p) Beginning on December 8, 2006, a transfer of land, but not buildings or structures located on the land, which meets 1 or more of the following requirements:

(*i*) The land is subject to a conservation easement under subpart 11 of part 21 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140 to 324.2144. As used in this subparagraph, "conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.

(*ii*) A transfer of ownership of the land or a transfer of an interest in the land is eligible for a deduction as a qualified conservation contribution under section 170(h) of the internal revenue code, 26 USC 170.

(q) A transfer of real property or other ownership interests resulting from a consolidation or merger of a domestic nonprofit corporation that is a boy or girl scout or camp fire girls organization, a 4-H club or foundation, a young men's Christian association, or a young women's Christian association and at least 50% of the members of that organization or association are residents of this state.

(r) A change to the assessment roll or tax roll resulting from the application of section 16a of 1897 PA 230, MCL 455.16a.

(s) Beginning December 31, 2013 through December 30, 2014, a transfer of residential real property if the transferee is related to the transferor by blood or affinity to the first degree and the use of the residential real property does not change following the transfer.

(t) Beginning December 31, 2014, a transfer of residential real property if the transferee is the transferor's

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or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the transferee shall furnish proof within 30 days that the transferee meets the requirements of this subparagraph. If a transferee fails to comply with a request by the department of treasury or assessor under this subparagraph, that transferee is subject to a fine of $200.00.

(u) Beginning December 31, 2014, for residential real property, a conveyance from a trust if the person to whom the residential real property is conveyed is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(8) If all of the following conditions are satisfied, the local tax collecting unit shall revise the taxable value of qualified agricultural property taxable on the tax roll in the possession of that local tax collecting unit to the taxable value that qualified agricultural property would have had if there had been no transfer of ownership of that qualified agricultural property since December 31, 1999 and there had been no adjustment of that qualified agricultural property's taxable value under subsection (3) since December 31, 1999:

(a) The qualified agricultural property was qualified agricultural property for taxes levied in 1999 and each year after 1999.

(b) The owner of the qualified agricultural property files an affidavit with the assessor of the local tax collecting unit under subsection (7)(n).

(9) If the taxable value of qualified agricultural property is adjusted under subsection (8), the owner of that qualified agricultural property shall not be entitled to a refund for any property taxes collected under this act on that qualified agricultural property before the adjustment under subsection (8).

(10) The register of deeds of the county where deeds or other title documents are recorded shall notify the assessing officer of the appropriate local taxing unit not less than once each month of any recorded transaction involving the ownership of property and shall make any recorded deeds or other title documents available to that county's tax or equalization department. Unless notification is provided under subsection (6), the buyer, grantee, or other transferee of the property shall notify the appropriate assessing office in the local unit of government in which the property is located of the transfer of ownership of the property within 45 days of the transfer of ownership, on a form prescribed by the state tax commission that states the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description. Forms filed in the assessing office of a local unit of government under this subsection shall be made available to the county tax or equalization department for the county in which that local unit of government is located. This subsection does not apply to personal property except buildings described in section 14(6) and personal property described in section 8(h), (i), and (j).

(11) As used in this section:

(a) "Additions" means that term as defined in section 34d.

(b) "Beneficial use" means the right to possession, use, and enjoyment of property, limited only by encumbrances, easements, and restrictions of record.

(c) "Inflation rate" means that term as defined in section 34d.

(d) "Losses" means that term as defined in section 34d.

(e) "Qualified agricultural property" means that term as defined in section 7dd.

(f) "Qualified forest property" means that term as defined in section 7jj[1].

(g) "Residential real property" means real property classified as residential real property under section 34c.

History: Add. 1982, Act 539, Eff. Mar. 30, 1983;—Am. 1993, Act 145, Imd. Eff. Aug. 19, 1993;—Am. 1993, Act 313, Eff. Mar. 15, 1994;—Am. 1994, Act 415, Imd. Eff. Dec. 29, 1994;—Am. 1996, Act 476, Imd. Eff. Dec. 26, 1996;—Am. 2000, Act 260, Eff. Mar. 28, 2001;—Am. 2005, Act 23, Imd. Eff. May 23, 2005;—Am. 2006, Act 378, Imd. Eff. Sept. 27, 2006;—Am. 2006, Act 446, Imd. Eff. Dec. 8, 2006;—Am. 2008, Act 506, Imd. Eff. Jan. 13, 2009;—Am. 2012, Act 47, Imd. Eff. Mar. 13, 2012;—Am. 2012, Act 497, Imd. Eff. Dec. 28, 2012;—Am. 2013, Act 50, Imd. Eff. June 6, 2013;—Am. 2014, Act 310, Imd. Eff. Oct. 10, 2014.

Popular name: Act 206

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Reset Form

Michigan Department of Treasury
3214 (Rev. 8-09)

County

Assessor Affidavit Regarding "Uncapping" of Taxable Value

The changes in Taxable Value recorded on this affidavit are related to the "Uncapping" of Taxable Value due to a failure on the part of the transferee (buyer) to timely file the Property Transfer Affidavit (form L-4260).

In accordance with the authority identified in Section 27b of the General Property Tax Act (P.A. 206 of 1893, as amended), a correction has been made in the Taxable Value of the following described Real/Personal property:

_____ located in the City of/Township of/Village of _____. This is a correction to the
(Parcel Identification Number)

_____ Assessment/Tax Roll.
(Tax Year)

Correction of Taxable Value Due to Transfer of Ownership

School Code	HOMESTEAD AND QUALIFIED AGRICULTURAL			NON-HOMESTEAD AND NON-QUALIFIED AGRICULTURAL		
	Before Correction	Amount of Increase/Decrease	Corrected	Before Correction	Amount of Increase/Decrease	Corrected
State Equalized Valuation						
Taxable Valuation						

Correction of Taxing Unit Levy

Taxing Unit	HOMESTEAD AND QUALIFIED AGRICULTURAL			NON-HOMESTEAD AND NON-QUALIFIED AGRICULTURAL		
	Before Correction	Amount of Increase/Decrease	Corrected	Before Correction	Amount of Increase/Decrease	Corrected
County						
Intermediate School District						
Community College						
State Education Tax						
Local School Operating						
Local School Supplemental (<=18)						
Local School Supplemental (>=18)						
Local School Enhancement						
Local School Debt						
City/Township/Village						
Other						
Total						

NOTE: The levy section of this affidavit does not include collections fees, penalties, and interest. These must be added to the bill, when applicable, by the treasurer.

I, _____, being the certified assessor for the City/Twp of _____, do hereby swear or affirm that the above information is true, to the best of my knowledge.

Signature of Certified Assessor No.	Date	Certification

Copies to: Property Owner, Equalization Department, County Treasurer, and the Treasurers of all other affected Taxing Units.

State Tax Commission Bulletin No. 16 of 1995
September 20, 1995
"Transfers of Ownership"

DATE: September 20, 1995
TO: Assessors, Equalization Directors
FROM: State Tax Commission (STC)

RE: **"TRANSFERS OF OWNERSHIP" AS CONTAINED IN PUBLIC ACT 415 OF 1994**

On March 15, 1994, the voters of the State of Michigan approved Proposal A which includes significant changes to Section 3 of Article IX of the State Constitution.

The following language from Proposal A has caused many changes in property tax procedures starting with 1995 assessments:

> For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. **WHEN OWNERSHIP OF THE PARCEL OF PROPERTY IS TRANSFERRED AS DEFINED BY LAW, THE PARCEL SHALL BE ASSESSED AT THE APPLICABLE PROPORTION OF CURRENT TRUE CASH VALUE.**

This bulletin will address that part of the implementation of Proposal A which deals with the last sentence of the language above regarding transfers.

The result of Proposal A and 1994 PA 415 is to require, beginning with 1996 assessment rolls, that each Michigan Assessing Officer USE THE CURRENT YEAR'S STATE EQUALIZED VALUATION OF ANY PARCEL WHICH HAS EXPERIENCED A "TRANSFER OF OWNERSHIP" DURING THE PRIOR YEAR AS THE TAXABLE VALUE FOR DETERMINING THE PROPERTY TAXES OF THAT PARCEL OF PROPERTY ACCORDING TO THE INSTRUCTIONS THAT FOLLOW. This process, which is described in the following pages, will be referred to as the "uncapping" of Taxable Valuations. An uncapped Taxable Valuation shall be the State Equalized Valuation of the parcel of property for the year following a "transfer of ownership". Taxable Value, as in 1995, is the lower of State Equalized Value or the result of the Capped Value equation described in STC Bulletin #3 of 1995 for each individual property. It should be noted that the Capped Valuation calculation has changed in two notable respects for 1996 from what it was in 1995. They are labeled 1 & 2 below:

1) For 1996, the Capped Value calculations begin with the 1995 Taxable Value for the property, NOT with the 1995 State Equalized Value.

2) For 1996, the Value Change Multiplier will be implemented for the first time by many assessing units. The Value Change Multiplier, sometimes referred to as the "Supercap", is explained in STC Bulletin #3 of 1995 starting on page 3.

The Capped Value Formula and the Value Change Multiplier Formula are contained in the glossary at the end of this bulletin.

Public Act (PA) 415 contains many significant changes to the General Property Tax Act regarding the implementation of Proposal A. Section 27a and 27b of the Act are included with this bulletin because they deal specifically with transfers. As mentioned above, **there is also a GLOSSARY OF TERMS at the end of this bulletin. There are many items defined in the GLOSSARY OF TERMS which are not defined in the main part of this bulletin.**

A) The Taxable Values of Properties Experiencing a "Transfer of Ownership" in the Immediately Preceding Year are Uncapped Starting in 1996.

Section 27a(3) of PA 415 of 1994 states the following:

"Upon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer."

THIS MEANS THAT "TRANSFERS OF OWNERSHIP" BEGIN JANUARY 1, 1995 AND THAT THE 1996 TAXABLE VALUES OF PROPERTIES WHICH HAVE EXPERIENCED A "TRANSFER OF OWNERSHIP" IN 1995 WILL BE THE SAME AS THE 1996 STATE EQUALIZED VALUES (SEV) OF THE PROPERTIES. THIS PROCESS OF MAKING THE TAXABLE VALUE THE SAME AS THE SEV IN THE YEAR FOLLOWING A "TRANSFER OF OWNERSHIP" WILL BE REFERRED TO IN THIS BULLETIN AS "UNCAPPING THE TAXABLE VALUE". "TRANSFER OF OWNERSHIP" WILL BE DEFINED IN PARAGRAPH B BELOW.

Starting in the 1996 assessment year, the taxable value of properties which have experienced a "transfer of ownership" in the previous year shall be adjusted to be the State Equalized Value (SEV) of the property for the year following the "transfer of ownership" (regardless of the answer produced by the capped value formula.) In other words, properties which experience a "transfer of ownership" anytime during calendar year 1995, will have their taxable values uncapped in 1996.

The taxable value of uncapped properties shall then be capped again in the second year following the "transfer of ownership", until the year following the next "transfer of ownership".

IMPORTANT: The law requires that in the year following a "transfer of ownership", the taxable value SHALL BE uncapped. The assessor does NOT have

the authority to refuse to uncap the Taxable Value in the year following a "transfer of ownership".

Regarding the transfer of individual properties, the assessor is required to make 2 determinations:

1) The assessor shall determine whether each individual transfer meets the definition of a "transfer of ownership", ("Transfer of ownership" will be defined in paragraph B below.)

> Some transfers (such as a transfer from one spouse to another) are not "transfers of ownership" and their Taxable Values are NOT uncapped in the year following the transfer.
>
> Those transfers which are "transfers of ownership" SHALL have their Taxable Values uncapped in the year following the "transfer of ownership".

2) The assessor shall continue to determine the SEV of all properties for each year. The SEV of a parcel of property which has experienced a "transfer of ownership" in the prior year SHALL become the Taxable Value for the year following the "transfer of ownership". The assessor is not required to calculate a CAPPED VALUE for a property which has experienced a "transfer of ownership" in the immediately preceding year since the SEV will become the Taxable Value for that year. Even though it is not necessary to calculate a Capped Value for properties which have experienced a "transfer of ownership" in the prior year, it is still necessary to keep track of additions and losses for these properties since that information is needed for the millage rollback calculations.

> **The assessor shall follow the same procedures for determining the assessed value and SEV of properties which have experienced a "transfer of ownership" as are used for properties which have not experienced a "transfer of ownership".**
>
> Michigan Compiled Law (MCL) 211.27(5) states the following:
>
> > (5) Beginning December 31, 1994, the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. In determining the true cash value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction.
>
> In the year following a sale which is determined to be a "transfer of ownership", the SEV of the property will not necessarily equal 1/2 of the sale price. An individual sale price <u>is</u> <u>not</u> always a good indicator of the true cash value of the property due to a variety of reasons such as an uniformed

buyer, an uninformed seller, insufficient marketing time, buyer and seller are relatives, and other possible reasons.

The assessment SHALL be set at a uniform level with other similar properties in the assessing unit. For example, if properties in the residential class of a unit are generally assessed at 48% of true cash value and, though it is not good assessment practice, the assessor intends to take an equalization factor, the assessment of properties which have experienced a "transfer of ownership" in the prior year should also be established at 48%. **Important: MCL 211.27a requires that property shall be assessed at 50% of its true cash value. Also, the rules of the State Assessors Board state that if an assessing unit receives a state equalized multiplier of more than 1.10, "that fact shall be sufficient cause for the board to conduct a hearing to determine if the certification of the assessor who prepared the assessment roll shall be revoked or suspended".**

Neither Proposal A nor its implementing language authorizes assessors to "follow sales" when determining the assessed value of properties. "Following sales" is described in the Assessor's Manual as the practice of ignoring the assessment of properties which have not recently been sold while making significant changes to the assessments of properties which have been sold.

B) "Transfers of Ownership" Defined

PA 415 defines "transfers of ownership" and also provides that the "Buyers" of properties which have experienced a "transfer of ownership" must notify the assessor when a "transfer of ownership" has occurred. The details of the notification process will be addressed later in this bulletin.

A "transfer of ownership" is defined in PA 415 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." Fee interest (also known as fee simple interest) is defined in the Glossary of Terms.

IMPORTANT: The definition of a "transfer of ownership" found in PA 415 of 1994 is different from the definitions used to determine whether a state or local transfer tax must be paid to the Register of Deeds.

"Transfers of Ownership" start on January 1, 1995. Generally the day the instrument (such as a deed) is delivered to the transferee (buyer) is the date of the transfer. The date the instrument is delivered is usually the same as the date shown on the instrument. The date the instrument is delivered is frequently NOT the same as the date that the instrument

is recorded with the register of deeds.

"TRANSFERS OF OWNERSHIP" INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:

1) A Conveyance by Deed is a "Transfer of Ownership" (MCL 211.27a(6)(a)).

A CONVEYANCE is a written instrument (such as a deed or a lease) that passes an interest in real property from one person to another. Conveyance is a general term which INCLUDES "transfers of ownership" though many conveyances are not "transfers of ownership."

The two types of deeds that are most often used are the warranty deed and the quitclaim deed. Warranty deed and quitclaim deeds are defined in the Glossary of Terms.

There are situations when a conveyance by quitclaim deed is NOT a "transfer of ownership". An example would be the situation where a quitclaim deed is used only for the purpose of settling a title dispute and no "beneficial use" of the property is actually transferred.

There are also situations when a conveyance by warranty deed is not a "transfer of ownership". These situations will be explained later in this bulletin.

2) A Conveyance by Land Contract is a "Transfer of Ownership" (MCL 211.27a(6)(b))

Land Contract is defined in the Glossary of Terms.

For the purposes of determining the date of the "transfer of ownership", a conveyance by land contract occurs on the date that the contract is entered into, NOT at the end of the contract when the deed is given.

If a land contract is entered into PRIOR to January 1, 1995, it is not a "transfer of ownership" even if the land contract is paid off and the deed is given in 1995 or thereafter. This is true because "transfers of ownership" start on January 1, 1995.

A "transfer of ownership" also occurs when a second buyer assumes the land contract of a first buyer.

EXAMPLE: A sells to B on a land contract. Later B sells to C who takes over the land contract payments. A "transfer of ownership" occurs when A sells to B and a "transfer of ownership" ALSO occurs when B sells to C.

A "transfer of ownership" does NOT occur when a seller (vendor) on a land contract sells his/her interest in the land contract.

EXAMPLE: A sells to B on a land contract. Later on A sells her vendor's interest to D and D receives the land contract payments rather than A. A "transfer of ownership" occurs when A sells the property to B on a land contract, but a "transfer of ownership" does NOT occur when A sells the contract document (and the right to receive land contract payments) to D.

3) Certain Conveyances to a Trust are "Transfers of Ownership" (MCL 211.27a(6)(c))

Before discussing conveyances to a trust, it is necessary to provide some general information about trusts. There are many types of trusts which have many different purposes. The most common type of trust is the revocable family trust. The following 2 definitions will help the reader to understand the revocable family trust.

The SETTLOR of a trust is the person(s) who creates the trust.

The BENEFICIARY of a trust is the person(s) who has the enjoyment and the beneficial use of the property during the life of the trust.

Typically, in the revocable family trust, parents (acting as settlors) deed their property to a trust and name themselves as beneficiaries and trustees of the trust. As beneficiaries, the parents have the use of the property during their lifetimes. As trustees, the parents control the property for the trust. Frequently the children are named as contingent beneficiaries (defined below) and they become actual beneficiaries upon the death of the parents.

When the trust ends, the property is deeded by the trust to the distributee(s) as specified by the trust.

A conveyance TO a trust is a "transfer of ownership", BUT NOT if the sole present beneficiary or beneficiaries of the trust are also the settlor of the trust or the settlor's spouse or both.

EXAMPLE: If person A conveys property to a trust and this same person, as beneficiary, has the sole use of the property during the life of the trust, a "transfer of ownership" has NOT occurred.

If the beneficiaries of a trust include a person who is not a settlor or the settlor's spouse, a "transfer of ownership" has occurred and the Taxable Value of the entire property shall be uncapped in the following year.

EXAMPLE: If A conveys property to a trust and the **present** beneficiaries are A and a child B, a "transfer of ownership" of the entire property has occurred because A is not the sole present beneficiary. See also the example below involving children who are contingent beneficiaries.

A CONTINGENT BENEFICIARY is a person who is NOT now a beneficiary but will become a beneficiary if some specified event occurs in the future.

EXAMPLE: A husband and wife convey property to a trust and name themselves as beneficiaries and their children as contingent beneficiaries. The children do not become beneficiaries until the death of the parents. In this example, a "transfer of ownership" occurs upon the death of the parents, when the children actually become beneficiaries, NOT when the property is originally conveyed to the trust.

4) Certain Conveyances by Distribution from a Trust are "Transfers of Ownership" (MCL 211.27a(6)(d))

A conveyance by distribution FROM a trust is a "transfer of ownership", but NOT if the distributee of the trust (defined below) is also the sole present beneficiary or the spouse of the sole present beneficiary or both. If the distributees include anyone who was not a sole present beneficiary or a spouse of a sole present beneficiary, a "transfer of ownership" of the entire property has occurred and the Taxable Value shall be uncapped in the year following the "transfer of ownership".

A DISTRIBUTEE of a trust is a person who receives a share of the property of a trust when the property is distributed.

EXAMPLE: If person A (beneficiary) gets to use a property during the life of a trust and is also the person to whom the property is distributed (distributee) at the end of the trust, there is NO "transfer of ownership" when the property is distributed from the trust.

5) Certain Changes in the Sole Present Beneficiary of a Trust are "Transfers of Ownership" (MCL 211.27a (6)(e))

A change in the sole present beneficiary or beneficiaries of a trust is a "transfer of ownership", BUT NOT if the change merely adds or substitutes the spouse of the sole present beneficiary.

EXAMPLE: If person A is the sole present beneficiary of a trust and person A's spouse is

also made a beneficiary, there is NO "transfer of ownership".

EXAMPLE: If A and B who are husband and wife are the beneficiaries of a trust and they add their child C as an additional **present** beneficiary, a "transfer of ownership" of the entire property has occurred and the Taxable Value of the entire property shall be uncapped in the year following the "transfer of ownership". In this example, the child was added as a present beneficiary, NOT as a contingent beneficiary.

6) Certain Conveyances by Distribution Under a Will or by Intestate (No Will) Succession are "Transfers of Ownership" (MCL 211.27a(6)(f))

A conveyance of a deceased person's property as directed by a will or as directed by a court (when there is no will) is a "transfer of ownership" BUT NOT if the person receiving the property is the deceased person's spouse.

The conveyance occurs when the property is distributed which is usually different from the day the person dies.

EXAMPLE: If A dies and if A's property goes to A's spouse, there is NO "transfer of ownership".

IMPORTANT EXAMPLE: If A dies and the property goes to A's spouse and A's children jointly, a "transfer of ownership" of the entire property has occurred in spite of the provisions regarding tenancy in common found in item 9 on page 10 of this bulletin and in spite of the provisions regarding joint tenancy found in item 8 on page 15 of this bulletin.

7) Certain Conveyances by Lease are "Transfers of Ownership" (MCL 211.27a(6)(g)).

A lease of real property , ENTERED INTO AFTER DECEMBER 31, 1994, is a "transfer of ownership" if ONE OR BOTH of the following conditions exist:

a) The total length of the lease including the initial term AND the term(s) of all options to renew the
lease is MORE THAN 35 YEARS.

b) The lease gives the lessee (usually the tenant) a bargain purchase option. "Bargain purchase option" means the right to purchase the property at the end of the lease for 80% or less of the property's projected true cash value at the end of the lease. Even though a lease is less than 35 years long, it will still be a "transfer of ownership" if there is a "bargain purchase option".

The date of a conveyance by lease is the date when the lease term starts.

There has been concern expressed about the situation where only one tenant of a multi-tenant property (such as a shopping center) enters into a lease of more than 35 years. The

language of PA 415 of 1994 appears to state that, in this situation, the taxable value of the entire property shall be uncapped. Legislation is being proposed which would allow a partial uncapping when, for example, only 1 of the tenants of a multi-tenant property is involved in a "transfer of ownership" by lease. You will be informed in a future bulletin if this proposed change becomes law.

The STC advises that a "transfer of ownership" does not occur when a lease expires and the use of the property returns to the landlord.

"Transfers of Ownership" DO NOT include the leasing of PERSONAL PROPERTY.

Transfers of Ownership" DO include the following two situations even though they involve property assessed on the personal property roll, provided they meet the criteria in "a" or "b" above.

i) The leasing of buildings on leased land provided the lease meets one or both of the requirements of "a" and "b" above.

ii) The leasing of property assessed under the provisions of Michigan Compiled Laws (MCL) 211.8(h), (i), or (j) provided the lease meets one or both of the requirements of "a" and "b" above.

> Properties assessed under the provisions of MCL 211.8(h), (i), and (j) include tenant-installed leasehold improvements (and structures) which add to the true cash value of the real property and the value of sandwich leases in which the sublessor receives net rentals in excess of net rentals required to be paid by the sublessor. See STC Bulletin No. 4 of 1985 for more information about these situations.

8) Certain Conveyances of An Ownership Interest in a Corporation, Partnership, Sole Proprietorship, Limited Liability Company, Limited Liability Partnership, or Other Legal Entity are "Transfers of Ownership" MCL 211.27a(6)(h)).

A conveyance of an ownership interest in one of the following is a "transfer of ownership" provided the ownership interest conveyed is **MORE THAN 50%** of the total ownership: (The legal cite is given for several of the items below where they are defined in the law. Non-legal definitions of these items are contained in the glossary at the end of this bulletin)

a) Corporation (MCL 450.1104 et seq.)
b) Partnership (MCL 449.1 et seq.)
c) Sole Proprietorship
d) Limited Liability Partnership (MCL 450.4102 et seq.)
e) Limited Liability Company (MCL 450.4102 et. seq.)
f) Other Legal Entity

If more than 50% of the total ownership interest in one of the above is conveyed, the Taxable Value of any real property owned by the entity shall be uncapped in the year following the "transfer of ownership".

If one buyer or more than one buyer gradually purchases an ownership interest in one of the entities named above over an extended period of time, a "transfer of ownership" occurs when the total purchased interest adds up to more than 50% of the total ownership. Please note the exception in the caution below.

CAUTION: Normal public trading of shares of stock or other ownership interest that, over any period of time, cumulatively represent more than 50% of the total ownership interest in a corporation or other legal entity and are traded in multiple transactions involving unrelated individuals, institutions, or other legal entities is NOT A "TRANSFER OF OWNERSHIP". Note that this exception involves NORMAL PUBLIC trading and UNRELATED individuals. A further explanation of "normal public trading" is provided in item #11 on page 18 of this bulletin.

Please note also that the following conveyances are NOT "transfers of ownership":

a) A transfer among members of an affiliated group.

b) A transfer among legal entities which are commonly controlled.

c) A transaction that qualifies as a tax-free reorganization.

A further explanation of these types of transfers is provided starting on page 18 of this bulletin.

The language of section 27a(6)(h) of PA 415 requires the legal entity itself (such as a corporation) to report the "transfer of ownership" to the assessor, unless the buyer reports it.

9) <u>Transfers of Property Held as Tenancy in Common</u> are "Transfers of Ownership" (MCL 211.27a(6)(i))

Tenancy in common may be defined as a type of co-ownership in which the co-owners own a partial interest in an entire property and when one of the co-owners dies, the ownership interest of the person who has died goes into his/her estate, not automatically to the surviving co-owners.

The ownership interests in a tenancy in common <u>do not have to be equal shares</u>. Thus, if there are 2 owners by tenancy in common, their ownership interests could be 70% and 30%.

A tenancy in common can be recognized by looking at the language on the deed or land contract which describes the grantee (buyer). Usually when a tenancy in common is being created, the language of the deed or land contract will say "as tenants in common" after the names of the grantees (buyers), for example, "to A and B as tenants in common." If the language merely says "to A and B", a tenancy in common is presumed to be created, assuming that A and B are not married. This is true because in Michigan a tenancy in common is presumed to be the intent when property is conveyed to 2 or more persons and no descriptive language is included.

A conveyance of property held as a tenancy in common is a "transfer of ownership", but only that portion of the property which is actually conveyed. Thus a partial "transfer of ownership" is possible which will result in the uncapping of only a part of the taxable value.

EXAMPLE: Two people own cottages on back lots and also co-own a separate lot for access to the lake as tenants in common. Owner A decides to sell his cottage and also his interest in the access lot. The sale of owner A's interest in the access lot is a "transfer of ownership" but B's ownership interest in the access lot has not transferred.

Tenancy in common and certain transfers subject to a life lease (see page 12 of this bulletin) are the **ONLY** types of ownership under which **part of a property's taxable** value may be uncapped in the year following a "transfer of ownership" rather than the entire taxable value of the parcel. There is proposed legislation which would also allow a partial uncapping for "transfers of ownership" by lease when, for example, only 1 of the tenants of a multi-tenant property is involved in a "transfer of ownership" by lease. You will be informed in a future bulletin if this proposed change becomes law.

In a situation where TWO PARTNERSHIPS own a property as tenants in common and ALL of one of the two partnerships conveys its interest in the property, the provisions of #9 above regarding tenancy in common take precedence over the provisions of #8 above regarding partnerships. Therefore, if this conveyance is a "transfer of ownership", only the taxable value of the part conveyed shall be uncapped in the following year, NOT the total taxable value.

"TRANSFERS OF OWNERSHIP" DO NOT INCLUDE THE FOLLOWING:

1) A Transfer from One Spouse to the Other Spouse is NOT a "Transfer of Ownership" (MCL 211.27a(7)(a))

A SPOUSE is a husband or a wife.

A transfer of property from one spouse to the other spouse OR from a deceased spouse to a surviving spouse is NOT a "transfer of ownership".

2) Certain Transfers Creating or Disjoining a Tenancy by the Entireties are NOT "Transfers of

Ownership"(MCL 211.27a(7)(b))

TENANCY BY THE ENTIRETIES is a form of joint tenancy where the co-owners are husband and wife and when the husband or wife dies, the property goes to the surviving spouse. In a tenancy by the entireties, neither husband nor wife can sell the property unless the other one joins in.

A tenancy by the entireties can be recognized by looking at the language on the deed or land contract which describes the grantee (buyer). If one of the following is used, a tenancy by the entireties is being created:

a) "to John and Mary Doe, his wife"
b) "to John and Mary Doe, husband and wife"
c) "to John and Mary Doe, as tenants by the entireties"

A transfer FROM a husband, a wife, or both WHOSE PURPOSE IS TO CREATE OR DISJOIN (UNDO) A TENANCY BY THE ENTIRETIES in the grantors or the grantor and his or her spouse is NOT a "transfer of ownership".

A transfer whose purpose is to create a tenancy by the entireties frequently occurs when a property owner marries and then deeds the property to himself/herself and his/her spouse. A transfer whose purpose is to disjoin a tenancy by the entireties frequently occurs when a divorce occurs and the jointly owned property is divided up between the former husband and wife.

When a husband and wife sell a property to a third party which they held as a tenancy by the entireties, a "transfer of ownership" DOES occur because this is not a transfer whose purpose is to disjoin a tenancy by the entireties.

3) <u>Certain Transfers Subject to a Life Lease</u> are NOT "Transfers of Ownership" (MCL 211.27a(7)(c))

A LIFE LEASE occurs when an owner transfers ownership of his/her property to someone else but keeps the right to use, occupy, and control the property during his/her lifetime.

A transfer subject to a life lease RETAINED BY THE TRANSFEROR (SELLER) is NOT a "transfer of ownership" <u>until</u> the life lease (life estate) ends.

The terms life lease and life estate mean the same thing for the purposes of this law.

EXAMPLE: Jane Doe sells her house in 1995 but keeps a life lease. A"transfer of ownership" does NOT occur in 1995. Jane dies in 1997 and the life lease ends. A "transfer of ownership" DOES occur in 1997 and the taxable value is uncapped in 1998.

If a life lease ends in 1995 or thereafter, a "transfer of ownership" occurs (assuming no

other exception applies) even if the original transfer which created the life lease occurred prior to 1995.

Frequently a person who owns a large-acreage parcel, which includes a house, sells the total parcel but keeps a life lease on the house and a few acres only. In this situation, the STC advises that the sale of the few acres subject to the life lease IS NOT a "transfer of ownership" until the life lease ends but the sale of the remaining large acreage parcel IS a "transfer of ownership" when the sale occurs.

4) Certain Transfers Through Foreclosure or Forfeiture are NOT "Transfers of Ownership" (MCL 211.27a(7)(d))

A transfer through foreclosure or forfeiture of a recorded instrument (usually a mortgage or land contract) under the provisions of MCL 600.3101 to 600.3280 OR of MCL 600.5701 to 600. 5785 is NOT a "transfer of ownership". A transfer of property through a deed or a conveyance in lieu of a foreclosure or forfeiture is also NOT a "transfer of ownership".

The above cited laws deal with: a) the foreclosures of mortgages and land contracts through circuit court proceedings (MCL 600.3101). b) the foreclosure of mortgages by advertisement (MCL 600.3201). c) the forfeiture of property by summary proceedings (MCL 600.5701)

Most mortgages are foreclosed by advertisement (MCL 600.3201). A Sheriff's Deed is used when a foreclosure by advertisement has occurred.

When a mortgagee (usually a bank) or a land contract vendor (seller), who has taken a property back through foreclosure or forfeiture, later transfers the property, that transfer must be separately analyzed to determine whether it is a "transfer of ownership".

If a mortgagee (usually a bank) does not transfer a property within 1 year of the expiration of the redemption period, the taxable value of the property shall be uncapped in the next assessment year. The typical redemption period is 6 months after the property is sold (usually by the Sheriff). It is important to note that the provisions in this paragraph apply only to mortgagees, NOT to land contract vendors.

5) A Transfer By Redemption is NOT a "Transfer of Ownership" (MCL 211.27a(7)(e))

This section deals with properties which may become "tax reverted lands" because of nonpayment of property taxes.

The following example illustrates the circumstances leading up to a transfer by redemption:

a) For this example assume the 1992 property taxes on a certain property have not been paid for three
years after the assessment.

b) In May of 1995 a tax sale is held by the County Treasurer on the first Tuesday and the taxes are
purchased by a lien buyer.

c) Also assume the property owner does not redeem within 1 year and the lien buyer receives a tax
deed. (Tax deeds do not convey title to property).

d) The owner then redeems the property within the following 6 month period by paying the taxes paid
by the lien buyer plus 50% and other applicable fees..

e) The lien buyer executes a quitclaim deed back to the original owner.

"e" above is a transfer by redemption and is NOT a "transfer of ownership".

If the owner had NOT redeemed the property in step "d" above, the lien buyer would then have recorded a Notice by Persons Claiming Title Under Tax Deed and would have taken title to the property. A "transfer of ownership" DOES occur when a lien buyer takes title to a property.

6) Certain Conveyances to a Trust are NOT "Transfers of Ownership" (MCL 211.27a(7)(f))

A conveyance to a trust is NOT a "transfer of ownership" when the sole present beneficiary of the trust is the settlor or the settlor's spouse. This same information was already provided under item number 3 on page 6.

7) Certain Transfers Pursuant To A Court Order or Judgment are NOT "Transfers of Ownership" (MCL 211.27a(7)(g))

A transfer pursuant to a judgment or order of a court-of-record making or ordering a transfer is NOT a "transfer of ownership" UNLESS A SPECIFIC AMOUNT OF MONEY IS SPECIFIED or ordered by the court for the transfer.

A court-of-record is any court which has been designated as a court by the legislature.

The following is an example of a transfer pursuant to a court order making or ordering a transfer:

1) An action to "quiet title" ordered by a court. A "quiet title" action is frequently the result of a dispute

regarding the question of whether a particular person has on ownership interest in a property.

This example is NOT a "transfer of ownership" provided the court does NOT order that a specific amount of money be paid. If the court had ordered the grantee to pay a specific amount of money to the grantor, this example would be a "transfer of ownership".

In the case where a court orders a division of property as a result of divorce proceedings, item #2 on page 11 of this bulletin regarding the disjoining of a tenancy by the entireties takes precedence over this item (item #7). For example, if a court orders that a husband must pay his wife $50,000 for their house as a part of divorce proceedings, this would NOT be a "transfer of ownership" because it is the "disjoining of a tenancy by the entireties". This is so regardless of the provisions of this item (item #7).

8) Certain Transfers Creating or Terminating a Joint Tenancy are NOT "Transfers of Ownership" (MCL 211.27a(7)(h))

Joint tenancy is a type of co-ownership in which the co-owners own a partial interest in an entire property and when one of the co-owners dies, the decedent's ownership interest goes to the other co-owners, not to the decedent's heirs. The ownership interests in a joint tenancy must be equal shares. Therefore, if there are 2 co-owners in a joint tenancy, their ownership interests have to be 50% each.

A joint tenancy can be recognized by looking at the language of the deed or land contract which describes the grantee (buyer). Usually when a joint tenancy is being created, the language of the deed or land contract will say "as joint tenants" after the names of the grantees, for example, "to A and B, as joint tenants".

a) A transfer **CREATING** a new joint tenancy between 2 or more persons is NOT a "transfer of ownership" if at least one of the joint owners was an original owner before the joint tenancy was initially created.

EXAMPLE: A owns a property by himself and sells a 1/2 interest to B and creates a joint tenancy, NOT a tenancy in common. A "transfer of ownership" has NOT occurred because A was an original owner before the joint tenancy was created.

EXAMPLE: A, who owns a property by himself, sells the property to B and C as joint tenants and does not retain any ownership interest. A "transfer of ownership" HAS occurred because neither B nor C were original owners before the joint tenancy was created.

b) A transfer which **EXPANDS, SHRINKS OR TERMINATES** a joint tenancy is NOT

a "transfer of ownership" if:

i) at least 1 of the persons was an original owner and became a joint tenant when the joint tenancy was originally created

AND

ii) that person has <u>remained</u> a joint tenant since the joint tenancy was originally created

EXAMPLE:

A A owns a property alone.

Conveyance #1:ABC A joint tenancy is CREATED consisting of A,B, and C who are not related to each other by marriage. This is NOT a "transfer of ownership" because this is a transfer CREATING a joint tenancy and A was an original owner before the joint tenancy was originally created. See paragraph "a" above dealing with the CREATION of a joint tenancy.

Conveyance #2: AB C sells her interest to A and B and the joint tenancy is retained but it SHRINKS. This is NOT a "transfer of ownership" because A meets the tests of "i" and "ii" above (that is, A was an original owner, A became a joint tenant when the joint tenancy was originally created, and A has remained a joint tenant since the joint tenancy began in Conveyance #1.)

Conveyance #3: A The joint tenancy is TERMINATED as B sells his interest to A. This is NOT a "transfer of ownership" because A satisfies the provisions of "i" and "ii" above.

Conveyance #4: AD A joint tenancy is CREATED consisting of A and D who are not related to each other by marriage. This is NOT a "transfer of ownership" because this is a transfer CREATING a joint tenancy and A was an original owner before the joint tenancy was created. See paragraph "a" above dealing with the CREATION of a joint tenancy.

Conveyance #5: ADE The joint tenancy is EXPANDED by selling a 1/3 interest to E who is not related to A or D by marriage. This is NOT a "transfer of ownership" because A meets the tests of "i" and "ii" above (that is, A was an original owner, A became a joint tenant when the joint tenancy was originally created and A has remained a joint tenant since the joint tenancy began in Conveyance #4).

Conveyance #6: DEF A sells to F. A and F are <u>not related by marriage</u>. The transfer is structured in such a way that the joint tenancy continues with

D,E, and F as co-owners. A "transfer of ownership" HAS occurred because D,E, and F do not meet the test of "i" above (that is, D,E, and F were not original owners).

Section 27a(7)(h) of PA 415 states that a joint owner at the time of the last "transfer of ownership" of the property is an original owner of the property. This means that in the example above, D,E, and F in Conveyance #6 become "original owners" for future transactions because Conveyance #6 is a "transfer of ownership".

The law regarding joint tenancies also states that a person is an original owner of property owned by that person's **spouse**. This means that a person's spouse is the equivalent of that person when analyzing whether a "transfer of ownership" has occurred. For example, if F in Conveyance #6 were the spouse of A in Conveyance #4, Conveyance #6 would NOT be a "transfer of ownership" because DEF would now be the equivalent of DEA and A meets the tests of "i" and "ii" above (that is, A was an original owner, A became a joint tenant when the tenancy was originally created in conveyance #4 and A has remained a joint tenant since the tenancy was originally created).

9) A Transfer For Security is NOT a "Transfer of Ownership" (MCL 211.27a(7)(i))

A TRANSFER FOR SECURITY is the conveying of an interest in property for the purpose of assuring that a debt will be paid. In the case of a mortgage to a bank, the owner of a property gives a security interest to the bank which allows the bank to foreclose the mortgage and eventually take the property if the payments are not made.

A transfer for security or an assignment or discharge of a security interest is NOT a "transfer of ownership".

Therefore, the following are NOT "transfers of ownership":

a) The beginning of a mortgage
b) The assignment (transfer) of a mortgage to another party
c) The end of a mortgage
d) The transfer of a vendor's interest in a land contract. This occurs when a seller on a land contract sells his/her interest in the land contract to someone else. (See also paragraph #2 on page 5 of this bulletin.)
e) An Equitable Mortgage - An equitable mortgage is a lien on real property which a court would recognize as a mortgage even though it may not have all the features of a typical mortgage. An example of an equitable mortgage would be when a land owner deeds land to a home builder with the expectation that it will be deeded back when the home is finished. The deed to the home builder is an equitable mortgage under these circumstances.

10) A Transfer Among Members of an Affiliated Group is NOT a "Transfer of Ownership" (MCL 211.27a(7)(j))

A transfer of real property or other ownership interests among members of an affiliated group is NOT a "transfer of ownership".

AFFILIATED GROUP means 1 or more corporations connected to a common parent corporation by stock ownership.

MCL 211.27a(7)(j) provides that, upon request by the State Tax Commission, a corporation shall furnish proof that a transfer involves members of an affiliated group. You will be informed in the future about the procedures and forms that will be used by the STC for this request for proof.

11) <u>Certain Public Trading of Stock or Other Ownership Interests</u> is NOT a "Transfer of Ownership" (MCL 211.27a(7)(k))

Normal public trading of shares of stock or other ownership interests in a corporation or other legal entity which are:

a) traded in multiple transactions

AND

b) involve unrelated individuals, institutions, or other legal entities is NOT a "transfer of ownership" even if they cumulatively represent more than 50% of the total ownership interest.

"Normal public trading" of shares of stock, as discussed above, includes the usual day to day trading of publicly-held stock.

The STC advises that "Normal public trading" of shares of stock does NOT include the following:

1) The merger of 2 or more companies.

2) The acquisition of one company by another or by an individual.

3) The Initial Public Offering (IPO) of the stock of a company. An Initial Public Offering occurs when a company's stock is first offered for sale to the public.

4) A Secondary Public Offering of the stock of a company. A secondary public offering occurs when a company whose stock is already publicly traded issues additional new stock for sale to the public.

5) The trading of the stock of a privately-held company. A privately-held company is a company whose stock is not available for sale to the public.

6) A "takeover" involving a public offer by someone to buy stock from present stockholders in order to gain control of a company.

If **any** of the events listed in items 1 to 6 above occurs and the result is that more than 50% of the ownership interest in the company is transferred, a "transfer of ownership" has occurred and the taxable value of real property owned by the company shall be uncapped in the year following the "transfer of ownership".

CAUTION: The assessor must also consider whether one of the other exemptions from a "transfer of ownership" listed in this bulletin starting on page 11 applies to the situation being considered. For example, the acquisition of a company which appears to fit #2 of the list above may be also be a tax free reorganization discussed in paragraph #13 below.

See also #8 on page 9 of this bulletin.

12) Transfers of Real Property or Other Ownership Interests Among Legal Entities Which are Commonly Controlled are NOT "Transfers of Ownership" (MCL 211.27a(7)(l))

A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships or other legal entities is NOT a "transfer of ownership" if the entities involved are COMMONLY CONTROLLED.

An entity under common control is as defined in the Michigan Revenue Administrative Bulletin 1989-48. You may obtain a copy by calling 1-800-FORM-2-ME.

MCL 211.27a(7)(l) provides that, upon request by the State Tax Commission, a corporation, partnership, limited liability company, limited liability partnership or other legal entity shall furnish proof that it is commonly controlled. You will be informed in the future about the procedures and forms that will be used by the STC for this request for proof.

13) A Transaction That Qualifies as a Tax-Free Reorganization is NOT a "Transfer of Ownership"
(MCL 211.27a(7)(m))

A direct or indirect transfer of real property or other ownership interests resulting from a transaction that qualifies as a tax-free reorganization under section 368 of the Internal Revenue Code of 1986 is NOT a "transfer of ownership".

A reorganization generally involves corporate acquisitions, divisions, etc in which stockholders of the acquired company retain an equity interest in the surviving corporation.

MCL 211.27a(7)(m) provides that, upon request by the STC, a property owner shall

furnish proof that a transfer meets the requirements of a tax-free reorganization. You will be informed in the future about the procedures and forms that will be used by the STC for this request for proof.

14) The Transfer of Personal Property is NOT a "Transfer of Ownership".

A transfer of personal property is NOT a "transfer of ownership".

Transfers of the following ARE "transfers of ownership" even though they are assessed on the personal property roll:

a) Buildings on leased land as described in Michigan Compiled Law (MCL) 211.14(6).

b) Leasehold improvements of a real property nature and structures installed and constructed on real
property by a tenant (lessee) as described in MCL 211.8(h).

c) Leasehold estates created in a sandwich lease situation as described in MCL 211.8(i).

d) Leasehold estates created by the difference between contract rent and market rent as described in
MCL 211.8(j).

C) The Reporting of Transfers

MCL 211.27a(8) states the following regarding the reporting of transfers:

> Unless notification is provided under subsection (6) or (7), the buyer, grantee, or other transferee of the property shall notify the appropriate assessing office in the local unit of government in which the property is located of the transfer of ownership of the property within 45 days of the transfer of ownership, on a form prescribed by the state tax commission that states the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description. This subsection does not apply to personal property except buildings described in section 14(6) and personal property described in section 8(h), (i), and (j).

A copy of the Property Transfer Affidavit (Form L-4260) is attached to this bulletin.

1) The above law places the burden of filing Form L-4260 upon the BUYER (grantee, or transferee) of property, NOT upon the SELLER of property.

2) Form L-4260 must be filed with the local township or city assessor where the property

is located regardless of whether a legal document has been recorded at the Register of Deeds.

IMPORTANT: The State Tax Commission requires that township and city assessors SHALL make all of the Property Transfer Affidavits (Form L-4260) filed with them available to the County Equalization Department for copying. There is also legislation being proposed to make this requirement part of the law.

3) The Property Transfer Affidavit (Form L-4260) must be filed within 45 days of the transfer.

4) Form L-4260 is set up in such a way that the transfer must be reported even if the transfer qualifies as an exemption on the bottom of the form. The State Tax Commission requires that the assessor then review each Form L-4260 submitted and make a determination whether it is a "transfer of ownership" or whether it qualifies as an exemption.

If it is a "transfer of ownership", the Taxable Value of the property shall be uncapped in the year following the "transfer of ownership". If it is not a "transfer of ownership", the Taxable Value shall not be uncapped in the following year.

5) If the assessor discovers a "transfer of ownership" which was not reported by the buyer on Form L-4260 the assessor is still required to uncap Taxable Value in the year following the "transfer of ownership" even though the form L-4260 was not filed.

The assessor may discover facts indicating that "transfers of ownership" have occurred from the following sources and others:

a) Documents filed at the Register of Deeds office.

This may include deeds, land contracts, mortgages, death certificates, and others. The filing of a death certificate could indicate that a life lease has ended or that a distribution of property to heirs has or will occur.

b) Requests for name changes on the assessment roll, tax roll, or tax bill.

c) The filing of Homestead Affidavit form (T-1056) and Homestead Exemption Update form (T-1058).

While the filing of a homestead affidavit form may indicate that a "transfer of ownership" has occurred, the assessor is

NOT authorized to refuse to accept or process Homestead Exemptions because the buyer has not yet filed the Property Transfer Affidavit (form T-4260).

The penalty for not filing the Property Transfer Affidavit is established by law (Section 27b of PA 415 of 1995) and will be discussed later in this bulletin. This penalty does NOT include the authority to refuse to process Homestead Exemptions.

The filing of the Homestead Exemption form (T-1056 or T-1058) and the Transfer Affidavit Form L-4260 are separate matters not related to each other. Nor does the filing of one of these forms provide any relief from the obligation to file the other.

d) Unrecorded sale information discovered while making appraisals for various purposes.

e) Newspaper articles regarding sales which have occurred or long term leases which have been signed or other matters related to "transfers of ownership".

When the assessor discovers that a "transfer of ownership" may have occurred for which a Transfer Affidavit Form L-4260 has not been filed, the assessor is advised to send the transferee (usually a buyer) a copy of Form L-4260 and advise the transferee of the obligation under the law to file the form and the penalties which apply.

If the form is still not filed and the assessor concludes that a "transfer of ownership" has occurred, the transferee should be informed that the assessor has made the determination that a "transfer of ownership" has occurred and that the Taxable Value will be uncapped for the year following the "transfer of ownership". The appropriate action should also be taken regarding the levy of additional taxes, interest, and penalties which will be discussed in paragraph D below.

D) Additional Taxes, Interest, and Penalties

Section 27b of PA 415 of 1994 states the following regarding additional taxes, interest, and penalties that may be levied when a buyer (grantee, or transferee) does not file the Transfer Affidavit (Form L-4260) within 45 days of the occurrence of a "transfer of ownership":

"(1) If the buyer, grantor, or transferee does not notify an assessing

officer as required by this act, all of the following may be levied:

(a) Any additional taxes that would have been levied if the transfer of ownership had been recorded as required under this act from the date of transfer.

(b) Interest and penalty from the date the tax would have been originally levied.

(c) A penalty of $5.00 per day for each separate failure beginning after the 30 days have elapsed, up to a maximum of $200.00.

(2) The treasurer shall determine any taxes, interest, and penalty due pursuant to this section, and prepare and submit a corrected tax bill.

(3) Any taxes, interest, and penalty collected pursuant to this section shall be distributed in the same manner as other delinquent taxes are distributed under this act.

(4) The governing body of a local tax collecting unit may waive, by resolution, the penalty levied under subsection (1)(c)."

IMPORTANT: The actual language of section 27b has two mistakes in it which will be corrected by proposed future legislation. Those mistakes are the following:

a. The language of section 27b(1) refers to the "buyer, **grantor**, or transferee". It should read "buyer, **grantee**, or transferee".
b. The language of section 27b(1)(c) refers to a penalty beginning "after the **30 days** have elapsed". It should read "after the **45 days** have elapsed".

This bulletin is written as if these corrections had already been made.

The discussion in this bulletin regarding additional taxes, interest, and penalties will be divided into the following 3 sections:

1) The penalty of $5.00/day (up to a maximum of $200) for failure to file the Transfer Affidavit (form L-4260) within 45 days of a "transfer of ownership".

2) "Additional taxes" that would have been levied if the

Taxable Value had been uncapped at the proper time.

3) Interest and penalty that apply on the "additional taxes".

1) The Penalty of $5.00/Day (Up to a Maximum of $200)

Section 27b of PA 415 of 1994 states that if the buyer, grantee, or transferee does not file the Transfer Affidavit (form L-4260) within 45 days of a "transfer of ownership", a penalty of $5.00 per day may be levied (up to a maximum of $200) for each day after the 45 days have elapsed.

PA 415 of 1994 specifically states that the information reported in box numbers 4,5,6,7, and 8 on the Property Transfer Affidavit (form L-4260) SHALL be provided by the buyer (grantee or transferee).

If a Property Transfer Affidavit (Form L-4260) is filed which does not contain the information requested in box numbers 4,5,6,7, and 8, the requirements of the law have NOT been met and the $5.00 per day penalty (up to a maximum of $200) may be levied.

Section 27b(4) allows the governing body of a local tax collecting unit to pass a resolution waiving the $5.00 per day penalty (up to a maximum of $200). It is the opinion of the State Tax Commission that only the $5.00 per day penalty may be waived, NOT the additional taxes, penalty and interest which will be discussed in "2" and "3" below.

If a local tax collecting unit has NOT waived the $5.00 per day (up to a maximum of $200) penalty, it is the responsibility of the local treasurer to collect the $5.00 per day penalty where applicable. The State Tax Commission recommends that the local unit assessor assist the treasurer when necessary. The STC advises that the $5.00 per day penalty is levied against buyers, grantees, or transferees and does not become a lien on property.

2) Additional Taxes

Section 27b(1)(a) of PA 415 of 1994 states that when it is discovered that a Transfer Affidavit (Form L-4260) was not timely filed for a particular property and because of this the assessor did not uncap the Taxable Value at the proper time, the local treasurer SHALL levy any additional taxes that would have been levied if the Transfer Affidavit Form L-4260 had been timely filed.

The State Tax Commission recommends that the local assessor assist the treasurer with the calculation of "additional taxes".

3) Interest and Penalty on the "Additional Taxes"

Section 27b(1)(b) of PA 415 of 1994 states that interest and penalty SHALL be levied on the "additional taxes" discussed in paragraph #2 above from the date the tax would have been originally levied if the Taxable Value had been uncapped at the proper time.

This means, for example, that if a Taxable Value should have been uncapped in 1996, for a tax levied on December 1, 1996 and this was discovered several years later, the penalty and interest on the "additional taxes" would be calculated starting February 15, 1997 because February 14 is the last day to pay taxes without incurring a penalty.

The State Tax Commission recommends that the assessor of the local tax collecting unit assist the local treasurer with the calculation of the appropriate penalty and interest.

The assessor and the treasurer shall not obstruct, interfere with or needlessly delay the process of uncapping taxable value and collecting the "additional taxes" interest, and penalty.

Section 27b(3) of PA 415 of 1994 states that any "additional taxes", interest, and penalties collected pursuant to this section shall be distributed in the same manner as other delinquent taxes are distributed.

There has been considerable discussion that the $5.00 per day penalty (up to a maximum of $200) should not be distributed to all taxing units but should be kept by the township or city which collects the penalty. While there is legislation being proposed to make this change, the present law requires that the $5.00 per day penalty be distributed to all taxing units.

The Local Audit and Finance Division of the Michigan Department of Treasury recommends that, if "additional taxes", interest, and penalties are not paid within 30 days of billing, they should be added to the delinquent tax roll(s) for the year(s) that the taxes were originally levied.

GLOSSARY OF TERMS

IMPORTANT: The definitions in this glossary are not intended as legal definitions but are provided only as
an aid to the reader for the purpose of interpreting PA 415 of 1994.

Affiliated Group - Affiliated group is defined in MCL 211.7a(7)(j) as 1 or more corporations connected by
stock ownership to a common parent corporation.

Beneficiary - The beneficiary of a trust is the person(s) who has the enjoyment and the beneficial use of the property during the life of the trust.

Capped Value Formula -Capped Value = (Prior Year's Taxable Value - Losses) X (The lowest of 1.05, or the
inflation rate, or the Value Change Multiplier) + Additions.

Common Control - Common control is as defined in Michigan Revenue Administrative Bulletin 1989-48. You
may obtain a copy by calling 1-800-FORM-2-ME.

Contingent Beneficiary -A person who is not now a beneficiary but will become a beneficiary if some specified
event occurs in the future such as the death of the present beneficiary.

Conveyance - A written instrument (such as a deed or a lease) that passes an interest in real property from
one person to another.

Corporation - An organization, incorporated under the laws of 1 of the 50 states, that acts as a separate legal entity in performing certain activities. A Michigan corporation is required to file certain documents with the Michigan Department of Commerce and is assigned a corporate identification number by the department. See MCL 450.1104 for more information about corporations.

Decedent - A person who has died (deceased)

Deed - A written legal document whose purpose is to convey an interest in real property.

Distributee - A distributee of a trust is a person(s) who receives a share of the property of a trust when the property is distributed.

Fee Simple Estate - Absolute ownership subject only to the governmental powers of taxation, eminent domain,
police power and taxation.

Grantor - In a sale involving a deed, the grantor is the seller.

Grantee In a sale involving a deed, the grantee is the buyer.

Joint Tenancy - A type of co-ownership in which the co-owners own a partial interest in an entire

property
and when one of the co-owners dies, the decedent's ownership interest goes to the other co-owners, not to the decedent's heirs. The ownership interests in a joint tenancy must be equal shares.

In order to create a joint tenancy, the "four unities" of time, title, interest, and possession must be present. 1) The unity of time means that the interests of all of the tenants start at the same time. 2) The unity of title means that all of the tenants acquire title by one and the same instrument (usually a deed). 3) The unity of interest means that all of the tenants have the same ownership interest. 4) The unity of possession means that all of the tenants have the same right of possession and use of the property.

Land Contract - A contract in which a buyer of real estate makes payments (usually monthly) to the seller
until the entire purchase price has been paid, at which time the seller gives a deed to the buyer.

Lessor - The person in a lease who owns the property (the landlord).

Lessee - The person in a lease who uses or occupies the property during the term of the lease (the tenant).

Limited Partnership - A limited partnership is different from a limited liability partnership. A limited partnership is
an ownership arrangement made up of general partners and limited partners. The general partners are the business managers and assume the liability for the debts of the partnership. The limited partners are liable only to the extent of their own capital contributions. See MCL 449.1101 for more information about limited partnerships

Limited Liability Company - A limited liability company (LLC) is type of business that has characteristics of both
a partnership and a corporation. Like a partnership, the profits and losses of a limited liability company pass through to its members. Like a corporation, the members of a limited liability company are not liable for the acts, debts, or obligations of the company. A Michigan limited liability company must file certain documents with the Michigan Department of Commerce and is assigned a limited liability company identification number by the department. See MCL 450.4102 for more information about limited liability companies.

Limited Liability Partnership - A limited liability partnership is different from a limited partnership. A limited
liability partnership is a limited liability company which happens to be a partnership. See MCL 450.4102 for more information about limited liability companies.

Mortgagor - The person in a mortgage who is borrowing money.

Mortgagee - The person in a mortgage who is lending the money (usually a bank or a mortgage company).

Partnership - An unincorporated legal entity in which 2 or more people jointly own a business. See MCL
449.1 for more information about partnerships.

Quitclaim Deed - A deed in which the seller conveys an ownership interest in real property but does not guarantee that he/she has good title. A seller who is not sure whether his/her title is good will usually use a quitclaim deed.

Redemption - The term redemption, as it applies to lands which may become "tax reverted lands", refers to
the right of an owner to buy back (redeem) lands from a lien buyer by paying the applicable back taxes and other fees.

Sandwich Lease - The following is an example of a sandwich lease: A lease in which the lessee (user of the
property) from an original lease subleases the property to a second lessee who becomes the new user of the property.

Settlor - The settlor of a trust is the person(s) who creates the trust. The term "trustor" has the same meaning as settlor.

SEV - State Equalized Value - The state equalized value is the assessed value after equalization at the county and state levels. The SEV of a property approximates 50% of true cash value.

Sheriff's Deed - A deed given by the county sheriff to a person who buys property at the public sale which is
a part of foreclosure by advertisement. The deed becomes operative only if the property is not redeemed.

Sole Proprietorship - A sole (or single) proprietorship is an unincorporated business owned by an individual who
is held solely responsible for the debts of the business.

Spouse - A spouse is a husband or wife.

Sublessor - A sublessor is a lessee (the user of leased property) who leases the property to another party. The sublessor is neither the owner of the property nor the present user of the property but is a former user of the property. Example: A, the owner of rental property, leases to B who operates a store at the property. B decides to go out of business but subleases the

property to C who now becomes the user of the property. In this example, B is a sublessor.

Taxable Value Formula Taxable Value is the lesser of the State Equalized Value (SEV) or the Capped Value for each individual parcel of property. In the year following a "transfer of ownership", the Taxable Value of an individual parcel shall be the same as the SEV of the parcel for the year following the "transfer of ownership".

Tax Reverted Lands - Property which the State of Michigan acquires title to due to the nonpayment of property taxes.

Tenancy By Entireties - A form of joint tenancy where the co-owners are husband and wife and when the husband or wife dies, the property goes to the surviving spouse. In a tenancy by the entireties, neither husband nor wife can sell the property unless the other one joins in.

Tenancy In Common - A type of co-ownership in which the co-owners own a partial interest in an entire property and when one of the co-owners dies, the ownership interest of the person who has died goes into his/her heirs, not automatically to the other co-owners. The ownership interests in a tenancy in common do not have to be equal shares.

Transfer for Security -A transfer for security is the conveying of an interest in property for the purpose of assuring that a debt will be paid. In the case of a mortgage to a bank, the owner of a property gives a security interest to the bank which allows the bank to foreclose the mortgage and eventually take the property if the payments are not made**.**

Transferor - The person or legal entity which conveys the title to or a present interest in a property. The transferor is frequently the seller of property.

Transferee - The person or legal entity to whom the title or present interest in a property is conveyed. The transferee is frequently the buyer of property.

True Cash Value - True Cash Value is defined in MCL 211.27(1). The courts have held that True Cash Value is the same as Market Value.

Trustor - The trustor of a trust is the person who creates the trust. Trustor means the same as settlor.

Trustee - The trustee of a trust is the person or agent who is appointed to administer the trust. Banks are frequently trustees.

Value Change Multiplier - The Value Change Multiplier is calculated for each parcel of property by

dividing
(Current SEV - Additions) by (Last Year's SEV - Losses).

Vendor - The seller of property.

Vendee - The buyer of property.

Warranty Deed - A deed in which the grantor (seller) guarantees that the title to the property is free and clear
of all encumbrances except those specifically set forth in the deed.

BULLETIN NO. 8 OF 1996

UNCAPPING TAXABLE VALUE

MAY 6, 1996

TO: Assessors

Equalization Directors

Treasurers

FROM: State Tax Commission(STC)

RE: **PROCEDURES TO USE WHEN A 1995 "TRANSFER OF OWNERSHIP" IS DISCOVERED AFTER THE ADJOURNMENT OF THE 1996 MARCH BOARD OF REVIEW**

This bulletin will establish procedures to be used by the assessor when the assessor discovers after the adjournment of the 1996 March Board of Review that a "Transfer of Ownership" has occurred in 1995, and that the 1996 Taxable Value has not yet been "uncapped". "Uncapping Taxable Value is the process which makes the Taxable Value of a parcel of property the same as the State Equalized Value in the year following a "Transfer of Ownership". Also, see a related example situation described in paragraph B of this bulletin where a Taxable Value is incorrectly "uncapped" due to a clerical error.

IMPORTANT NOTE: This bulletin is being written as it applies specifically to the "uncapping" of the 1996 Taxable Value. It will also apply to the same situations in future years.

This failure to "uncap Taxable Value" in a timely manner can be caused either by a failure on the part of the transferee (buyer) of the property to file the Property Transfer Affidavit (Form L-4260) in a timely manner or by a clerical error on the part of the assessor or a mutual mistake of fact. Each of these two situations will be addressed separately in this bulletin.

A) Problem: A Taxable Value is Not "Uncapped" Due to a Failure on the Part of the Transferee (Buyer) to Timely File the Property Transfer Affidavit (Form L-4260).

Corrective Procedures: The following are the procedures established by the State Tax Commission which shall be used by assessors and treasurers when it is discovered that a Taxable Value has not been "uncapped" in a timely manner DUE TO A FAILURE ON THE PART OF THE TRANSFEREE (BUYER) TO TIMELY FILE THE PROPERTY TRANSFER AFFIDAVIT (FORM L-4260).

1) If the assessor is uncertain whether a particular transfer is a "Transfer of Ownership", the assessor shall send a copy of the Property Transfer Affidavit (Form L-4260) to the Transferee (Buyer). (Please see STC Bulletin No. 16 of 1995 for more information regarding "Transfers of Ownership".) The assessor should advise the transferee of the obligation under the law to file

the form and the penalties which apply. If the assessor is certain that a particular transfer is a "Transfer of Ownership", steps 1, 2 and 3 of this procedure may be skipped.

2) The assessor shall allow at least 2 weeks for the transferee to return the form L-4260.

3) Whether or not the form L-4260 is returned, the assessor must decide whether a "Transfer of Ownership" has occurred.

4) If the assessor believes that a "Transfer of Ownership" has occurred in 1995 and the 1996 Taxable Value has not been "uncapped", the assessor shall immediately "uncap" the 1996 Taxable Value of the property and enter the new Taxable Value on the 1996 assessment roll. The 1996 Tax Roll shall also be corrected. The assessor shall also enter on the assessment roll the date of the last "transfer of ownership" as required by Public Act 415 of 1994 and as discussed on page 10 of STC Bulletin No. 18 of 1995.

5) The assessor shall immediately notify the property owner in writing that the determination has been made that a "transfer of ownership" has occurred and that the Taxable Value on his/her property has been "uncapped". The assessor shall also advise the owner of his/her right to appeal to the Michigan Tax Tribunal by letter within 35 days of the notice.

6) Within 30 days of the "uncapping" of Taxable Value, the assessor shall file an affidavit relative to the new Taxable Value and the additional taxes to be levied with the proper officials who are involved with the assessment figures, rate of taxation, or mathematical calculations and all affected official records shall be corrected. A sample affidavit is included at the end of this bulletin along with an example of how the middle part of the affidavit is to be filled out for a homestead property which requires an immediate billing for additional taxes. A separate affidavit must be filled out for each property and for each year affected. Therefore, if the Taxable Value for a property is changed for 2 years, 2 affidavits must be filed.

7) If the "uncapping" occurs after a 1996 tax bill has already been sent out, the assessor shall certify to the treasurer any additional taxes due because of the "uncapping". This is done on the affidavit form discussed in step 6 above. This certification is made to the treasurer of the local tax collecting unit if the local unit has possession of the tax roll or to the county treasurer if the county has possession of the tax roll.

If the "uncapping" occurs before the 1996 tax bill has been sent, the 1996 tax roll shall be orrected so that when the 1996 bill is sent, it will be based on the corrected Taxable Value.

8) The appropriate treasurer shall immediately prepare and submit a corrected tax bill including any interest and penalty which may be due. The interest and penalty originate from the date the tax would have been originally levied if the Taxable Value had been uncapped at the proper time.

For example, if a Taxable Value should have been uncapped in 1996, for a tax levied on ecember 1, 1996 and this fact was discovered several years later, the penalty and interest on the "additional taxes" would be calculated starting on

February 15, 1997 because February 14 is the last day to pay taxes without incurring a penalty.

Please see STC Bulletin No. 16 of 1995, starting on page 22, for further clarification of interest and penalties.

The assessor and the treasurer shall not obstruct, interfere with, or needlessly delay the process of uncapping taxable value and collecting the "additional taxes" interest, and penalty.

The Local Audit and Finance Division of the Michigan Department of Treasury recommends that, if "additional taxes", interest, and penalties are not paid within 30 days of billing, they should be added to the delinquent tax roll(s) for the year(s) that the taxes were originally levied, (assuming there already is a delinquent tax roll for the year in question).

9) Section 27b of PA 415 of 1994 states that if the buyer, grantee, or transferee does not file the Transfer Affidavit (form L-4260) within 45 days of a "transfer of ownership", a penalty of $5.00 per day may be levied (up to a maximum of $200) for each day after the 45 days have elapsed. Please see STC Bulletin No. 16 of 1995, starting on page 23, for more information about the $5.00/day penalty.

The collection of the $5.00/day penalty (up to a maximum of $200) may be delayed until the next tax bill. The STC recommends that the $5.00/day penalty shall NOT become a lien on property.

B) Problem: Taxable Value is Not "Uncapped" Due to a Clerical Error by the Assessor or a Mutual Mistake of Fact

Corrective Procedure: The procedures to be followed when a 1995 "Transfer of Ownership" has occurred and the 1996 Taxable Value was not "uncapped" DUE TO A CLERICAL ERROR BY THE ASSESSOR OR A MUTUAL MISTAKE OF FACT are substantially different from the procedures outlined in paragraph A of this bulletin.

An example of a clerical error would be the situation where a Property Transfer Affidavit (Form L-4260) was received by the assessor prior to the adjournment of the March Board of Review but, due to a clerical error, the Taxable Value was not "uncapped" even though there was a "Transfer of Ownership".

Another example of a possible situation involving a clerical error would be where a deed is recorded in January of 1995 and the assessor "uncaps" Taxable Value in 1996. Later the assessor discovers that the "Transfer of Ownership" actually occurred in December of 1994 even though the deed was recorded in 1995. Because the transfer actually occurred in 1994, the 1996 Taxable Value should NOT have been "uncapped" because "Transfers of Ownership" were not authorized to begin until January 1, 1995.

Situations involving clerical errors related to the "uncapping" of Taxable Value should be corrected by the July or December Board of Review using the same procedures that are used to

correct other clerical errors. This includes notifying the property owner of the action being recommended by the assessor to the July or December Board of Review so that the owner has the opportunity to appear at the Board of Review session and advising the taxpayer of the right to appeal to the Michigan Tax Tribunal within 30 days of the Board of Review action.

For future years, when there is a missed "uncapping" of Taxable Value due to a clerical error or a mutual mistake of fact, it will be necessary to recalculate Taxable Value for each year following the "Transfer of Ownership" (from the year of the error to the current year). Although it may be necessary to recalculate Taxable Value for more than 2 years, a correction by the July or December Board of Review due to a clerical error by the assessor or a mutual mistake of fact can only be made for the current year and one previous year.

For example, in the year 2000, the assessor discovers a missed "uncapping" of Taxable Value on the 1996 assessment roll due to a clerical error involving a 1995 "Transfer of Ownership" which was missed. Although the recalculation of Taxable Value will determine what the Taxable Value should have been for the years 1996 through the year 2000, the July or December Board of Review is limited to correcting the Taxable Values for the years 1999 and 2000.

It is important to note that since "Transfers of Ownership" which uncap Taxable Values first occurred in 1995, the recalculation of Taxable Values will not be necessary for years prior to 1996.

Michigan Department of Treasury
L-4054 (4-96)

ASSESSOR AFFIDAVIT REGARDING "UNCAPPING" OF TAXABLE VALUE

County

The changes in Taxable Value recorded on this affidavit are related to the "Uncapping" of Taxable Value due to a failure on the part of the transferee (buyer) to timely file the Property Transfer Affidavit (form L-4260).

In accordance with the authority identified in Section 27b of the General Property Tax Act (P.A. 206 of 1893, as amended), a correction has been made in the Taxable Value of the following described Real/Personal property:

_____ located in the City of/Township of/Village of _____. This is a correction to the
(Parcel Identification Number)

_____ Assessment/Tax Roll.
(Tax Year)

Correction of Taxable Value Due to Transfer of Ownership

School Code	HOMESTEAD AND QUALIFIED AGRICULTURAL			NON-HOMESTEAD AND NON-QUALIFIED AGRICULTURAL		
	Before Correction	Amount of Increase/Decrease	Corrected	Before Correction	Amount of Increase/Decrease	Corrected
State Equalized Valuation	23,000					
Taxable Valuation	20,000	3,000	23,000			

Correction of Taxing Unit Levy

Taxing Unit	HOMESTEAD AND QUALIFIED AGRICULTURAL			NON-HOMESTEAD AND NON-QUALIFIED AGRICULTURAL		
	Before Correction	Amount of Increase/Decrease	Corrected	Before Correction	Amount of Increase/Decrease	Corrected
County 4.5 mills	90.00	13.50	103.50			
Intermediate School District 2 mills	40.00	6.00	46.00			
Community College 1 mill	20.00	3.00	23.00			
State Education Tax 6 mills	120.00	18.00	138.00			
Local School Operating						
Local School Supplemental (<=18) 5 mills	100.00	15.00	115.00			
Local School Supplemental (>=18)						
Local School Enhancement						
Local School Debt 1 mill	20.00	3.00	23.00			
City/Township/Village 30 mills	600.00	90.00	690.00			
Other						
Total	990.00	148.50	1,138.50			

NOTE: The levy section of this affidavit does not include collections fees, penalties, and interest. These must be added to the bill, when applicable, by the treasurer.

I, _____, being the certified assessor for the City/Twp of _____, do hereby swear or affirm that the above information is true, to the best of my knowledge.

Signature of Certified Assessor	Date	Certification No.

Copies to: State Tax Commission, Equalization Department, County Treasurer, and the Treasurers of all other affected Taxing Units.

lichigan Department of Treasury
-4054 (4-96)

ASSESSOR AFFIDAVIT REGARDING "UNCAPPING" OF TAXABLE VALUE

County

he changes in Taxable Value recorded on this affidavit are related to the "Uncapping" of Taxable Value due o a failure on the part of the transferee (buyer) to timely file the Property Transfer Affidavit (form L-4260).

n accordance with the authority identified in Section 27b of the General Property Tax Act (P.A. 206 of 1893, as amended), a correction as been made in the Taxable Value of the following described Real/Personal property:

_____ located in the City of/Township of/Village of _____. This is a correction to the
(Parcel Identification Number)

_____ Assessment/Tax Roll.
(Tax Year)

Correction of Taxable Value Due to Transfer of Ownership

School Code	HOMESTEAD AND QUALIFIED AGRICULTURAL			NON-HOMESTEAD AND NON-QUALIFIED AGRICULTURAL		
	Before Correction	Amount of Increase/Decrease	Corrected	Before Correction	Amount of Increase/Decrease	Corrected
State Equalized Valuation						
Taxable Valuation						

Correction of Taxing Unit Levy

Taxing Unit	HOMESTEAD AND QUALIFIED AGRICULTURAL			NON-HOMESTEAD AND NON-QUALIFIED AGRICULTURAL		
	Before Correction	Amount of Increase/Decrease	Corrected	Before Correction	Amount of Increase/Decrease	Corrected
County						
Intermediate School District						
Community College						
State Education Tax						
Local School Operating						
Local School Supplemental (<=18)						
Local School Supplemental (>=18)						
Local School Enhancement						
Local School Debt						
City/Township/Village						
Other						
Total						

NOTE: The levy section of this affidavit does not include collections fees, penalties, and interest. These must be added to the bill, when applicable, by the treasurer.

I, _____, being the certified assessor for the City/Twp of _____, do hereby swear or affirm that the above information is true, to the best of my knowledge.

Signature of Certified Assessor	Date	Certification No.

State Tax Commission, Equalization Department, County Treasurer, and the Treasurers of all other affected Taxing Units.

State Tax Commission Bulletin No. 3 of 1997

January 31,1997

P.A. 476 Of 1996 (HB 5359)

TO: Assessors, Equalization Directors

FROM: State Tax Commission (STC)

RE: IMPLEMENTATION OF PUBLIC ACT 476 OF 1996 (HB 5359)

Attached is a copy of Public Act (PA) 476 of 1996 that was signed by Governor Engler and became effective on December 26, 1996. Please note that the new language that was added to the General Property Tax Act (GPTA) by this Public Act has been underlined on the enclosed copy.

Since the first tax day after the enactment of the bill is December 31, 1996, the changes to the tax law under the provisions of this Act will be first implemented for 1997 property tax administration. Fortunately some of the procedural changes authorized by the ACT were anticipated and already incorporated in Property Tax Division/State Tax Commission policy as explained by prior State Tax Commission bulletins.

This bulletin will not address every change made by PA 476 of 1996. Some of the changes will be addressed by future STC bulletins. Some of the changes are of a purely technical nature and do not require further explanation.

The headings in this bulletin will identify the sections of the statute being discussed and will be in the same order as they appear in the statute.

1) Section 7k - Exemption for Facilities for Which an Industrial Facilities Exemption Certificate Has Been Issued (Page 1 in the copy of PA 476 of 1996)

PA 476 of 1996 amends section 7k of the GPTA to clarify that not only IFT New facilities are exempt from taxation under the General Property Tax Act (GPTA) but also IFT Rehabilitated facilities.

2) Section 7cc and Section 7dd - Homestead Exemption (Pages 1-6 in the copy of PA 476 of 1996)

There are several significant changes made to sections 7cc and 7dd of the GPTA which deal with the administration of the HOMESTEAD exemption from the 18 mills of local school operating tax. One of those changes deletes the language from the statute that would have required all property owners to re-file for the homestead exemption in 1999 and every four years thereafter. Because of this change, all homestead exemptions will NOT expire in 1998 and new claims for exemption will NOT be required to be filed by all property owners in 1999.

Enclosed with this bulletin is an informational paper prepared by Mr. Floyd Schmitzer of the Michigan Department of Treasury regarding these new provisions of the act which address the homestead exemption.

3) Section 7ee - Qualified Agricultural Property Exemptions (Page 6 in the copy of PA 476 of 1996)

There are two main changes made by PA 476 of 1996 to section 7ee which deals with the administration of the QUALIFIED AGRICULTURAL PROPERTY exemption from the 18 mills of local school operating tax.

A) All Qualified Agricultural Property Exemptions Do NOT Expire on 12-31-98

Prior to PA 476 of 1996, there was language in subsection 4 of section 7ee of the law which provided that all Qualified Agricultural Property exemptions would expire on December 31, 1998 and that all owners of Qualified Agricultural Property which was not classified agricultural would have to file new claims forms in order to receive the exemption in 1999 and every four years thereafter.

Because of the change in the law contained in PA 476 of 1996, all Qualified Agricultural Property exemptions will NOT expire on December 31, 1998 and all owners of property not classified agricultural will NOT be required to file new claims for exemption in 1999 and every four years thereafter.

The law, as amended by PA 476 of 1996, now states that Qualified Agricultural Property exemptions remain in effect until December 31 of the year in which the property is no longer Qualified Agricultural Property as defined in the statute.

B) Appeal to the 1997 July or December Board of Review Regarding the 1994 Qualified Agricultural Property Exemption

New language has been added to Section 7ee that provides for a one-time appeal at the 1997 July or December Board of Review to obtain the Qualified Agricultural Property exemption for the year **1994,** provided certain conditions are met.

This new language appears at the top of page 7 of your copy of PA 476 of 1996 as subsections 9,10, and 11.

The STC will issue a bulletin in the near future which will deal entirely with the authority of the July and December Boards of Review. Part of this new bulletin will cover in detail the new provisions contained in subsections 9,10, and 11 referred to above.

4) Section 24c - Notice of Assessment Increase (Page 8 in the copy of PA 476 of 1996)

Certain language has been deleted from section 24c that removes the LEGAL requirement that the

assessed value must appear on the Notice of Assessment Increase (STC Form L-4400).

While this change removes the LEGAL requirement that the assessed value must appear on the Notice of Assessment Increase, the State Tax Commission will continue to include the assessed value on its "model assessment notice form" (Form L-4400) which section 24c requires the State Tax Commission to prepare. The reason for continuing to place the assessed value on Form L-4400 is the fact that the assessed value is one of the items that an owner can appeal to the March Board of Review.

PA 476 of 1996 does NOT require that any changes be made to the 1997 Notice of Assessment, Taxable Valuation and Proper Classification (Form L-4400) included with STC Bulletin No. 14 of 1996.

5) Section 27a(2)(a) - The Value Change Multiplier (VCM) (Page 8 **in the copy of PA 476 of 1996)**

PA 476 of 1996 has deleted the language from section 27a(2)(a) that required the use of the Value Change Multiplier (VCM) when calculating Capped Value. Starting in 1997, the Value Change Multiplier (VCM) SHALL NOT be used in the formula for calculating Capped Value.

For further information about the Capped Value formula for use in 1997, please see STC Bulletin No. 14 of 1996.

One result of the removal of the VCM from the Capped Value Formula is that, in certain circumstances, the Taxable Value MAY increase in a year in which the State Equalized Value (SEV) remains the same (or even decreases).

EXAMPLE: The final Taxable Value of the property in 1996 is $100,000 and its final 1996 SEV is $105,000. The property has no additions or losses. If the final SEV correctly stays the same in 1997, the Taxable Value must increase by the rate of inflation (1.028) up to $102,800 even though the 1997 SEV is still $105,000.

In the example above, the Assessor and the Board of Review ARE REQUIRED BY LAW to increase the 1997 Taxable Value by the rate of inflation. In this example, it would be illegal for the assessor or the Board of Review to set the Taxable Value at any figure other than $102,800.

1997 SUPPLEMENT TO STC BULLETIN NO. 16 OF 1995

Note: While the materials which follow are part of item #6 of this bulletin, they are labeled as a **Supplement to STC Bulletin No. 16 of 1995** with the thought that they will also be copied and added to STC Bulletin No. 16 of 1995 in order to keep all information regarding transfers of ownership together in one place.

6) Sections 27a(6) and 27a(7) - Transfers of Ownership (Pages 9 and 10 in the copy of PA 476 of 1996)

PA 476 of 1996 makes several significant changes to sections 27a(6) and 27a(7) that affect the determination of whether a particular conveyance is a "transfer of ownership." (A "transfer of ownership" in the current year causes an uncapping of Taxable Value in the following year.)

STC Bulletin No. 16 of 1995 addressed in detail the provisions of the law regarding "transfers of ownership" as they existed prior to PA 476 of 1996.

The following paragraphs in section 6 of this bulletin will address each change made by PA 476 of 1996 that affects the determination of whether a particular conveyance is a "transfer of ownership".

Since PA 476 takes effect on December 26, 1996, all of the amendments contained in PA 476 of 1996 shall be implemented by the assessor when determining whether a specific 1996 conveyance is a transfer of ownership and when calculating the proper 1997 Taxable Value to use on the 1997 Assessment and Tax Rolls.

A) Section 27a(6)(c) - Conveyance to a Trust (Page 9 of the copy of PA 476 of 1996)

Page 6 of STC Bulletin No. 16 of 1995 discusses conveyances to a trust. STC Bulletin No. 16 of 1995 states that a conveyance to a trust is NOT a transfer of ownership if the sole present beneficiary (or beneficiaries) of the trust is also the settlor of the trust (or the settlor's spouse or both).

PA 476 of 1996 adds an additional requirement that must be met in order for a conveyance to a trust to NOT BE a transfer of ownership. That additional requirement is that the settlor (or the settlor's spouse or both) is the person who conveys the property to the trust.

EXAMPLE A: If person A conveys property to a trust and person A is also the sole present beneficiary of the trust, a transfer of ownership has NOT occurred.

EXAMPLE B: If person B conveys property to the trust in Example A where person A is the settlor, a transfer of ownership HAS occurred because person B conveyed the property to the trust and person B is not the settlor of the trust; person A is the settlor.

B) Section 27a(6)(g) - Conveyance by Lease (Page 9 of the copy of PA 476 of 1996)

Page 8 of STC Bulletin No. 16 of 1995 discusses conveyances by lease, stating that when there is a lease on a PART of a total property and that lease qualifies to be a

transfer of ownership, the Taxable Value of the ENTIRE property is uncapped in the year following the transfer of ownership, even though only a portion of the property is leased. **THIS IS NO LONGER THE CORRECT PROCEDURE.**

PA 476 of 1996 amends the section of law which addresses transfers by lease by stating that, in the example above, only that part of the property which is subject to the lease is uncapped in the year following the transfer of ownership, NOT the entire property.

EXAMPLE: A shopping center consisting of 40 tenant spaces is described and assessed as one property on the assessment roll. During 1996, the owner enters into a long-term lease (more than 35 years in length) on one of the tenant spaces. This type of lease shall be determined by the assessor to be a "transfer of ownership".

In this example, PA 476 of 1996 provides that the assessor shall uncap the Taxable Value of only that portion of the property that is subject to the long term lease. Beginning in 1997 the assessor shall NOT uncap the total Taxable Value of the entire shopping center.

C) Section 27a(6)(j) - Cooperative Housing Corporation (Page 9 of the copy of PA 476 of 1996)

A cooperative housing corporation is a type of ownership in which a corporation holds titles to an entire housing complex and individual stockholders in the corporation have the right to occupy an individual dwelling in the housing complex.

PA 476 of 1996 **ADDS** subsection j to section 27a(6) of the General Property Tax Act (GPTA).

Subjection j states that a conveyance of an ownership interest in a cooperative housing corporation is a "transfer of ownership", but only that portion which is actually conveyed.

EXAMPLE: If the total ownership of a cooperative housing corporation consists of 100 shares of stock and 10 shares are conveyed from their present owners to new owners during 1996, then 10% of the Taxable Value of the housing complex owned by the cooperative housing corporation is uncapped in 1997 assuming the value of each share of stock is the same.

THIS PROCEDURE, AUTHORIZED BY PA 476 OF 1996, IS A CHANGE FROM HOW THE "TRANSFER OF OWNERSHIP" OF A COOPERATIVE HOUSING CORPORATION WAS ADMINISTERED PRIOR TO PA 476 OF 1996 AND WILL BE FIRST EFFECTIVE FOR 1997.

Procedure That No Longer Applies to Cooperative Housing Corporations: Prior to PA 476 of 1996, subsection h of section 27a(6) was the section of the statute that

applied to the conveyance of an ownership interest in a cooperative housing corporation. In the past subsection h, **which no longer applies to cooperative housing corporations,** required the assessor to uncap the total Taxable Value of the housing complex owned by the Cooperative Housing Corporation in the year after more than 50% of the ownership of the corporation had been conveyed. See paragraph 8 on page 9 of STC Bulletin No. 16 of 1995 for more information about this procedure. While this procedure no longer applies to cooperative housing corporations, it still applies to other types of corporations which own property.

D) Section 27a(7)(c) - Life Lease (Page 9 of the copy of PA 476 of 1996)

The new language contained in section 27a (7)(c) of PA 476 of 1996 does NOT change the procedure already in place for determining whether a conveyance involving a life lease is a "transfer of ownership".

This new language merely adds statutory support to a procedure which was already in place and is described in paragraph 3 on page 12 of STC Bulletin No. 16 of 1995.

E) Section 27a(7)(f) - Conveyance to a Trust (Page 9 of the copy of PA 476 of 1996)

The language contained in this section of the statute merely adds support to the procedure already discussed in paragraph "A" on page 5 of this bulletin. Since the meaning of these two subsections is the same, it is not necessary to repeat it here.

F) Section 27a(7)(j) - Transfer Among Members of an Affiliated Group (Page 10 of the copy of PA 476 of 1996)

PA 476 of 1996 ADDS language to subsection (7)(j) which clarifies that a corporation which has been asked by the State Tax Commission to furnish proof that a transfer meets the requirements of being a Transfer Among Members of an Affiliated Group must do so <u>within 45 days</u> of the request.

PA 476 of 1996 also clarifies that the fine for failure to comply with the request by the STC is <u>$200.</u>

G) Section 27a(7)(1) - Transfer **Among Entities that are Commonly Controlled (Page 10 of the copy of PA 476 of 1996)**

PA 476 OF 1996 ADDS language to subsection (7)o) which clarifies that a corporation which has been asked by the State Tax Commission to furnish proof that a transfer meets the requirements of being a Transfer Among Entities That Are Commonly Controlled must do so within <u>45 days</u> of the request.

PA 476 of 1996 also clarifies that the fine for failure to comply with the request by the STC is $200.

H) Section 27a(7)(m) - Transfer Resulting From a Transaction Qualifying as a Tax Free Reorganization (Page 10 of PA 476 of 1996)

PA 476 OF 1996 ADDS language to subsection (7)(m) which clarifies that a corporation which has been asked by the State Tax Commission to furnish proof that a transfer meets the requirements of being a Transfer Resulting from a Transaction Qualifying as a Tax Free Reorganization must do so within 45 days of the request.

PA 476 of 1996 also clarifies that the fine for failure to comply with the request by the STC is $200.

I) Section 27a(8) - Records Made Available to Equalization Departments

Section 27a(8) requires that the Register of Deeds notify the assessing officer not less than once each month of any recorded transactions involving the ownership of property.

PA 476 of 1996 ADDS the requirement that the Register of Deeds shall also make any recorded deeds or other title documents available to the Equalization Department.

PA 476 of 1996 also states that Property Transfer Affidavits filed in the Assessor's office shall be made available to the Equalization Department. This new language adds statutory authority to the procedure already required by the State Tax Commission on page 21 of STC Bulletin No. 16 of 1995.

END OF SUPPLEMENT TO STC BULLETIN NO. 16 OF 1995

1997 SUPPLEMENT TO STC BULLETIN NO. 8 OF 1996

Note: While the materials which follow are part of item #7 of this bulletin, they are labeled as a **Supplement to STC Bulletin No. 8 of 1996** with the thought that they will also be copied and added to STC Bulletin No. 8 of 1996 in order to keep all information regarding the topic of that bulletin together in one place.

7) Section 27b and 27c - Immediate Uncapping of Taxable Value by the Assessor When a Transferee (Buyer) Has Not Timely Filed the Property Transfer Affidavit and Consequently the Assessor Did Not Timely Uncap the Taxable Value in the Year Following the Transfer of Ownership (Pages 10 and 11 of the copy of PA 476 of 1996)

STC Bulletin No. 8 of 1996 describes the procedures used by assessors when they become aware of a transfer of ownership after the time when the assessor could timely uncap Taxable Value in the year following the transfer of ownership.

Most of the new language in **Section 27b of PA 476 of 1996** does not require new procedures but merely adds statutory authority to procedures which are already in place and are described in STC Bulletin No. 8 of 1996.

The following are the CHANGES caused by the new language contained in sections 27b and 27c of PA 476 of 1996.

A) Prior to PA 476 of 1996, the provisions of STC Bulletin No. 8 of 1996 regarding the immediate uncapping of Taxable Value by the assessor when a transferee did not timely file a Property Transfer Affidavit applied to ALL transfers of ownership. Because of the changes contained in PA 476 of 1996, the above-referenced provisions of STC Bulletin No. 8 of 1996 NOW APPLY ONLY TO THE TRANSFEREE (BUYER) IN THE MOST RECENT TRANSFER OF OWNERSHIP.

The provisions of STC Bulletin No. 8 of 1996 do NOT apply to the transferee (buyer) in A PREVIOUS TRANSFER OF OWNERSHIP.

The intent of this change is that a new owner of property should not have to pay extra taxes for past years because of the failure of a previous owner to timely file a Property Transfer Affidavit (L-4260).

In other words, if a transfer of ownership occurred on a property in 1995 for which a Property Transfer Affidavit was not filed and if a later transfer of ownership on the same property occurred in 1996, the provisions of STC Bulletin No. 8 of 1996 would only apply to the second transfer of ownership.

The first transfer of ownership would be covered by the NEW provisions contained in Section 27c of PA 476 of 1996 that apply to a transferee (buyer) in A PREVIOUS TRANSFER OF OWNERSHIP. These new provisions will be discussed in paragraph E below.

B) Certification by Assessor

Page 2 of STC Bulletin No. 8 of 1996 already discusses the requirement that the assessor shall certify to the treasurer any additional taxes due when the assessor immediately uncaps taxable value for a "transfer of ownership" that has not been reported by the transferee.

PA 476 of 1996 ADDS the additional requirement that the assessor shall also certify to the appropriate treasurer the amount of the $5.00/day penalty due because of the failure of the transferee (buyer) to timely fill the Property Transfer Affidavit (Form L-4260).

C) Distribution of the $5.00/Day Penalty

PA 476 of 1996 provides that the $5.00/day penalty for failure to timely file the Property Transfer Affidavit (Form L-4260) shall be distributed to the LOCAL TAX COLLECTING UNIT. This is a CHANGE from the procedures outlined on page 25 of STC Bulletin No. 16 of 1995.

Prior to PA 476 of 1996, the $5.00/day penalty was required to be distributed to all TAXING units, NOT only to the LOCAL TAX COLLECTING unit. Because of PA 476 of 1996, the $5.00/day penalty shall now be distributed to the LOCAL TAX COLLECTING unit. The LOCAL TAX COLLECTING unit is the township or city that collects the tax.

D) Appeal to the Michigan Tax Tribunal (MTT)

STC Bulletin No. 8 of 1996 provided that an owner could appeal (to the MTT) the assessor's decision that a "transfer of ownership" had occurred and that the Taxable Value should be immediately uncapped.

PA 476 of 1996 specifies that the appeal to the MTT is **limited to the issues of whether a transfer of ownership occurred and correcting arithmetic errors. A dispute regarding the valuation of the property is NOT a basis for appeal under this subsection.**

E) Section 27c - NEW Procedures that Apply When a Transfer of Ownership (for which a Property Transfer Affidavit was not timely filed) is Discovered by the Assessor (After the Taxable Value Should Haven Been Uncapped) and this Transfer of Ownership IS NOT THE MOST RECENT TRANSFER OF OWNERSHIP.

PA 476 of 1996 ADDS NEW procedures which apply in the following situation:

- A Transfer of Ownership occurs on a property.

- The transferee (Buyer) does not timely file the Property Transfer Affidavit (Form L-4260).
- Because of this the assessor does not timely uncap Taxable Value. Another Transfer of Ownership of this same property occurs later on.
- The assessor then discovers that the first Transfer of Ownership occurred.

The NEW procedures provided by PA 476 of 1996 state that a taxing unit may SUE the transferee (buyer) involved in the first transfer of ownership described in the situation above. The present owner of the property is NOT sued but a previous owner is sued. This does NOT result in a lien being placed on the property.

The NEW section 27c provides that a taxing unit may sue for all of the following:

(i) Any additional taxes that would have been levied if the transfer of ownership had been recorded as required under this act from the date of transfer.

(ii) Interest and penalty from the date the tax would have been originally levied.

(iii) A penalty of $5.00 per day for each separate failure beginning after the 45 days elapsed, up to a maximum of $200.00.

END OF SUPPLEMENT TO STC BULLETIN NO. 8 OF 1996

8) Section 27d - Report of Taxable Value by the Equalization Director (Page 11 of the copy of PA 476 of 1996)

Section 27d is a new section of law that **statutorily** requires a procedure already in place. That procedure is the filing by the Equalization Director of STC Form L-4046 by the fourth Monday in June.

STC Form L-4046 is a Statement of Taxable Valuations that has already been filed for the past two years by Equalization Directors.

9) Section 30c - Prior Year's Assessment Set by Board of Review or Michigan Tax Tribunal Used as BASIS for the Following Year's Assessment When the Assessment Was Reduced (Page 11 of the copy of PA 476 of 1996)

PA 476 of 1996 adds language to section 30c to clarify the meaning of section 30c when it involves a property on which there was a transfer of ownership in the prior year.

Some assessors have thought that in the year following a transfer of ownership the assessor could disregard the provisions of section 30c when setting the assessed value for that property for the following year. The new language of section 30c clarifies that the provisions of section 30c shall be considered when setting the assessed value in the year following a transfer of ownership.

For a further explanation of the proper interpretation of the provisions of section 30c, please see the explanation contained in STC Bulletin No. 5 of 1997.

1997 SUPPLEMENT TO STC BULLETIN NO. 9 OF 1995

Note: While the materials which follow are part of item #10 of this bulletin, they are labeled as a **Supplement to STC Bulletin No. 9 of 1995** with the thought that they will also be copied and added to STC Bulletin No. 9 of 1995 in order to keep all information regarding property classifications together in one place.

10) Section 34c - Classification of Property on the Assessment Roll (Page 11 of the copy of PA 476 of 1996)

PA 476 of 1996 makes 2 major changes to section 34c that addresses the classification of property on the assessment roll.

A) New Date **for Appeal of Classification to the State Tax Commission** PA 476 of 1996 provides a new appeal deadline date for the appeal of a property classification to the State Tax Commission.

If a property owner appeals a classification to the March Board of Review, the owner can appeal the decision of the March Board of Review to the State Tax Commission **not later than June 30 of that tax year.**

PRIOR TO THIS CHANGE IN STATUTE, the deadline for an appeal of classification to the State Tax Commission was **within 30 days after the adjournment of the March Board of Review. THIS DEADLINE NO LONGER APPLIES.**

B) Appeal of Property Classification by the Department of Treasury

PA476 of 1996 provides authority to the Department of Treasury to appeal a property classification to the Small Claims Division of the Michigan Tax Tribunal no later than December 31 of the year of the classification being appealed. This appeal by the Department of Treasury does NOT require a prior appeal to the March Board of Review.

An owner or assessor still may NOT appeal a parcel's assessment roll classification to the Michigan Tax Tribunal. MCL 211.34c(6) states that the State Tax Commission's determination regarding a property's assessment roll classification is final and binding for the year of the petition to the STC.

END OF SUPPLEMENT TO STC BULLETIN NO. 9 OF 1995

1997 SUPPLEMENT TO STC BULLETIN NO. 3 OF 1995

Note: While the materials which follow are part of item #11 of this bulletin, they are labeled as a **Supplemental to STC Bulletin No. 3 of 1995** with the thought that they

will also be copied and added to STC Bulletin No. 3 of 1995 in order to keep all information regarding the formulas for additions and losses together in one place.

11) Section 34d - Additions Used in the Capped Value Formula and in the Headlee" and "Truth in Taxation" Millage Rollback Calculations (Page 13 of the copy of PA 476 of 1996)

PA 476 of 1996 changes the method of calculating the Additions for **Replacement Construction** and **Increase in Occupancy** Rate. These Additions are used in the formula for calculating Capped Value and in the calculation of the millage rollbacks for the "Headlee" and Truth in Taxation" rollbacks.

The formulas for calculating the Additions for **Replacement Construction** and for an **Increase in Occupancy Rate** are contained in STC Bulletin No. 3 of 1995. **THOSE FORMULAS ARE NO LONGER CORRECT.**

Pa 476 OF 1996 requires that the answers by the formulas for these 2 types of additions (as discussed in STC Bulletin No. 3 of 1995) must also be multiplied by the lesser of 1.05 or the rate of inflation (1.028 for 1997 assessments).

The following are the old formulas and the new formulas for each of these 2 types of additions.

Replacement Construction

Old Formula NO LONGER USED

Taxable
Value of
the subject

Additions = TCV of Replacement X <u>property in the previous year</u>

Construction TCV of the subject property

in the
previous
year

New Formula USED STARTING IN 1997

TCV of Taxable Value of the Subject

Additions = Replacement X property in the previous year X Lessor of 1.05

Construction TCV of the subject property or Inflation Rate

In the previous year

Increase in Occupancy Rate

Old Formula NO LONGER USED

Increase in Taxable Value of the subject

Additions = TCV Due to X property in the previous year Occupancy increase TCV of the subject property

In the previous year

New Formula USED STARTING IN 1997

Increase in Taxable Value of the Subject

Additions = TCV due to X property in the previous year X Lessor of 1.05

Occupancy increase TCV of the subject property or Inflation Rate

In the previous year

The other changes made to the definitions of Additions and Losses simply clarify the involvement of the Department of Environmental Quality (formerly the Department of Natural Resources) in the calculation of Additions and Losses related to **environmental contamination.** Please see pages 14 and 15 of the copy of PA 476 of 1996 attached to this bulletin for the details on those changes

END OF SUPPLEMENT TO STC BULLETIN NO. 3 OF 1995

12) Sections 6la, 131e, 140 and 141 - Delinquent Taxes (Pages 17-20 of the copy of PA 476 of 1996)

PA 476 of 1996 makes several significant changes to sections 6la, 13lc, 140, and 141 of the General Property Tax Act. These sections address various procedures related to DELINQUENT TAXES.

Enclosed is a copy of a mailing to county treasurers prepared by Mr. Donald Bengel of the Local Property Services Division of the Michigan Department of Treasury regarding these new provisions.

13) Section 154 - Actions Before the State Tax Commission Regarding Property that is Omitted or Incorrectly Reported (Page 20 of the copy of PA 476 of 1996)

PA 476 of 1996 makes two major changes to the provisions of section 154 of the General Property Tax Act. Section 154 authorizes the State Tax Commission to correct the assessment roll for the current year and 2 previous years for property that is omitted or property that is incorrectly reported by a taxpayer on a personal property statement.

A) Expanded Jurisdiction of the State Tax Commission Regarding Properties Which are Omitted or Incorrectly Report

In the past, the State Tax Commissions jurisdiction regarding omitted or incorrectly reported property was limited to assessments on the regular ad valorem assessment roll.

PA 476 of 1996 has expanded that jurisdiction to allow the State Tax Commission to change the assessment on the following rolls when there has been omitted or incorrectly reported property:

a) The Industrial Facilities Tax (IFT) Roll (MCL 207.551)

b) The Commercial Facilities Tax (CFT) Roll (MCL 207.651)

c) The roll for State Assessed Properties (MCL 207.1) such as railroads and telephone companies.

d) The roll for properties assessed under the provisions of PA 189 of 1953 (MCL 211.181). PA 189 of 1953 provides for the assessment of real property which is exempt from ad valorem assessment but is leased, loaned, or otherwise made available to and used by a business conducted for profit.

B) Change in Interest Rate When a Change By the STC Results in a REFUND OF TAXES

In **the past,** the interest rate paid by the county treasurer when a section 154 action by the STC resulted in a refund of taxes was 1% per month. THIS HAS BEEN PARTIALLY CHANGED.

PA 476 of 1996 provides that the interest rate of 1% per month continues for taxes

levied before January 1, 1997.

For taxes levied after December 31, 1996, the interest rate is the same rate as is used in Michigan Tax Tribunal decisions as provided by M.C.L. 205.737. The interest rate that shall be used for the 1997 calendar year as provided by MCL 205.737 is 6.11%. This is as directed in STC Bulletin No. 1 of 1997.

BULLETIN NO. 19
DECEMBER 12, 1997
"FOLLOWING SALES" AND
ASSESSING OVER 50%

STATE OF MICHIGAN

JOHN ENGLER, Governor
DEPARTMENT OF TREASURY
DOUGLAS B. ROBERTS, State Treasurer

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COMMISSION MEMBERS

Mark A. Hilpert, Chairperson
Lesley F. Holt
Robert Lupi

Dennis W. Platte, Secretary

TO: Assessors
Equalization Directors

FROM: State Tax Commission (STC)

RE: THE ILLEGAL PRACTICES OF:

A) "FOLLOWING SALES"

AND

B) ASSESSING OVER 50%

The State Tax Commission is very concerned about reports that some assessors have engaged in the illegal practices of "following sales" and assessing over 50% of true cash value.

The purpose of this bulletin is to provide instruction to assessors regarding these illegal practices.

A. "Following Sales"

"Following sales" is described in the State Tax Commission Assessor's Manual as the practice of ignoring the assessments of properties which HAVE NOT RECENTLY SOLD while making significant changes to the assessments of properties which HAVE RECENTLY SOLD.

"Following sales" can also be described as the practice of assessing properties which HAVE RECENTLY SOLD significantly differently from properties which HAVE NOT RECENTLY SOLD.

Article IX, Section 3 of the State Constitution states that "The legislature shall provide for the **UNIFORM** general ad valorem taxation of real and tangible personal property ..." This requirement has NOT changed as a result of Proposal A.

Section 27(5) of the General Property Tax Act states the following:

> "In determining the true cash value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction."

The following example illustrates the illegal practice of "following sales".

> **EXAMPLE**: An assessor has been notified by the equalization department that the starting base for the residential class in his/her unit is 45.45%. This means that it is necessary for the assessor to increase the residential class overall by about 10% in order to avoid a factor. It is the assessor's responsibility to determine where this increase should be spread in order that all properties are assessed at 50%.
>
> It would be illegal for the assessor to generally increase properties which have recently sold by say 25% while increasing all other properties in a neighborhood by say 5%. This would be an example of the illegal practice of "following sales".

"Following sales" is both UNCONSTITUTIONAL AND ILLEGAL. An exception would occur where an assessor inspects a property after a transfer of ownership and discovers that there is omitted property such as a garage which was built in the past but was not included in the assessment and was not noted on the assessment card. In this case the assessor must include the omitted property in the assessed value for the year following the transfer of ownership.

If the assessor is doing a proper job of assessing all properties uniformly at 50% of true cash value each year, there is no reason to assess properties which have sold any differently from properties which have not sold.

In a related matter, some assessors believe that Proposal A requires that, in the year following a transfer of ownership, the assessed value of a property which has transferred must automatically be set at ½ of the sale price. **Proposal A does NOT authorize the assessor to AUTOMATICALLY set the assessed value of a property which has sold at ½ of the sale price.** An individual sale price may NOT be a good indicator of the true cash value of the property due to a variety of reasons (such as an uninformed buyer, an uninformed seller, insufficient marketing time, buyer and seller are relatives, and other possible reasons).

B. Assessing Over 50%

It has come to the attention of the State Tax Commission that some assessors are making a practice of assessing properties in excess of 50% of true cash value. This is an illegal practice.

Article IX, Section 3 of the State Constitution states that the assessment of property shall not exceed 50% of its true cash value.

Section 27a of the General Property Tax Act states that property shall be assessed at 50% of its true cash value.

County equalization departments are required to study every classification of property every year and to report the starting ratios to assessors so that the assessors know how much assessments must be changed overall in order to avoid an equalization factor greater or less than 1.0000.

County equalization directors are required to use a 24 month period of sales when studying a class of property. This is true whether the director prepares an assessment/sales ratio study or an appraisal study (An exception to this occurs where there is a severely declining real estate market, in which case a single year study may be substituted for a two year study.)

The 24 month time period which equalization directors must use in setting the starting base for 1998 assessments is as follows:

Year 1: **April 1, 1995 to March 31, 1996**

Year 2: **April 1, 1996 to March 31, 1997**

ASSESSORS ARE REQUIRED TO USE THIS SAME 24 MONTH TIME PERIOD FOR SALES USED FOR CALCULATING ECONOMIC CONDITION FACTORS (ECF'S) AND LAND VALUES.

This means that assessors are NOT allowed to incorporate the market value INCREASES from sales occurring in the last 9 months of 1997 into the assessments for 1998. To do so could cause assessments to exceed 50% of true cash value. If assessments exceed 50%, it is the responsibility of the County Board of Commissioners to apply a factor of less than 1.0000 in order to reduce the assessments down to 50%.

This means that for 1998 assessments, an assessor is NOT allowed to incorporate market

value increases which have occurred from April 1, 1997 to December 31, 1997.

The assessor should also be aware that the County Board of Commissioners is permitted by the State Tax Commission to equalize as assessed in those classes where the ending ratio on line 8 of STC Form L-4023 falls between 49.00% and 50.00%. This means that if an assessor is striving to reach 50% but ends up, for example, at 49.50%, an equalization factor of 1.0000 will be assigned by the County Board of Commissioners, NOT an equalization factor greater than 1.0000.

Assessors must also be aware that this same leeway does NOT exist for ratios which fall between 50.01% and 51.00%. The State Tax Commission, in STC Bulletin No. 13 of 1996, advises that a County Board of Commissioners has the obligation to determine the correct true cash value for each class of property for each year even if this results in a class of property receiving an equalization factor of less than 1.0000. An assessor should therefore expect to receive an equalization factor of less than 1.0000 if the ratio on line 8 of form L-4023 exceeds 50% by any amount, provided that the starting ratio was based on a reliable and accurate study. (Please see page 5, paragraph C (copy attached) of STC Bulletin No. 13 of 1996 for an exception to this rule when there has been a complete reappraisal.)

The State Tax Commission intends to closely monitor this practice of assessing in excess of 50% for the 1998 assessment year.

Assessors are advised to review pages 4 to 6 (copies attached) of STC Bulletin No. 13 of 1996 regarding ratios which exceed 50% of true cash value.

REPRINT FROM STC BULLETIN NO. 13 OF 1996

2) Assessment/True Cash Value Ratios Over 50% on STC Form L-4023

There has been some misunderstanding in recent years about the STC position regarding procedures to follow when the ratio for a class of property exceeds 50% on line _ 05 of the form L-4023.

The practice of some counties has been to automatically reduce a ratio (which exceeds 50%) down to 50% by adding true cash value on line _07 of the form L-4023.

The STC policy regarding procedures to follow when a ratio exceeds 50% on line _0 5 of the form L-4023 is based on whether or not the starting ratio on line _01 of the form L-4023 is supported by a reliable and accurate equalization study.

a) Procedure When a Ratio on Line _05 of the Form L-4023 Exceeds 50% and the Ratio on Line _01 of the Form L-4023 Is Based on a Reliable and Accurate Study

Article IX, Section 3 of the Michigan Constitution states that assessments on property shall not exceed 50% of true cash value.

When a ratio on line _05 of Form L-4023 has been properly calculated and exceeds 50% (except for the situation described in paragraph c below) and this ratio is based on a reliable and accurate sales or appraisal study, the constitution and the law require that the County Board of Commissioners apply an equalization factor of less than 1.0000 in order to bring the State Equalized Value down to 50%. It would be INCORRECT procedure, in this instance, to add true cash value on line _07 of the Form L-4023 in order to reduce the ratio to 50% and thereby have a factor of 1.0000. An example of this INCORRECT procedure is shown on a Form L-4023 on the page labeled EXAMPLE #1.

The County Board of Commissioners has the obligation to determine the correct true cash value for each class of property for each year even if this results in a class of property receiving a county equalization factor of less than 1.0000.

See also paragraph c below for special provisions for units where a complete reappraisal is being implemented.

Important Note: If an equalization department finds it necessary to submit an amended L-4018 to the STC, a full explanation of the reason for the change must be included.

b) **Procedure When a Ratio on Line _05 of the Form L-4023 Exceeds 50% and the Ratio Is NOT Based on a Reliable and Accurate Study.**

Sometimes, contrary to STC Rule 209.41(4), the ratio on line _05 of the Form L-4023 is NOT based on a reliable and accurate study such as when a ratio is based on an unsupported estimate by the equalization department. When this occurs and the ratio exceeds 50%, the ratio shall be reduced to 50% by adding true cash value on line _07 of the Form L-4023. This is the procedure outlined in paragraph 4 on page 33 of Chapter 16 of the 1972 Assessor's Manual. **(Chapter 16 of the 1972 Assessor's Manual, along with amending STC bulletins, constitutes the applicable STC Equalization Chapter.)**

If true cash value is added on line _07 of the form L-4023, a full explanation of the reason for this action must be included.

Any exception to this procedure of reducing the ratio to 50% in the circumstances described in section b must be accompanied by a complete explanation of the assessor's justification of assessments above the constitutional maximum level.

c) **Procedure When the Ratio on Line _05 of the Form L-4023 Exceeds 50% and There Has Been a Complete Reappraisal in the Unit.**

Separate equalization procedures are frequently needed when analyzing the ratio for a unit where a complete reappraisal has been implemented on the current assessment roll. For purposes of this example, a complete reappraisal occurs when a revaluation is accompanied **by a reinspection of each parcel of property**.

The starting ratio for the Form L-4018 (which is carried to Line _01 of the Form L-4023) is calculated using standard study procedures as described in Chapter 16 of the 1972 Assessor's Manual. The ratio may be based on an assessment /sales ratio study or an appraisal study or a combination of the two. In any case, the assessments that are compared to the sales or the appraisals are for a year(s) prior to the reappraisal.

Sometimes, as a result of a reappraisal, the ratio on line _05 of the Form L-4023 is in excess of 50% especially when the unit has not been

reappraised for many years. This may be true because the reappraisal is picking up many improvements made over the years which are not identifiable at the time of the reappraisal as equalization NEW and are therefore being treated as equalization PLUS ADJUSTMENTS.

In this situation the equalization department may hold the ratio at 50% (rather than allowing it to exceed 50%) PROVIDED THAT THE EQUALIZATION DEPARTMENT HAS ANALYZED THE REAPPRAISAL AND IS CONVINCED THAT THE REAPPRAISAL IS RESULTING IN ASSESSMENTS THAT ARE AT 50% OF TRUE CASH VALUE. In this case, true cash value is added on line _07 of the L-4023 and an explanation must be included. An example of this procedure is shown on a Form L-4023 on the page labeled EXAMPLE #2.

d. **Assessment/True Cash Value Ratios Between 49.00% and 51.00%**

The STC continues to allow a classification of property within a township or city to be equalized as assessed if the ratio on line 8 of the Form L-4023 lies between **49.00% and 50.00%**. This has not changed.

The STC does NOT recommend that ratios between **50.01% and 51.00%** be equalized as assessed because the Constitution does not allow the assessment of property in excess of 50%. The STC policy regarding ratios over 50% was discussed in paragraphs a), b) and c) above.

The STC will use the same procedures to determine whether to DEDUCT true cash value from a classification of property in a given county on the 4th Monday in May as it presently uses to determine whether to ADD true cash value to a classification. These procedures have not changed.

3. DNR Land Assessed on the Ad Valorem Roll

Frequently State-owned land, which is controlled by the Department of Natural Resources (DNR) and is assessed on the ad valorem roll, is separately analyzed on the Form L-4018 as a sub class within the agricultural class of property. The remainder of the agricultural class is also separately analyzed.

Sometimes the DNR land is assigned a ratio of 50% on the Form L-4018 filed by December 31 and later it is discovered that the assessments established by the STC indicate a ratio of less than 50%.

The STC advises, in this situation, that the equalization department submit a revised Form L-4018 which correctly sets the starting ratio for DNR Land at the

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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

ROBERT J. KLEINE
STATE TREASURER

BULLETIN 7 OF 2006
TRANSFERS OF QUALIFIED AGRICULTURAL PROPERTY
AUGUST 29 , 2006

TO: **Assessors, Equalization Directors and Treasurers**

FROM: **State Tax Commission**

RE: **PUBLIC ACTS 260 AND 261 OF 2000 REGARDING TRANSFERS OF QUALIFIED AGRICULTURAL PROPERTY.**

Preliminary draft of STC Bulletin No. 10 of 2000 is hereby rescinded.

PA 260 of 2000 first affected the analysis of transfers, which occurred starting January 1, 2000. Therefore qualifying transfers were first exempt from uncapping under this law beginning with the 2001 assessment roll. PA 261 of 2000 – the agricultural property recapture act had an effective date of June 29, 2000.

Copies of PA 260 and PA261 of 2000 are available on the Internet at www.legislature.mi.gov. When you reach the site, click on "Public Acts" and enter the act number and the year in the appropriate locations.

❑ 2005 SUPPLEMENT TO BULLETIN NO. 16 OF 1995

NOTE: These materials are to be considered a "2005 SUPPLEMENT TO BULLETIN NO. 16 OF 1995" with the thought that they will be copied and added to STC Bulletin No. 16 of 1995 to keep information regarding transfers of ownership together.

1. Certain Transfers of Qualified Agricultural Property Are Not "Transfers of Ownership" Starting With the 2001 Assessment Roll.

PA 260 of 2000 provided that a transfer of qualified agricultural property is not a "transfer of ownership" provided that:

a) The property remains qualified agricultural property after the transfer. And

b) The person to whom the property is transferred files an affidavit with the assessor and the register of deeds. (The STC recommends that the assessor verify that an affidavit has also been filed with the register of deeds.)

The signer of the affidavit must attest that the qualified agricultural property shall remain qualified agricultural property. The affidavit, Form 3676, can be obtained at the Department of Treasury Web site, www.michigan.gov/treasury.

When a property is transferred and the transfer is not a "transfer of ownership", the taxable value of the property is not uncapped in the year following the transfer.

Important Note: If qualified agricultural property is transferred and does not remain qualified agricultural property, the taxable value may still be exempt from uncapping if the transfer qualifies under some other section of law, such as a qualifying transfer to a trust, etc.

2. Procedure to Follow When Qualified Agricultural Property Which Has Been Exempt from Uncapping Under the Provisions of PA 260 of 2000 Later Ceases to be Qualified Agricultural Property.

MCL 211.27a. (7)(n) provides that if qualified agricultural property, which was exempt from being uncapped due to the provisions of PA 260 of 2000, ceases to be qualified agricultural property at any time after being transferred, the following shall occur:

- The taxable value shall be uncapped in the year after the property ceases to be qualified agricultural property. This means that the SEV, for the year after the property ceases to be qualified agricultural property, will become the taxable value of the property for that year

- The property is subject to the Agricultural Property Recapture Act. Separate instructions regarding the recapture tax are provided in this bulletin as a service to assessors.

Important Note: The language "ceases to be qualified agricultural property" has been interpreted to include situations where the portion of a parcel that is qualified agricultural property decreases (i.e., the qualified agricultural property exemption percentage decreases). Please see question 3 contained in the addendum to this bulletin.

3. Procedure to Follow When a Purchaser of Qualified Agricultural Property Does Not Timely File An Affidavit to Claim the Exemption from Uncapping, Then Later Discovers This Exemption from Uncapping, and Files Form 3676 After the Taxable Value Has Been Uncapped by the Assessor.

PA 260 of 2000 provided for the recapping of taxable value when all of the following five conditions exist.

a) A purchaser of qualified agricultural property qualifies for the exemption from uncapping except that the purchaser does not timely file the affidavit required. And
b) The assessor uncaps the taxable value in the year following the transfer. And
c) The purchaser later discovers (or chooses to claim) this exemption from uncapping. And
d) The purchaser then files the affidavit (Form 3676). And
e) The property was qualified agricultural property for each year back to and including 1999.

When all five of theses conditions exist, the local tax collecting unit shall immediately revise the current tax roll by changing the existing uncapped taxable value to the taxable value the property would have if it had not been uncapped after the transfer. (This applies only to uncapping which occurred in 2001 or later.) This will require going back to the year when the taxable value was uncapped and recalculating the capped value from that point forward to the current year. However, only the current year's tax roll is actually changed. (A notation is also made in the *change column* of the current assessment roll.)

When an assessor recaps taxable value, the STC requires that the assessor file Form 3675. This is a mandatory form, which provides a paper trail for an action not occurring at a meeting of the board of review. Form 3675 can only be used for the recapping authorized by PA 260 of 2000 and cannot be used for other purposes.

When a taxable value is recapped, the owner of the recapped property is not entitled to a refund of taxes already paid. However, if a tax bill has not been paid and the due date for the bill occurs after the recapping, the recapped taxable value shall be used for that bill. The due date is the last date on which taxes can be legally paid without the addition of interest or penalty.

Important Note: The recapping of taxable value as authorized by PA 260 of 2000 for qualified agricultural property must not be confused with adjustment of taxable value by the July or December board of review under PA 23 of 2005 to correct an incorrect uncapping of taxable value. Adjustment of taxable value by the July or December board of review is now authorized only when the assessor has determined that no transfer of ownership occurred after a property has been incorrectly uncapped. It is not an incorrect uncapping that occurs when qualified agricultural property transfers ownership and the new owner does not file the affidavit to keep the cap in place and the assessor therefore uncaps the property's taxable value.

❑ THE RECAPTURE TAX

1. When is the recapture tax imposed?

The recapture tax is imposed when all of the following conditions are met:

a) Property was transferred after December 31, 1999.
b) The taxable value of the property was not uncapped in the year following the transfer because it qualified for the exemption from uncapping provided by PA 260 of 2000.
c) The qualified agricultural property is converted by a change in use after December 31, 2000. There is a change in use when one of the following occurs:

   There is a change in use and the assessor determines that the property is no longer qualified agricultural property. Or

   A purchase is about to occur but, prior to the purchase, the future purchaser files a Notice of Intent to Rescind the Qualified Agricultural Property Exemption (Form 3677) with the local tax-collecting unit.

Please note: Form 3677 - The Notice of Intent to Rescind the Qualified Agricultural Property Exemption is different from Form 2743 - The Request to Rescind the Qualified Agricultural Property Exemption. Form 3677 is filed before a change in use occurs. Form 2743 is filed after a change in use actually occurs.

Property is converted by a change in use on the date that the notice (Form 3677) is filed with the local tax-collecting unit. If the sale is not consummated within 120 days of the filing with the local unit, then the property is not converted by a change in use.

2. How is the recapture tax calculated?

The recapture tax is calculated on the benefit period, which consists of up to seven years of tax savings enjoyed by the person to whom qualified agricultural property was transferred with a capped taxable value under PA 260 of 2000. When a conversion by a change in use occurs, the tax benefit that occurred during the period of up to seven years is recaptured. The year that the property is converted by a change in use is not included in this calculation.

For example:
Qualified agricultural property transferred on October 1, 2000. The property remained qualified agricultural property after the transfer and an affidavit (Form 3676) was filed by the new owner. Therefore, the property was not a transfer of ownership due to the provisions of P.A. 260 of 2000 and the taxable value was not uncapped in 2001. The property then is converted by a change in use on September 1, 2010.

In this example there is a 7-year recapture tax period consisting of the tax savings for the years 2003 through 2009. The tax savings for the years 2001 and 2002 are not included because these years are before the most recent 7 years. The tax savings for the year 2010 are not included because the tax savings for the year that a property is converted by a change in use are not recaptured.

The following procedures are recommended for use in calculating the recapture tax:

a. Determine the number of mills levied on the property during each year of the benefit period.
b. Determine the taxable value the property would have had during the benefit period if it had been uncapped in the year following the transfer. This is called the true cash taxable value.
c. Determine the actual taxable value for the benefit period.
d. Subtract the actual taxable value for each year of the benefit period from the true cash taxable value for each year of the benefit period.
e. Multiply the millage for each year determined in step a) by the taxable value difference for each year determined in step d) and add the results.

3. Who calculates the recapture tax?

The County treasurer calculates and collects the recapture tax. However, the assessor of the local tax-collecting unit must notify the County Treasurer of the date on which the property is converted by a change in use and must calculate the true cash taxable as described in item 2(b) above.

The STC recommends that assessors keep a record of properties which have been exempt from uncapping due to PA 260 of 2000 and annually calculate the true cash taxable values of these properties. If, for example, a conversion by a change in use were to occur 25 years in the future, it might be very difficult to go back and calculate true cash taxable values 25 years after the exemption from uncapping was initially granted.

Important Note: The recapture tax must include the tax savings for the entire benefit period of up to 7 years. The County treasurer does not have the authority to reduce the recapture tax.

4. Who pays the *recapture tax*?

The recapture tax is sometimes paid by the person who owns the property at the time that the property is converted by a change in use. However, under certain circumstances, the recapture tax is paid by the person who transfers a property even though the actual change in use occurs after the transfer. This is the case when, prior to the transfer, the future purchaser files a Notice of Intent to Rescind the Qualified Agricultural Property Exemption (Form 3677) with the local tax collecting unit and delivers a copy of the notice to the future seller. Please see section 2. (c)(ii) And 3. (3) of PA 261 of 2000.

Important Note: If a property is transferred after receiving an exemption from uncapping (as provided by PA 260 of 2000) and if the status of the property later changes so that the property is no longer qualified agricultural property to the same extent it was before the transfer, the entire recapture tax is paid by the owner who owned the property when the qualified agricultural property exemption percentage was reduced. It is not split between the current owner and the previous owner.

For example, person A sells a farm property (which is 100 percent qualified agricultural property) to person B. Person B qualifies for the exemption from uncapping provided by PA 260 of 2000. After five years, person B sells the property to person C who also qualifies for the exemption from uncapping provided by PA 260 of 2000. After another three years, person C develops the property into a commercial use and the property is no longer qualified agricultural property to the same extent it was before the transfer. In this example, seven years of recapture tax are due and the recapture tax is paid entirely by person C. Person B pays none of the recapture tax.

5. When is the recapture tax collected?

Section 3. (2) applies when there is a change in use as defined in Section 2(c)(i), and requires that the tax be paid within 90 days of the date the property was converted by a change in use. If it is not paid within 90 days, the treasurer may bring a civil action against the owner of the property.

Section 3. (3) applies when a future purchaser files a Notice of Intent to Rescind the Qualified Agricultural Property Exemption (Form 3677). In this case, the tax is an obligation of the person who owned the property prior to the transfer and the tax is due when the instruments transferring the property are recorded with the register of deeds.

6. Who gets the recapture tax revenue?

Please see sections 5 and 6 of PA 261 of 2000 for specific wording. The recapture tax is collected by the county treasurer and deposited with the state treasurer where it is credited to the fund in which the proceeds from lien payments made under part 361 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.36101 to 324.36117, are deposited.

The interest earned on the money collected while held by the county may be retained by the county treasurer as reimbursement for the costs incurred by the county in collecting and transmitting the tax. The money retained by the county shall be deposited in and credited to the general fund of the county in which the tax is collected.

ADDENDUM

Question 1: What happens if the property being transferred has a qualified agricultural property exemption of less than 100 percent, example a 75 percent exemption, and the transfer qualifies to be exempt from being uncapped due to the provisions of PA 260 of 2000?

In this situation, there is a partial uncapping of 25 percent of the taxable value and 75 percent remains capped.

Question 2: What happens if a property has a 100 percent exemption as qualified agricultural property and only 75 percent will remain qualified agricultural property after the transfer due to a partial change in use? (Note: This example does not involve a split.)

There will be a total uncapping of the taxable value of this parcel (assuming that the transfer does not qualify to be exempt from uncapping under some other provision of the law). It is the opinion of the STC that a reduction in the percentage of the qualified agricultural property exemption of a parcel results in a total uncapping of that parcel's taxable value in the situation described above. PA 260 of 2000 did not provide for a partial uncapping in this situation.

Question 3: In terms of uncapping, what happens if only part of a qualified agricultural property is converted by a change in use after a transfer, which was exempt from uncapping by PA 260 of 2000?

If part of the property is split off, and then the split parcel is converted by a change in use, the taxable value of the split parcel is uncapped in the following year and the recapture procedure is applied. The taxable value of what remains of the original parcel remains capped (assuming that the original portion remains qualified agricultural property to the same extent it was before the split). However, if part of the property is converted by a change in use prior to or not involving a split, the taxable value of the entire parcel is uncapped in the year following the change in use and the recapture procedure is applied.

Question 4: An 80-acre property is classified agricultural but the owner lives on the property and claims the homeowner's principal residence exemption so that he/she can also claim a homeowner's principal residence exemption on contiguous vacant property, which is classified residential. If this 80-acre parcel is being transferred to someone who will continue to farm the property, can the buyer file an affidavit (Form 3676) and claim the exemption from uncapping that is provided for qualified agricultural property even though the property is receiving the homeowner's principal residence exemption (and not the qualified agricultural property exemption)?

Yes. Properties, which are classified agricultural, meet the definition of "qualified agricultural property" even though the property has a homeowner's principal residence exemption. PA 260 of 2000 simply required the property be qualified agricultural and remain qualified agricultural after a transfer in order to avoid uncapping. The act did not require that the property be receiving the qualified agricultural property exemption.

Furthermore, if the 80-acre parcel was classified residential but was qualified agricultural property because more than half its acreage was devoted to agricultural use, a transfer of the parcel could

qualify for the exemption from uncapping even though it is classified residential. (Please see page 4 of STC Bulletin No. 4 of 1997 regarding the 50 percent test for qualified agricultural property.)

89 (Rev. 01-11)

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

R. KEVIN CLINTON
STATE TREASURER

Bulletin 15 of 2014
October 13, 2014
Transfer of Ownership

TO: Assessors, Equalization Directors and Interested Parties

FROM: State Tax Commission

SUBJECT: Transfer of Ownership

Bulletin 5 of 2013 and Bulletin 23 of 2013 are rescinded.

MCL 211.27a has been amended further define conveyances that are considered transfers of ownership.

From December 31, 2013 through December 30, 2014, a transfer of residential real property is not a transfer of ownership if the transferee is related to the transferor by blood or affinity to the first degree **and** the use of the residential real property does not change following the transfer of ownership.

Beginning December 31, 2014, a transfer of residential real property is not a transfer of ownership if the transferee is the transferor's or the transferor's spouses mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter **and** the residential real property is not used for any commercial purpose following the conveyance. This includes a conveyance to a trust, a conveyance by distribution from a trust, and a change in the sole present beneficiary or beneficiaries of a trust, if the person to whom the residential real property is conveyed is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter and the property is not used for any commercial purpose following the conveyance. This exception includes a conveyance by distribution under a will or by intestate succession if the person to whom the residential real property is conveyed is the decedent's or the decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter and the property is not used for any commercial purpose following the conveyance.

A. Definitions

Transferee is defined as the person to whom the conveyance is made.

Transferor is defined as the person who conveys a title, right or interest in property.

A first degree blood relative is a person who shares approximately 50% of their genes with another member of the family. These relatives include spouse, father or mother, father or mother of spouse, son or daughter, adopted son or daughter, son or daughter of spouse, and siblings. .

Residential Real Property is defined as real property classified as residential real property under MCL 211.34c.

The term "used for any commercial purpose" means used in connection with any business or other undertaking intended for profit.

B. Assessor Responsibilities

Assessors should note that the provisions in this Act only apply to residential real property and not to any other property classification. The residential real property classification includes vacant and improved parcels. However, the provisions in this act **are not** limited to homestead property, meaning any residential real property regardless of residency, the application of a Principal Residence Exemption or how many residential real parcels the taxpayer owns. Assessors should review the classification of the real property in the year of the conveyance. Even if there has not been a subsequent conveyance, if the residential real property is later used for any commercial purpose, the assessor should uncap the taxable value of the real property in the following year.

The Property Transfer Affidavit has been updated to include a checkbox, under the exemptions, for the relationships described above and a statement that the transferee will not use the property for any commercial purpose.

The Department of Treasury or the assessor can request the transferee, sole present beneficiary or beneficiaries to provide within 30 days, proof that the transferee meets the relationship requirements described in the Act. Failure to respond to this request results in a $200 fine and can result in immediate uncapping of the property.

STATE OF MICHIGAN
DEPARTMENT OF TREASURY

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

DATE: June 9, 2011

TO: Assessors and Equalization Directors

FROM: State Tax Commission

SUBJECT: The Michigan Supreme Court's Decision in *Klooster v City of Charlevoix*

The State Tax Commission rescinds the Klooster v City of Charlevoix case memo dated March 21, 2011 and replaces it with this document.

Summary of the Court Case:

On March 10, 2011, the Michigan Supreme Court issued a decision in the case of *Klooster v City of Charlevoix*, Michigan Supreme Court Docket No. 140423 (2011), regarding the interpretation of MCL 211.27a(7)(h) and specifically which conveyances involving a joint tenancy are or are not transfers of ownership.

James Klooster, the father, quit-claimed his property to himself and to his son, Nathan as joint tenants with rights of survivorship, on August 11, 2004. James died on January 11, 2005, leaving Nathan as the sole owner. On September 10, 2005, Nathan quit-claimed the property to himself and his brother, Charles, as joint tenants with rights of survivorship. The assessor uncapped the taxable value for the 2006 assessment year. The taxpayer appealed and the Tax Tribunal ruled that the taxable value should have uncapped for the 2006 assessment year because Nathan was not an "original owner," or an already existing joint tenant before the August 11, 2004 joint tenancy was created.

The Michigan Court of Appeals reversed the Tax Tribunal. The Court found the property should not have uncapped because the death of a joint tenant does not constitute a transfer of ownership, even if the joint tenant who dies was the sole original owner. The Court concluded that a "conveyance" within the meaning of MCL 211.27a(7)(h) could not occur unless there was a transfer of title by a written instrument.

The Michigan Supreme Court reversed the Michigan Court of Appeals decision. The Supreme Court found that the death of the only other joint tenant is a conveyance under the GPTA and does not require a written instrument beyond the deed initially creating the joint tenancy. The Court also determined that MCL 211.27a(7)(h) establishes requirements for an exception from the definition of transfer of ownership in three separate and distinct types of conveyances: termination of a joint tenancy, creation of a joint tenancy where the property was not previously held in joint tenancy or the creation of a successive joint tenancy.

Definitions:

Joint Tenancy: A joint tenancy is a form of concurrent ownership wherein each co-tenant owns an undivided share of property and the surviving co-tenant has the right to the whole estate. On the death of each joint tenant, the property belongs to the surviving joint tenants, until only one individual is left.

Initial Joint Tenant: A person whose interest in the property was obtained because he or she was one of the joint tenants who became a co-owner as a result of the "initial" joint tenancy **and** who has continuously held an interest in the property as a co-owner in joint tenancy since the creation of the "initial" joint tenancy.[1]

Original Owner: A sole owner at the time of the last uncapping event; a joint owner at the time of the last uncapping event; or, the spouse of the either a sole or joint owner of the property at the time of the last uncapping event.

How to Determine if a Property Should Uncap:

Step 1: Identify the "Conveyance at Issue"

The first step is to determine if the "conveyance at issue" is the creation of an *"initial"* joint tenancy, the creation of a *"successive"* joint tenancy or the *"termination"* of a joint tenancy. The determination of whether a "conveyance at issue" is a transfer of ownership that uncaps the taxable value of the property must be separately determined *after* identification of the "conveyance at issue." A conveyance will not constitute a transfer of ownership under the General Property Tax Act if it is excluded under MCL 211.27a(7)(a) through (q).

Step 2: Determine if the Conveyance is the Creation of a Joint Tenancy

The creation of an "initial" joint tenancy occurs when a property held by a sole owner, by a husband and wife holding as tenants by the entirety, or by tenants in common, is conveyed to two or more persons as joint tenants.

If the person creating the joint tenancy held title to the interest being conveyed either as a sole owner, as husband and wife, tenants by the entirety, or as tenants in common, then the creation of a joint tenancy is not a transfer of ownership, if, at least one of the persons conveying the interest **and** one of the persons receiving the interest was an "original owner."

If you determine the conveyance meets the requirements defined above, STOP. No further review is necessary and the conveyance is not a transfer of ownership. If the conveyance does not meet both requirements defined above, move to Step 3 and/or Step 4.

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[1] This phrase "initial joint tenant" is not specifically used in the Supreme Court's decision, but is helpful in explaining the decision.

Step 3: Determine if the Conveyance "Terminates" a Joint Tenancy

A joint tenancy terminates when there is no "successive" joint tenancy. The termination of joint tenancy **is** a transfer of ownership if the resulting owner is not an "initial joint tenant."

The termination of a joint tenancy **is not** a transfer of ownership if both of the following are true:

- At least one of the joint tenants in the joint tenancy being terminated was an "original owner" before the joint tenancy was initially created; **and**
- At least one of the joint tenants in the joint tenancy being terminated was an "initial joint tenant" and has remained a joint tenant in successive joint tenancies.

Step 4: Determine if the "Conveyance at Issue" is the creation of a "Successive" Joint Tenancy

A "successive" joint tenancy occurs when the conveyance is from one joint tenancy directly into another joint tenancy. The creation of a "successive" joint tenancy may, or may not, be a transfer of ownership.

The creation of a "successive" joint tenancy is **not** a transfer of ownership if both of the following are true:

- At least one of the individuals in the "successive" joint tenancy was an "original owner" **and**
- At least one of the joint tenants in the previous joint tenancy was an "initial joint tenant" and has remained a joint tenant in successive joint tenancies.

Conclusion:

- If a joint tenancy is created by an "original owner" and if that "original owner" or their spouse are also co-tenants in the joint tenancy, then the taxable value does not uncap.
- If a "successive" joint tenancy is created and an "original owner" or their spouse continue as co-tenants in the "successive" joint tenancy, then the taxable value does not uncap.
- If a joint tenancy is terminated by the death of an "original owner" or by the "original owner" making a conveyance, resulting in the ownership again being a sole ownership, and if that sole owner is an "initial joint tenant," then the taxable value does not uncap.
- If a joint tenancy is terminated by conveyance and the sole owner after the termination is an "initial joint tenant" then the taxable value does not uncap.

Several examples of each of the scenarios described above are listed below. The list should not be considered all inclusive. The State Tax Commission advises assessors that taxpayers are protected by a right of appeal, and therefore, when in doubt if a transfer of ownership should result in an uncapping, an assessor should consider uncapping the property.

Assessors are directed to MCL 211.27a(4) and Bulletin 9 of 2005 for the procedures to follow if they determine the taxable value has mistakenly uncapped for a past assessment year. General questions regarding transfers of ownership are addressed in the State Tax Commission Transfers of Ownership Publication available on the Commission's website under the What's New heading and the Publications link: www.michigan.gov/statetaxcommission. Specific questions regarding the Klooster Case and transfer of ownership can be directed to Heather Frick or Tim Schnelle at 517-335-3429.

Example # 1: Creation of a Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, John conveyed Blackacre to himself and his son, Michael, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

No, there was not a transfer of ownership. Since there was a transfer of ownership which uncapped the taxable value when John purchased the property in 2004, John was an "original owner" who continued to have an interest after the creation of the joint tenancy. Michael became an "initial joint tenant" but he was not an "original owner." John's status as an "original owner" who continued to be a co-tenant as part of the "initial" joint tenancy provides an exception to uncapping. Michael's status as an "initial joint tenant" is not a factor in the analysis.

Example # 2: Termination of a Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Did the taxable value uncap in 2006?

No, there was not a transfer of ownership. Since John had previously held title as a sole owner, the joint tenancy he created with Michael was an "initial" joint tenancy. Further, since there was a transfer of ownership which uncapped the taxable value when John purchased the property in 2004, John was an "original owner." John was an "original owner" and an "initial joint tenant" when the joint tenancy was initially created in 2005. Further, John remained a joint tenant from the creation of the "initial" joint tenancy until the joint tenancy was terminated by the death of John. Since John was an "original owner" who continued to be a co-tenant after the creation of the "initial" joint tenancy and since Michael became a joint tenant when the "initial" joint tenancy was created, and Michael's interest continued uninterrupted until the death of John, the taxable value did not uncap when John died.

Example # 3: Termination and a Non-Successive Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Michael immediately conveyed to himself and his brother, Peter, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

Yes, there was a transfer of ownership when Peter was added as a joint tenant. These facts are, in substance, those in the *Klooster* case itself. Since John was an "original owner" who continuously held his interest as a co-tenant in the joint tenancy since the joint tenancy was initially created and since Michael became an "initial joint tenant" when the "initial" joint tenancy was created, the taxable value did not uncap when John died. However, when

Michael, as the sole surviving co-tenant, created the joint tenancy with his brother, Peter, the creation of the joint tenancy itself was an uncapping event for the reason that Michael was not an "original owner" at the time of the creation of the "initial" joint tenancy with Peter. The reason that Michael was not an "original owner," was that he had not acquired his ownership interest in a transaction that resulted in an uncapping of the taxable value.

Example # 4: Successive Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. In 2006, John and Michael conveyed to themselves and Michael's brother, Peter, as an additional joint tenant, thereby expanding the joint tenancy by making John, Michael and Peter, joint tenants, with rights of survivorship. Did the taxable value uncap in 2007?

No, there was not a transfer of ownership. John was an "original owner" arising from the fact that he obtained his interest in the property by a conveyance that resulted in the uncapping of the taxable value. John and Michael became "initial joint tenant" when the "initial" joint tenancy was created in 2005. Since John was an "original owner" whose ownership interest has continued in the "successor" joint tenancy that added Peter, and since both John and Michael were "initial joint tenants" whose interests as co-tenants was continuous from the time of the "initial" joint tenancy, the taxable value did not uncap when Peter was added.

Example # 5: Life Estate

John and Mary purchased Blackacre, as tenants by the entireties, in 2004. In 2005 John and Mary conveyed to themselves and Michael, using language which indicated that "all three (held title) as joint tenants." However, in addition to creating the joint tenancy among the three of them, John and Mary also reserved a life estate for their joint lives. In 2006, both John and Mary died. Did the taxable value uncap in 2007?

Yes, there was a transfer of ownership. Although John and Mary were "original owners" in Blackacre, arising from the fact that the taxable value uncapped in 2005, the year following their purchase, no "present" joint tenancy was created by the 2005 conveyance. Instead, the instrument, by reservation, created a Life Estate during their joint lives, with a remainder interest, in joint tenancy, among John, Mary and Michael. MCL 211.27a(7)(c) provides an exception to uncapping for a conveyance of property subject to a retained Life Estate "until the expiration or termination of the life estate…" Therefore, it is the State Tax Commission's interpretation that a separate and distinct uncapping event, the expiration or termination of a retained life estate, occurred prior to the joint tenancy becoming a present interest and that this uncapping event took precedence over the exception to uncapping contained in MCL 211.27a(7)(h). MCL 211.27a(6) provides that a "transfer of ownership means 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." In this example, by the time the remainder interest becomes a present interest, Michael was the sole owner of the property, not an "initial joint tenant." It should also be noted that upon the death of John and Mary, Michael becomes an "original owner."

Example # 6: Partial Interest

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Michael immediately conveyed a 1% interest in the property to his daughter, Roberta, as a tenant in common. At the time, Roberta was a Michigan resident who resided on the property, and the conveyance was made for the purpose of allowing her to claim the Principal Residence Exemption. In 2007, Michael and Roberta conveyed to themselves, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2008?

Yes, there was a transfer of ownership as to an undivided 99% interest in the property. The original 1% conveyed to Roberta in 2005 resulted (or should have resulted) in an uncapping of the undivided 1% interest which she received as a tenant in common. This uncapping made Roberta an "original owner." However, she was an "original owner" of *only an undivided 1% interest*, as a tenant in common, with her father. When the joint tenancy interest was created, the effect was that Michael, as the sole surviving co-tenant of the previous joint tenancy with his father, John, could not rely on the fact that he was an "initial joint tenant" to exempt the conveyance of the undivided 99% interest he still held, for the reason that when the previous joint tenancy terminated, he was not an original owner. He was not an "original owner" for the reason that he had not acquired his remaining 99% undivided ownership interest in a transaction that resulted in an uncapping of the taxable value.

Please note, however, if multiple grantors hold as tenants-in-common, each tenancy-in-common interest must be analyzed separately, and it is possible for a partial uncapping to occur, for the reason that a person may be an "original owner" as to one tenancy-in-common interest, but not an "original owner," as to the remainder of the tenancy-in-common interests in the property.