



RE: MICHIGAN PROPERTY TAX:

**TAXABLE VALUE OR SEV? WHAT TRIGGERS A
TRANSFER OF ASSESSMENT TO THE HIGHER FIGURE?**

I've been getting numerous questions on this in the past year... the following is a condensed summation of the regulations issued in 1994-1995, updated in 1996-1997. Many thanks to Bethel Larabee, Exelsior Twp Clerk and lifetime farmer, for providing these regs to me.

Passage of Proposal A and P.A. 415 in 1994 initiated a mandatory requirement that assessing officers change "taxable values" to current State Equalized Valuation" on any parcel which under went a "transfer of ownership" during the prior year.

1. TRANSFER OF OWNERSHIP – WHAT UNCAPS TAXABLE VALUE?

A "transfer of ownership" is defined as "the conveyance of title to, or a present interest in, property... beginning on or after January 1, 1995. Generally the day the deed or contract is delivered to the buyer is the date of the transfer – usually the date on the document, **not** the date it is recorded with the Register of Deeds.

A. On Land Contracts, transfer occurs on the date 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 1-1-1995 it does **not** constitute a transfer of ownership, even if the contract is paid off and deed given in 1995 or after. However, if a second buyer were to assume land contract payments from the first buyer (after 1-1-95)

that does trigger the transfer of ownership.

Selling your interest in a land contract does **not** trigger a transfer, since the original buyer is the same.

Transfers of property between spouses are **not** transfers of ownership for purpose of uncapping the taxable valuation.

B. On Trusts: In general, transfers to a trust (revocable or irrevocable) constitute a transfer of ownership. However, if **all** beneficiaries of the trust (those persons who have enjoyment and use of the trust property during the life of the trust) are the same as the trust creator (or their spouse), then **no** transfer of ownership has occurred. However, if any other party has "use" or "enjoyment" as "beneficiary" during the life of the trust, a transfer **has** occurred on all trust property at the time of trust creation.

A "Contingent Beneficiary" is someone who is not now a beneficiary but will become one at some future date. A transfer is triggered, then, at the time the contingent beneficiary receives the trust property.

Distributions from a trust are triggering transfers, unless distributee is the trust beneficiary (or spouse).

Wills/Court Conveyances: Are transfers for purpose of uncapping taxable values, unless going to a spouse. Date of transfer is when property is actually distributed, not on deceased date of death.

D. Leases: Real Estate/Building leases are generally **not** subject to uncapping taxable values, **But:**

- 1) If total length of the lease, including all options to renew exceeds 35 years, **OR**
- 2) If any lease allows a purchase option at lease's end for 80% or less of properties projected true cash value, **OR**
- 3) Sales of structures or improvements on leased/land occur, then a transfer is triggered at the inception of the lease on that portion of property involved.

E. Interests in Partnerships, Corps, LLP, LLC, or other legal Entity: If more than 50% of total ownership is conveyed in one of the above, any real property owned by that entity shall be uncapped in the year following the "over-50%" transfer year.

F. Tenancy-In-Common: WATCH OUT FOR THIS ONE... This is where two or more co-owners exist and no other ownership form is specified. In Michigan, a tenancy-in-common is presumed, unless co-owners are married, or other descriptive language is included. If the deed says simply "... to "A" and "B", a tenancy-in-common is assumed. Ownership interest does not have to be equal.

That portion of transferred or conveyed tenancy-in-common property **does** constitute a transfer of ownership for uncapping taxable values.

G. Disjoining Property between Spouses: Splitting property to spouses individually (such as in divorce) does **not** create a transfer for purposes of uncapping taxable values.

H. Life Lease: Life leases retained by the seller does **not** constitute a transfer until the life lease ends. However, any property transferred without life lease (such as non-residence real estate) is a triggered transfer.

I. Foreclosure/Forfeiture: Are **not** transfers of ownership. Neither are deed or conveyances in lieu of foreclosure. Subsequent sales of property after receiving the property back may be a transfer, however.

J. Redemption (Tax-Reverted) Lands: If original owner redeems the property from the lien-buyer, **no** transfer of ownership occurs. However, if redemption does not occur and lien buyer takes title, a transfer does occur, and taxable value is uncapped.

K. Court-Ordered Transfers: is **not** a transfer, unless specific amounts of money is ordered for the transfer.

L. Creating/Terminating Joint Tenancy: On property where joint tenancy with right of survivorship is created or terminated **and** interests are equally owned (which is assumed unless otherwise stated), **and** at least one of the resulting owners is an original owner, then a "transfer of ownership" has **not** occurred. "Original" owners are those owners of record at last date that transfer of ownership was triggered. Spouses of original owners are also treated as original owners.

M. Liens/Security Interest: Are **NOT** transfers of ownership.

II. THE REPORTING OF TRANSFERS

The **Buyer** (or the recipient) is required to notify the proper assessing office where the property is located within 45 days of the transfer. A "Property Transfer Affidavit" Form L-4260 must be completed and submitted whether or not the property qualifies as

"EXEMPT". Additional taxes, penalties and/or interest fees may be levied for failure to file.

III. APPEALS TO MICHIGAN TAX TRIBUNAL

Owner may appeal to MTT the assessor's decision that a "transfer of ownership" has occurred, uncapping taxable value. The law specifies, however, that the appeal be limited to whether a "transfer of ownership" has occurred, and correcting numerical errors. Disputes on valuations is not a basis for appeal under this section.

IV. WHERE A "TRANSFER OF OWNERSHIP"

Has occurred, **taxable values shall be uncapped in the year following "transfer of ownership"** year.

V. SEV's VS. SALE PRICE:

It is important to note here that State Equalized Valuations applied to property may have little or no relationship to actual sale price of the parcel for a variety of reasons.

On "Taxable Value", Value Change Multipliers cannot be used in calculating taxable values since 1/1/97. Assessors and Board of Review are required by law to increase taxable values by the rate of inflation.

VI. EXPIRATION OF HOMESTEAD EXEMPTIONS/QUALIFIED AG PROPERTY EXEMPTIONS:

P.A. 476 (of 1996) eliminated the requirement to refile "expiring" exemptions for Homestead or Qualified Agricultural Property. Therefore, present Homestead and Qualified Ag Properties Exemptions will **NOT** expire in 1998. No new claims for exemption need to be filed.

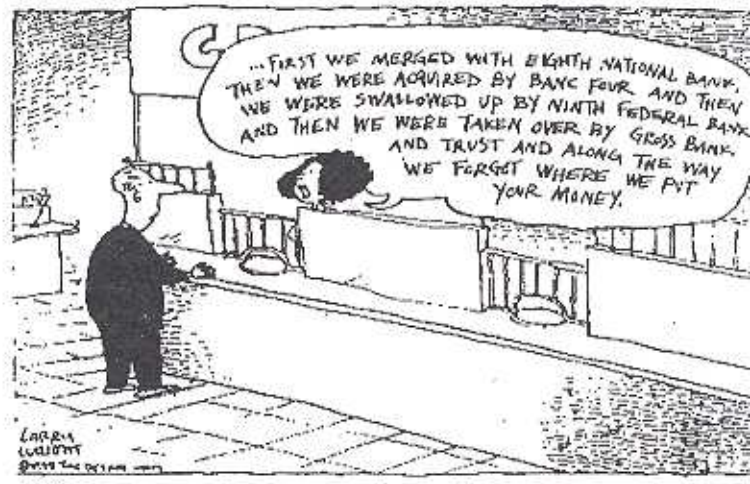
Please file this for future reference. It may be helpful in answering some of those questions I often get out there!!

Best wishes in 1998! Pray for rain, and **NO** frost...

Sincerely,



Glenn Kole



MICHIGAN R/E TRANSFER TAX

I) WHAT IS THE TRANSFER TAX?

The Michigan R/E Transfer Tax is, in general, a tax imposed on the "total consideration" of the real property, based on the actual value of the property conveyed. If "total consideration" is not stated on the deed (or written instrument), then a "Real Estate Transfer Valuation Affidavit" shall be filed. In these instances, the written instrument should state that such affidavit is on file.

The transfer tax is actually two taxes: the State Transfer Tax of .75% (MCL 207.526, effective 1-1-1995) and the County Transfer of .11% (MCL 207.505), charged against "total consideration". For instance, on a qualifying real estate actual value sale of \$50,000 the State Transfer Tax would be \$375.00 and the County Transfer Tax an additional \$55.00, both payable to the County Register of Deeds office.

II) WHAT PROPERTY TRANSFERS TRIGGERS THIS TAX?

Generally, any real-estate transfer exceeding \$100 in value within Michigan is subject to transfer tax. However, there are notable exemptions:

- A) Conveyances from Parent to Children;
- B) Conveyances from one Spouse to the other;
- C) Conveyance from Grandparents to Grandchildren is exempt from State transfer tax, but not County transfer tax;
- D) Land contracts are exempt Until contract is paid off and warranty deed is issued. Then transfer tax is invoked;
- E) Transfer of mineral right, underground gas storage, leases (including oil/gas leases), or assessed personal property is exempt.
- F) Simply adding name(s) as joint owners where grantor is already owner is exempt;
- G) Granting (or discharge) of security interest is exempt;
- H) Property sold by (or given to) the U.S. Michigan, or subdivisions thereof is exempt;
- I) Court-Ordered transfers are exempt, unless specific monetary remuneration is ordered for transfer;
- J) Simply straightening boundary lines, or correcting a flaw in Title is exempt.

ADDITIONALLY, THE FOLLOWING SITUATIONS ARE EXEMPT FROM STATE TRANSFER TAX, BUT NOT EXEMPT FROM COUNTY TAX:

- 1) A R/E transfer made, subject to a binding sales agreement in place before 01-01-1995, if such agreement cannot be withdrawn, altered, or price changed.
 - 2) R/E transfer involving "homestead exemption" qualifying property (which includes most primary residences and farm properties) IF:
"The State Equalized Value" (SEV) of the property transferred is equal to or less than the SEV of the same property when the seller acquired it.
 - 3) Property transferred through foreclosure of a mortgage. However, subsequent sales are not exempt.
- III) OTHER NOTES ON TRANSFER TAX:
- A) Tax is sellers (or grantors) responsibility;
 - B) If transfer is exempt, such exemptions are to be stated on the face of the deed or instrument;
 - C) An exchange of two properties subjects each parcel to the transfer tax, based on respective actual values;
 - D) Conveyances affecting property situated in more than one county must allocate the portion of the actual value of each parcel lying in each respective county, and transfer tax allocation paid accordingly to each county.
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By Glenn Kole
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