TRANSFER OF OWNERSHIP AND TAXABLE VALUE UNCAPPING GUIDELINES

MICHIGAN DEPARTMENT OF TREASURY
STATE TAX COMMISSION/PROPERTY TAX DIVISION

Note: These guidelines have been developed to provide assistance to property owners and assessment administration officials regarding transfers of ownership as defined by Michigan statute and the uncapping of a property's taxable value due to a transfer of ownership of that property.

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Background Information

Note: The Property Tax Division of the Michigan Department of Treasury and the State Tax Commission are not authorized to issue legal opinions. Therefore, the comments in this publication are not to be considered as such, but rather as statements of fact as the State Tax Commission and the Property Tax Division believe them to be.

Note: The State Tax Commission has issued several bulletins pertaining to transfer of ownership and taxable value uncapping issues. The reader is directed to these bulletins for additional information regarding transfer of ownership and taxable value uncapping matters:

Bulletin No. 16 of 1995
Bulletin No. 8 of 1996
Bulletin No. 3 of 1997
Bulletin No. 10 of 2000

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. 10 of 2000 (issued in preliminary draft form) addresses the transfer of ownership exemption for qualified agricultural property allowed by Public Act 260 of 2000. Bulletin No. 10 of 2000 constitutes another supplement to Bulletin No. 16 of 1995.

- **Why is a transfer of ownership important with regard to property taxes?**

  A transfer of ownership is important with regard to property taxes since, in accordance with the Michigan Constitution as amended by Proposal A of 1994 and Michigan statutes, a transfer of ownership as defined by law results in the taxable value of the transferred property being uncapped in the year following 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 5 percent or the rate of inflation, whichever is less. However, in the year following a statutory transfer of ownership, this limitation is eliminated and the property's taxable value is set at 50 percent of the property's true cash value (i.e., the state equalized value). This is what is meant by "taxable value uncapping".

  Note: A property's true cash value may not be 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. "Following sales" as discussed in State Tax Commission Bulletin No. 19 of 1997 is illegal and unconstitutional.***

- **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 a transfer of ownership of that property.

- **When did transfers of ownership start?**

  Statutory transfers of ownership started January 1, 1995. Prior to that day no transfers of ownership were possible for purposes of taxable value uncapping.

Transfer of Ownership Definitions

- **What is a transfer of ownership?**

  Michigan statute provides a general definition of what constitutes a transfer of ownership for taxable value uncapping purposes. Michigan law also defines by example (with exceptions) what a transfer of ownership is. 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 Michigan Compiled Laws (MCL) 211.27a.(6)(a)-(j). Transfer of ownership exemptions are contained in MCL 211.27a.(7)(a)-(n).

  *Note: The general definition of transfer of ownership states that a conveyance of title to, or a present interest in, a property—**including beneficial use of the property**—is a transfer of ownership.*

  Note: It is possible for a transfer of property not to be a transfer of ownership under statute. It is also possible for transactions or circumstances to occur which do not transfer a property but which are a transfer of ownership for taxable value uncapping purposes.

Deeds

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

  Provided no statutory exception or exemption applies, a transfer of property by deed is a transfer of ownership.

Land Contracts

- **Is a sale by land contract a transfer of ownership?**

  Provided no statutory exception or exemption applies, a transfer of property by land contract is a transfer of ownership.

- **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 completed (paid in full) and not the date of a deed in fulfillment of the land contract.

- **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.

  Note: See also the information regarding security interests contained in this publication, starting on page 18.

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

  Yes, provided that no lawful exception or exemption applies. 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.

Trusts

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

  Yes, provided no statutory exception or exemption applies. 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.

- **What is a beneficiary of a trust?**

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

- **What 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 a transfer of property by a husband and wife to a trust with the husband and wife and their child as present beneficiaries a transfer of ownership?**

  Yes, provided no statutory exception or exemption applies. The child, a present beneficiary, is not the settlor of the trust or the settlor's spouse.

- **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.

- **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.

- **John Doe and Jane Doe are married. A transfer of property occurred from John Doe and Jane Doe to John Doe and Jane Doe as trustees of the Doe Family Trust. Was this property transfer a transfer of ownership?**

  It cannot be determined from this information whether the property transfer was a transfer of ownership. Information regarding the

beneficiary or beneficiaries of the Doe Family Trust is required to make a decision whether a transfer of ownership occurred. This information is best obtained from the trust instrument. If the sole present beneficiary or beneficiaries were John Doe or Jane Doe or both John and Jane Doe, this was not a transfer of ownership. If, however, someone other than John Doe or Jane Doe was a present beneficiary of the trust, a transfer of ownership occurred (provided no statutory exception or exemption applies).

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

  Yes, provided no statutory exception or exemption applies. However, 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.

  *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 change merely adds or substitutes the spouse of the sole present beneficiary (and provided that no statutory exception or exemption applies).

Distributions Under Wills or By Courts

- **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, provided no statutory exception or exemption applies. However, if the person receiving the property is the deceased person's spouse, the conveyance is not a transfer of ownership.

  *Note: A transfer of ownership exemption exists which states that a transfer due to a judgment or order of a court of record (without specific monetary consideration for the transfer) is 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).*

- **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 distributed to the heir(s) which is usually different from the day the person dies.

  Note: 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 by the State Tax Commission

to have occurred when dominion was first exercised by the heir. Dominion in this context means control or beneficial use of a property—including occupancy, receipt of rents, etc.

Example: Individual A owned and occupied a residential property as his homestead. Individual A died intestate (without a will) in 1996. As of 2001, the property of individual A had not yet been distributed. However, the child of individual A began living at the property in 1996 (or began renting the property to someone else in 1996 and receiving rents). Under such circumstances, a transfer of ownership is considered to have occurred in 1996 even though the property has not been distributed. ***This example is not to be construed to mean that a five-year period needs to pass without a distribution for a transfer of ownership to occur. The relevant considerations are whether the distribution process has advanced in a typically timely manner and whether/when the heir had dominion over the property.***

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.

  Note: A bargain purchase option in such matters 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 will be worth at the end of the lease.

- **Can the leasing of personal property be a transfer of ownership?**

  Generally no. However, the leasing of personal property that is a building on leased land, 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, provided no statutory exception or exemption applies. 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, provided no statutory exception or exemption applies. 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.

Ownership Changes of Legal Entities (Corporations, Partnerships, Limited Liability Companies, etc.)

- **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 (and provided that no statutory exception or exemption applies).

  Note: The law states that a transfer of ownership occurs when more than 50 percent of the ownership interest of a corporation changes. This law, however, is not applicable to cooperative housing corporations. Cooperative housing corporations are discussed separately in this publication, starting on page 7.

- **A conveyance of 25.0 percent of the ownership interest in a limited liability company was completed in 1999. In January of 2000, a conveyance of 25.1 percent of the ownership interest of the limited liability company occurred. The limited liability company owns real property. Did a transfer of ownership of the real property occur? If so, when?**

  Provided no statutory exception or exemption applies, a transfer of ownership of the property owned by the limited liability company occurred in January of 2000 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 uncapped for 2001.

  *Note: These circumstances are to result in the **total (100 percent)** uncapping of the property's taxable value for 2001. A partial (less than 100 percent) uncapping is not authorized in this situation.*

- **As of January of 2000, 50.1 percent of the ownership interest of a limited liability company had been conveyed and the taxable value of the property owned by the limited liability company was uncapped for 2001. If, in March of 2002, 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 2001 and March of 2002, not more than 50.0 percent of the ownership interest is conveyed. Therefore, no transfer of ownership occurs as of March of 2002.

Tenancies in Common

- **What is a tenancy in common?**

  A tenancy in common is a form of property co-ownership in which the co-owners own a partial interest in an entire property. When a tenant in common dies, the ownership interest of that tenant in common goes into the estate of that tenant in common, 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, provided no statutory exception or exemption applies. However, the transfer of ownership is only for that portion of the property ownership which is conveyed. Therefore, a partial uncapping of the property's taxable value in the year following the transfer of ownership is possible with tenancies in common.

  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 2000, individual A conveyed his/her interest to individual B (and this conveyance was a transfer of ownership). Under these circumstances, a partial, 50 percent uncapping of the property's taxable value occurs for 2001.

  Note: The calculations involved in a partial uncapping situation involving a tenancy in common have been established by the State Tax Commission. See also the example of these calculations contained in the partial uncapping situations section of this publication, on page 29.

- **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.

  Note: 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. Sometimes the percentages are not included on the deed or land contract. 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 to make formal contact with the tenants in common to determine the various percentages.

  Note: When ownership percentages are not stated on the deed or land contract establishing a tenancy in common, it is not advisable to assume equal shares of ownership interest.

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, provided no statutory exception or exemption applies. 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.

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

- **What happens if a cooperative housing corporation has 100 shares of stock and, during 2001, 15 of the shares are conveyed (and no statutory exception or exemption applies)?**

  A transfer of ownership occurs and the taxable value of the cooperative housing corporation property is to be partially uncapped for 2002. Since 15 of 100 shares transferred in 2001, 15 percent of the taxable value of the cooperative housing corporation is to be uncapped for 2002.

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)-(n).

  Note: 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."* Michigan Baptist Homes & Development Company *v* City of Ann Arbor, *396 Mich 660, 669-700; 242 NW2d 749 (1976);* Ladies Literary Club *v* Grand Rapids, *409 Mich 748, 753; 298 NW2d 422 (1980). 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). It is the opinion of the State Tax Commission that these principals which apply to general property tax exemptions also apply to transfer of ownership exemptions since a transfer of ownership exemption is simply a form of property tax exemption. 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.

- **What happens if a transfer of ownership definition applies to a property transfer situation and a transfer of ownership exemption also applies to the situation?**

  It is possible for a property transfer situation to be a transfer of ownership as defined by law and to meet the requirements of a statutory transfer of ownership exemption. In such instances, whichever section of the law is most specific is to be followed.

*Example: A property was conveyed to a man's son by an order of a probate court because the man died intestate (without a will). A transfer of ownership **exemption** states, in part, that a transfer of property is not a transfer of ownership if the transfer was pursuant to an order of a court of record. However, a transfer of ownership **definition** says, in part, that a transfer of property includes a distribution by intestate succession. Both the transfer of ownership **definition** and the transfer of ownership **exemption** apply to the circumstances of the situation. Since the transfer of ownership **definition** is more specific than the transfer of ownership **exemption**, a transfer of ownership occurred.*

Spouses

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

  As a general rule, a transfer of property from one spouse to another spouse is not a transfer of ownership.

- **Is a transfer of property from a deceased spouse to a surviving spouse a transfer of ownership?**

  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, provided no statutory exception or exemption applies. No transfer of ownership exemption exists for property transfers between divorced spouses. Therefore, a transfer of property between divorced spouses is generally a transfer of ownership.

  Note: Oftentimes recently divorced spouses must convey property to one another as part of the divorce proceedings. Such transfers of property may be exempt transfers (i.e., not subject to taxable value uncapping) if the conveyances are solely to terminate a tenancy by the entireties (tenancies by the entireties are discussed in the following section).

  Note: See also the transfer of ownership exemption information under court orders contained in this publication, starting on page 15.

- **Is a transfer of property a transfer between spouses if the property is transferred from one spouse to a limited liability company with the other spouse as the only member of that limited liability company?**

  No. 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.

  Note: This situation may be a transfer of ownership (if no statutory exception or exemption applies).

Tenancies by the Entireties

- **What is a tenancy by the entireties?**

  A tenancy by the entireties is a form of joint ownership where the co-owners are husband and wife. 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.

Transfer of Ownership And Taxable Value Uncapping Guidelines

- **How is a tenancy by the entireties formed?**

  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.

  Examples: 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. In these examples, Mr. and Mrs. Doe are the tenants by the entireties.

- **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.

- **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, provided no statutory exception or exemption applies. 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 become divorced 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.

  Note: See also the transfer of ownership exemption information under court orders contained in this publication, starting on page 15.

- **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, provided no statutory exception or exemption applies. The purpose of the conveyance is not solely to end the tenancy by the entireties. (Instead, the primary purpose of the conveyance is to sell the property.)

- **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.

Note: A conveyance from a former spouse to a former spouse may then be a transfer of ownership.

Example: John Doe and Jane Doe owned a lakefront cottage property as husband and wife. They then divorced, but both John Doe and Jane Doe continued to own the lakefront cottage property for several years after the divorce. 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, provided no statutory exception or exemption applies, 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 a Michigan Land Title Standard, a tenancy by the entireties cannot be created by a conveyance to two people who later marry.

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.

  Note: A life lease must be in writing.

- **What is a life estate?**

  A life estate is the same as a life lease (described above) for taxable value uncapping purposes.

  Note: A life estate must 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. This transfer of ownership exemption only applies, however, 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 (provided no statutory exception or exemption applies) upon the conveyance of the property. A partial uncapping can, therefore, occur with conveyances involving life leases.

- **In 2001 Jane Doe conveys her residential property to her son, 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 2001 Jane Doe conveys her residential property to her son, retaining a life estate on the entire parcel. In 2003, Jane Doe dies. Does the death of Jane Doe result in a transfer of ownership?**

  Yes, provided no statutory exception or exemption applies. 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 2004 tax year.

- **In 1983 (before passage of Proposal A) Jane Doe conveyed her residential property to her son, retaining a life estate on the entire parcel. In 2001 Jane Doe dies. Does the death of Jane Doe result in a transfer of ownership?**

  Yes, provided no statutory exception or exemption applies. 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 ownership of the property changed to Jane Doe's son upon her death. The taxable value of the property must be uncapped for the 2002 tax year.

- **In 2001 Jane Doe conveys 80 acres to her son, 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 (provided no statutory exception or exemption applies). 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 2002.

- **John and Sally Smith own property and grant John Smith's mother a life estate for this property. Is the conveyance of the life estate to John Smith's mother a transfer of ownership?**

  Yes, provided no statutory exception or exemption applies. 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 Sally Smith to John Smith's mother and a transfer of ownership occurred.

- **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.

- **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 (provided no lawful transfer of ownership exception or exemption applies).

  Note: 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.

  Example: John Doe conveys an unimproved 80 acre parcel in the northern Lower Peninsula to

his son, Joe Doe, 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 a 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 mortgage or land contract.

  Note: 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.

  Note: A Sheriff's Deed is frequently utilized in foreclosure matters.

- **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 a 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, provided no statutory exception or exemption applies.

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

  Yes. If a mortgagee which has received a property through foreclosure or forfeiture 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.

  Note: The redemption period in such matters is the period during which the former owner may pay the debt due and reclaim the property. The redemption period in such matters varies in length, but is often six months.

  Example: A property is transferred in January of 2002 when a bank forecloses on the property. The redemption period in this instance happens to be 6 months and expires in July of 2002. If the bank still owns the property in July of 2003 (one year after the redemption period expires),

a transfer of ownership occurs and the taxable value must be uncapped for tax year 2004.

Note: The one-year time limit discussed in this section 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 1999. This sale was a transfer of ownership and the property's taxable value was uncapped for tax year 2000. In 2001 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 2000 and subsequent years be recapped as if the 1999 transfer of ownership never occurred?**

  No. The 1999 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 2000 and the 2000 taxable value must be used as the base for subsequent taxable value determinations.

Redemptions of Tax-Reverted Properties

Note: Public Act (PA) 123 of 1999 significantly altered the property tax reversion process. As a result, two different property tax reversion processes are currently in effect in Michigan. The old (currently existing) reversion processes will eventually no longer be in effect; the last opportunity to purchase a tax lien under the old reversion processes will be in 2001. The information in this section of the publication only applies to the old (currently existing) property tax reversion processes. Under the new (currently existing) property tax reversion processes, there can be no tax lien purchases and no transfers by redemption.

- **What are tax-reverted properties?**

  For purposes of this section, tax-reverted properties are properties with property taxes which have not been timely paid and, for this reason, the property owner no longer has clear title to the property.

- **What is meant by "redemption"?**

  As used with regard to tax-reverted properties (see above), "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 a tax lien buyer deeds property back to the original owner by quitclaim deed because the original owner has redeemed the property, has a transfer of ownership occurred?**

  No. This is a transfer by redemption of tax-reverted lands and is not a transfer of ownership.

  Example: Taxes have not been paid on a property for three years. A tax lien buyer purchases taxes for the property at a tax sale. The owner then redeems (pays the needed sum to clear the tax lien held by the tax lien buyer)

within the redemption period. The tax lien buyer then conveys the property back to the owner by quitclaim deed. The conveyance by the tax lien buyer back to the owner under these circumstances is a transfer by redemption and is not a transfer of ownership.

- **Does a tax deed convey title to a property?**

  No. A tax deed can be issued by the State to a tax lien buyer one year after purchase at a county tax sale by the tax lien buyer of delinquent property taxes for a property. This deed signifies the tax lien buyer's interest in the property and does not convey title to the property.

  Note: However, a tax lien holder in possession of a tax deed may claim title to the property covered by the tax deed if the owner does not redeem the property within the redemption period. A transfer of ownership does occur when a tax lien buyer acquires title to a property. Also, if a tax deed has been issued and the owner has not redeemed the property within the six months after issuance of the tax deed, it is the opinion of the State Tax Commission that a transfer of ownership has occurred.

Trusts

- **Is a conveyance of property to a trust a transfer of ownership in the circumstances listed below?**

  - **The grantor 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.**

  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.

  Note: See also the information regarding trusts contained in the transfer of ownership definitions section of this publication, starting on page 3.

Court Orders

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

  A transfer of property pursuant to a judgment or order of 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 (provided that no other transfer of ownership exemption or exception applies).

- **What is a court of record?**

  Any court which has been designated as a court by the legislature is a court of record.

- **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, such a transfer is generally not a transfer of ownership since the purpose of the transfer is to disjoin (undo) a tenancy by the entireties (see also the transfer of ownership exemption information under tenancies by the entireties contained in this publication, starting on page 9). 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 property co-ownership in which each co-owner owns an equal, partial interest in an entire property. When a joint tenant dies, the decedent's ownership interest goes to the remaining joint tenant(s), not to the decedent's heir(s).

  Example: Five people own a property as joint tenants. Each joint tenant has a 20 percent interest in the property (100 percent divided by five people equals 20 percent per person). 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 (20 percent divided by four people equals 5 percent per person; 5 percent per person plus 20 percent per person equals 25 percent per person).

- **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.

  Example: A property is owned by four people as joint tenants. Each tenant must have a 25 percent interest (100 percent divided by four people equals 25 percent per person).

- **How is a joint tenancy formed?**

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

  Examples: If John Doe conveys property to John Doe and Joe Smith "as joint tenants", a joint tenancy is created. Similarly, if John Doe conveys property to John Doe and Joe Smith "as joint tenants and not as tenants in common", a joint tenancy is created. Also, if Jane Jones conveys property to John Doe and Joe Smith "as joint tenants" or "as joint tenants and not as tenants in common", a joint tenancy is established. John Doe and Joe Smith are the joint tenants in these examples.

  Note: The word "jointly" used alone to describe the grantees is not sufficient to create a joint tenancy. Use of the word "jointly" by itself to describe the nature of the ownership results in the creation of a tenancy in common.

- **Is a conveyance of property involving a joint tenancy a transfer of ownership?**

  Such a conveyance may or may not be a transfer of ownership depending upon the circumstances of the conveyance. General rules regarding joint tenancies are as follows:

  - A property transfer which creates a new joint tenancy 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.
  - A property transfer which expands, shrinks, or terminates a joint tenancy is not a transfer of ownership if at least one of the persons was an original owner and became a joint tenant when the joint tenancy was originally created **and** that person has remained a joint tenant since the joint tenancy was originally created.

Note: A joint owner at the time of the last transfer of ownership of a property is an "original owner".

- **Parent A conveys a property to parent A and his child B as joint tenants. Is this a transfer of ownership?**

  No, since parent A is the original owner of the property and has remained a joint tenant since the joint tenancy was created.

- **Parent A conveyed property to parent A and her child B as joint tenants. Parent A later dies. Is the death of parent A a transfer of ownership?**

  Yes, provided no statutory exception or exemption applies. Parent A is the only original owner in the joint tenancy and, upon the death of parent A, a transfer of ownership occurs because an original owner is no longer part of the joint tenancy.

  Note: The answer to this question remains the same even if the joint tenancy between parent A and child B was established prior to 1995, when transfers of ownership for taxable value uncapping purposes first became possible. In other words, for circumstances matching the circumstances of this situation, original ownership is not the ownership that existed on January 1, 1995 when transfers of ownership for taxable value uncapping first became possible. Under these circumstances, original ownership is the ownership that existed prior to creation of the joint tenancy, regardless of when that joint tenancy was formed.

- **Parent A conveyed a property to parent A and her child B as joint tenants. Parent A later conveys her interest to child B or someone other than her spouse. Is this later conveyance by parent A a transfer of ownership?**

  Yes, provided no statutory exception or exemption applies. Parent A is the only original owner in the joint tenancy and, when the conveyance occurs, a transfer of ownership occurs because an original owner is no longer part of the joint tenancy.

  Note: The note following the answer to the previous question also applies to this question and answer.

- **Parent A and child B acquire property together as joint tenants from unrelated individual C and (for purposes of this question) this acquisition was a transfer of ownership. Later, parent A conveys his interest to child B (or someone other than his spouse). Is this most recent conveyance a transfer of ownership?**

  No. Parent A and child B acquired the property together from unrelated individual C and this acquisition was a transfer of ownership. Under these circumstances, parent A and child B are both original owners. Since child B, an original owner, remains in the joint tenancy, no transfer of ownership occurs.

  Note: The answer to this question remains the same even if the joint tenancy between parent A and child B was established prior to 1995, when transfers of ownership for taxable value uncapping purposes first became possible. For circumstances matching the circumstances of this situation, original ownership is the ownership that existed when parent A and child B acquired the property as joint tenants since they acquired the property together and their acquisition of the property was a transfer of ownership. Under these circumstances, original ownership is the ownership that existed upon creation of the joint tenancy.

- **Individual A conveys a property to individual A and individuals B and C as joint tenants. Later, individual A conveys her interest to individual D (who is not individual A's spouse). This second conveyance to individual D is a transfer of ownership (for purposes of this question). After the conveyance to individual D, who is an original owner? If individual B, C, or D were to convey their interest in the property to someone, would that conveyance be a transfer of ownership?**

  After the conveyance to individual D, all three individuals B, C, and D are original owners. The joint tenants in the joint tenancy at the time of a transfer of ownership are original owners from that point forward. A conveyance by any of these three individuals (B, C, or D) would not be a transfer of ownership provided that at least one of the new original owners (or one of their spouses) remained in the joint tenancy.

- **Parent A deeds a property to parent A and child B as joint tenants. Later, child B conveys his interest back to parent A and the joint tenancy is terminated. Is this conveyance by child B a transfer of ownership?**

  No. Parent A, an original owner, held the property throughout and at the conclusion of the joint tenancy. Therefore, no transfer of ownership occurs.

- **Can a transfer of ownership involving a joint tenancy result in a partial uncapping of the taxable value of the property involved?**

  No, a transfer of ownership involving a joint tenancy cannot result in a partial taxable value uncapping (unless other factors are involved, such as a purchase of qualified agricultural property; see also the partial uncapping situations information near the end of this publication, starting on page 29). A transfer of ownership involving a joint tenancy must always result in a total taxable value uncapping for the transferred property.

- **How is an individual's spouse viewed in the analysis of a property transfer involving a joint tenancy?**

  A person's spouse is the equivalent of that person when analyzing a joint tenancy to determine whether a transfer of ownership has occurred.

  Example: Parent A conveys a property to parent A and child B as joint tenants. Later, parent A conveys his interest to individual C. If individual C is not the spouse of parent A, a transfer of ownership occurs (provided no statutory exception or exemption applies). However, if individual C is the spouse of parent A, individual C is considered the same as parent A and no transfer of ownership occurs.

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.

  Examples: The following situations 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 contained in this publication, starting on page 2)*
- *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.

  Example: Individual A is employed by XYZ Corporation. XYZ Corporation transferred individual A from Anywhere, Michigan to Los Angeles, California. As a result, Individual A executed a warranty deed with the name(s) of the buyer(s) left blank and provided this deed to a relocation company retained by XYZ Corporation. In return, individual A received an undisclosed amount of money. The deed was placed in escrow until the relocation company could find a buyer for the property. This situation is an example of a transfer involving a relocation company and no transfer of ownership occurs until the property is conveyed to the final buyer (provided that no lawful exception or exemption applies at that time).

  Note: 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.

Affiliated Groups

- **What is an affiliated group?**

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

- **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. A transfer of property or ownership interests among members of an affiliated group is not a transfer of ownership.

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.

  Note: This transfer of ownership exemption applies even if the trading cumulatively totals more than 50 percent of the total ownership interest of the entity.

  Note: See also the information regarding ownership changes of legal entities contained in this publication, contained on page 6.

- **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 (an IPO 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

Commonly Controlled Entities

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

  No. A transfer of real property (or other ownership interests) among entities that are commonly controlled is not a transfer of ownership.

- **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.

Transfer of Ownership And Taxable Value Uncapping Guidelines

- **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.treasury.state.mi.us. 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)

  This Revenue Administrative Bulletin (which is based on Internal Revenue Service regulation 1.414(c)) provides criteria which must be met for entities to be commonly controlled. Michigan Revenue Administrative Bulletin 1989-48 is to be consulted when making a decision whether entities are commonly controlled.

  Note: For entities to be commonly controlled under Michigan Revenue Administrative Bulletin 1989-48, the entities must be engaged in a business activity. Black's Law Dictionary, *Seventh Edition, page 192, defines "business" as "[a] commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain." Also,* Black's Law Dictionary, *Seventh Edition, page 1500, defines "trade" as "[t]he business of buying and selling or bartering goods or services". 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 yet still be considered entities under common control?**

  Yes. In the opinion of the State Tax Commission, the following circumstances 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:

  > Property (or an ownership interest) is conveyed from one entity to another entity and both entities are owned by the same individual(s) with the same percentage of ownership.

Property transfers (or transfers of ownership interests) under these exact circumstances are considered to be transfers between commonly controlled entities and not transfers of ownership.

Example: Individual A and individual B own a lakefront cottage property together as tenants in common, each with an undivided 50 percent interest. This is the only such property these individuals own and they use the property solely for recreational purposes, residing there from time to time. For liability protection purposes, individual A and individual B convey the property to a limited liability company. Individual A and individual B are the only members of the limited liability company, each having a 50 percent ownership interest. Even though these entities (individual A, individual B, and the limited liability company) are not entities under common control under Michigan Revenue Administrative Bulletin 1989-48, these entities are considered to be under common control by policy of the State Tax Commission and this property transfer would not be a transfer of ownership.

Example: Individual A and individual B own a lakefront cottage property together as tenants in common, each with an undivided 50 percent interest. This is the only such property these individuals own and they use the property solely for recreational purposes, residing there from time to time. For liability protection purposes, individual A and individual B convey the property to a limited liability company. Individual A and individual B are the only members of the limited liability company, with individual A having a 51 percent ownership interest and individual B having a 49 percent ownership interest. These entities (individual A, individual B, and the limited liability company) are not entities under common control under Michigan Revenue Administrative Bulletin 1989-48. These entities also do not qualify as entities under common control under the State Tax Commission policy regarding common control outside this bulletin for the reason that their ownership interests were not identical before and after the transfer. This property transfer would therefore be a transfer of ownership (provided no statutory exception or exemption applies).

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 of 1986, is that transfer a transfer of ownership?**

  No. A direct or indirect transfer of real property (or other ownership interest) 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.

- **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 of 1986?**

  Section 368 of the Internal Revenue Code of 1986 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 (provided no statutory exception or exemption applies).

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. Also, see State Tax Commission Bulletin No. 4 of 1997 for a complete discussion of qualified agricultural property.) Qualified agricultural property is entitled to exemption from local school operating taxes (usually 18 mills).

  Note: According to MCL 211.7dd, "[r]elated buildings include a residence occupied by a person employed in or actively involved in the agricultural use and who has not claimed a homestead exemption on other property" and "[a] parcel of property is devoted primarily to agricultural use only if more than 50% of the parcel's acreage is devoted to agricultural use."

- **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. This affidavit (the format of which is established by the State Tax Commission) must attest that the qualified agricultural property shall remain qualified agricultural property.

  Note: See also State Tax Commission Bulletin No. 10 of 2000 for additional information regarding this transfer of ownership exemption.

- **Must an assessor verify that the affidavit (attesting that qualified agricultural property shall remain qualified agricultural property) 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 which has a partial exemption as qualified agricultural property—e.g., a 75 percent exemption as qualified agricultural property—eligible for the qualified agricultural property transfer of ownership exemption?**

  Yes, if the new owner maintains the parcel as 75 percent qualified agricultural property and files an affidavit with the assessor and the register of deeds attesting that the property will remain 75 percent 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—e.g., 75 percent—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 (assuming that the transfer does not qualify for some other transfer of ownership exemption). 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.

Note: This answer is based on the assumption that no split of the parcel which is to be transferred occurs.

- **In terms of uncapping, what happens if only a part of a qualified agricultural property is converted by a change in use after a transfer which was exempt from uncapping due (solely) to the qualified agricultural property transfer of ownership exemption?**

  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.

  Note: 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 percent qualified agricultural property and could receive a 100 percent qualified agricultural property exemption (either by virtue of its class as agricultural or because more than 50 percent of the parcel is devoted to an agricultural use as defined by law). 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 which is classified residential. 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.

  Note: The answer to this question is equally applicable for parcels which are classed other than agricultural by the local assessor.

- **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—i.e., is not uncapped due solely to the transfer of ownership exemption for qualified agricultural property—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 (the Agricultural Property Recapture Act).
  3. The assessor must remove the qualified agricultural property exemption from local

school operating taxes in the year following the conversion by a change in use.[1]

- **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 (form 3677, **Notice of Intent to Rescind the Qualified Agricultural Property Exemption**) with the local tax collecting unit indicating the purchaser's intent to rescind the qualified agricultural property exemption. (And the sale is consummated within 120 days of the notice.)

  If either of these two sets of circumstances occurs, the property is converted by a change in use.

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

  *Note: The notice mentioned in item number 2 above is form 3677 (**Notice of Intent to Rescind the Qualified Agricultural Property Exemption**). This form is different from—and not to be confused with—form 2743 (**Request to Rescind Qualified Agricultural Property Exemption**). **These forms are not interchangeable.** Form 3677 is filed before a change in use occurs. Form 2743 is filed after a change in use actually occurs.*

- **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 qualified agricultural property and 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. The law allows for the recapping of taxable value when all five of the following conditions exist:

  1. A purchaser of qualified agricultural property qualified for the qualified agricultural property exemption from uncapping but 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.
  5. The property was qualified agricultural property for each year back to, and including, 1999.

  If all of these five conditions are met, the local tax collecting unit must immediately revise the current tax roll. This is accomplished by changing the existing uncapped taxable value to the taxable value the property would have if it had not been uncapped after the transfer.

[1] This language is expected to be supported by a technical change in the law in the near future.

Note: The recapping 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.

Note: The recapping is only for the year that the affidavit was filed. No other tax rolls are affected.

Note: When a property is recapped as described above, 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. (The due date is the last day that taxes can legally be paid without the addition of penalty or interest.)

Note: Recapping as described above only applies to an uncapping which occurred in 2001 or later. The law does not allow recapping as described above for the 2000 tax year or prior tax years.

- **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 local assessor implements this recapping by completing form 3675 (**Assessor Affidavit Regarding the Recapping of the Taxable Value of Qualified Agricultural Property**).

  Note: It is not necessary that these recappings be taken to 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.

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. Michigan statutes also provide that this notification is to be made on a form prescribed by the State Tax Commission. This form is the **Property Transfer Affidavit** and is also known as form L-4260. A current version of the Property Transfer Affidavit can be accessed at the Michigan Department of Treasury website, www.treasury.state.mi.us.

- **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.

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

  Yes. 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. This penalty begins to accrue after the 45-day filing deadline (see above) has passed.

  Note: The governing body of a local unit of government may adopt a resolution waiving this ($5.00 per day/$200.00 maximum) penalty. In the absence of such a resolution, however, this penalty must be levied and collected.

  Note: If a local assessor becomes aware that a transfer of ownership has occurred but this transfer of ownership was not timely reported to the local assessor, additional taxes, penalties, and interest could result.

Note: See also the information under delayed uncappings contained in this publication, starting on page 30.

- **Who receives the $5.00 per day/$200.00 maximum penalty?**

  This penalty is distributed to the local tax collecting unit.

- **Does the $5.00 per day/$200.00 maximum penalty become a lien on the property?**

  The State Tax Commission has advised that this penalty does not become a lien on the property involved. See State Tax Commission Bulletin No. 16 of 1995, page 24.

- **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 $5.00 per day/$200.00 maximum 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, etc.) be reported to the local assessor when reporting a transfer of ownership. The first 8 boxes on the Property Transfer Affidavit correspond to this required information and must be completed along with the certification portion of the form. 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 $5.00 per day/$200.00 maximum penalty is to be levied (unless waived as described on page 26 of this publication).

  Note: 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 filer.

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

  No. As noted on the form, neither the Property Transfer Affidavit itself nor the information contained on this form is confidential.

  *Note: The Property Transfer Affidavit should not be confused with a **Real Property Statement** (form L-4182). Information contained on a Real Property Statement is confidential (see Attorney General Opinion 93-035 dated June 29, 1993).*

- **Who is required to file the Property Transfer Affidavit?**

  Michigan law specifies two possibilities for the party responsible for filing the Property Transfer Affidavit. Under MCL 211.27a.(6)(h) which pertains to 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. 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. Some transfers are transfers of ownership and some are not. If a transfer of property (or ownership interest) is not a transfer of ownership, the Property Transfer Affidavit is not legally required to be filed.

Note: 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. Doing so helps avoid 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 (form L-4260). No substitute reporting means is permitted (i.e., a substitute reporting means will not fulfill the statutory transfer of ownership reporting requirement). However, it is permissible to submit additional documentation (e.g., a cover letter and/or copies of related documents) 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). Additional documentation is often needed by a local assessor to make a decision whether a transfer of ownership has occurred.

- **Can the recording of a document—such as a deed—with the register of deeds serve as notification of a transfer of ownership?**

  No. As stated above, notification of a transfer of ownership must be made using a Property Transfer Affidavit (form L-4260).

- **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 information that is not contained on the Property Transfer Affidavit. Therefore, although a local assessor cannot require documentation in addition to a Property Transfer Affidavit, a local assessor can certainly request that additional documentation (e.g., copies of trust instruments, partnership agreements, articles of incorporation, limited liability company operating agreements, etc.) be submitted.

  Note: 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.

  Note: As discussed in this publication, assessors must not infer a transfer of ownership exemption or grant a transfer of ownership exemption based on implication. If an assessor has reason to believe that a transfer of ownership may have occurred but is unsure whether the transfer was a transfer of ownership because relevant information has not been provided to (or has been withheld from) the assessor, it is the clear duty of the assessor to uncap the taxable value of the

property involved for the year following the transfer.

(0.333 x 2002 state equalized value)
+ (0.667 x 2002 capped value)[*][❖]
2002 taxable value

Note: 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 (provided no lawful exception or exemption applies). In such a 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.*

Partial Uncapping Situations

- **What is a partial uncapping situation?**

  A partial uncapping situation is a situation 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 percent 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 2001 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 2002 taxable value of the parcel is to be partially uncapped due to this (partial) transfer of ownership—i.e., the 2002 taxable value of the parcel is to be uncapped 1/3 to match the undivided ownership interest conveyed from Jane Doe to her sister. In accordance with State Tax Commission guidelines, the 2002 taxable value for this parcel would be determined as follows:

- **Under what circumstances can a partial taxable value uncapping occur?**

  Transfers of ownership may (or will) result in partial uncapping situations under the following six sets of circumstances:

  1. Tenancy in common
  2. Long-term (or bargain purchase option) lease of a portion of a parcel (e.g., a regional shopping center)
  3. Cooperative housing corporation
  4. Life lease retained by the grantor for a portion of a parcel (e.g., a house and 2 acres of a 40 acre 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

[*] The capped value used is to be determined as if no transfer of ownership had occurred.

[❖] This example assumes that the 2002 state equalized value is greater than the 2002 capped value (calculated as if no transfer of ownership occurred). If this is not the case, the 2002 state equalized value should be used instead of the 2002 capped value in the formula.

These are the only circumstances (of which the Property Tax Division staff is presently aware) that may result in a partial taxable value uncapping due to a transfer of ownership. **All other transfers of ownership must 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).**

Note: This publication contains additional information regarding items 1 through 4 and 6 above. See also the applicable sections of this publication.

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

  The procedures for handling delayed uncappings depend upon the cause and are detailed below.

  Note: See also the information regarding transfer of ownership notification requirements contained in the Property Transfer Affidavits section of this publication, starting on page 26.

- **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 and this situation resulted from a failure on the part 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 immediately 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 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 L-4054). 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.

Note: 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.

Note: A completely different procedure is required if a delayed uncapping is necessary due to a clerical error by the assessor or a mutual mistake of fact.

Note: The procedures discussed above do not apply if there has been another transfer of ownership of this same property subsequent to the (prior) unreported transfer of ownership. If this is the case, different rules apply; these rules are discussed at the end of this section of the publication.

Note: Forms L-4054 can be obtained from the Michigan Department of Treasury website, www.michigan.gov/treasury.

- **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 2001 a property owner does not file a Property Transfer Affidavit to report a transfer of ownership that occurred in 2001 and the property's taxable value is not uncapped for 2002. 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 2001 and the property's taxable value was not uncapped because the property owner did not report the transfer of ownership. Under these circumstances, 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 2002 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."

  Note: 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.

Further, the State Tax Commission has directed that "[t]he 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." In addition to not being legally authorized, processing delayed uncappings in these circumstances by the July or December Board of Review would (usually) delay the taxable value uncapping and associated tax collection.

- **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 is to 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 notifying the property owner that the assessor will recommend a delayed uncapping to the July or December Board of Review (to allow the property owner an opportunity to appear). These procedures also include advising the property owner of the right to appeal to the Michigan Tax Tribunal within 30 days of the July or December Board of Review action. Ultimately, the property owner will likely be billed for taxes based on the July or December Board of Review action to uncap and recalculate the parcel's taxable value(s).

  Note: 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.

  Note: A completely different procedure (discussed earlier in this section of the publication) is required if a delayed uncapping is necessary due to a failure on the part of a transferee of a property to file a Property Transfer Affidavit in a timely manner.

- **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.

  Example: In May of 2001 a local assessor discovers that a transfer of ownership occurred in 1996 and that the taxable value of the property involved was not uncapped for 1997 (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 on the part of the assessor (or the assessor's staff). Under these circumstances, the taxable values for the property for 1997 through 2001 will be recalculated. However, only the 2000 and 2001 taxable values can (and must) actually be changed by the 2001 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. A penalty of $5.00 per day up to $200.00 for failure to file a Property Transfer Affidavit (the $5.00 per day begins to accrue after the 45-day deadline to file the form; see also the information contained in the Property Transfer Affidavits section of this publication, starting on page 26)

  The taxable value(s) of the property are not actually changed due to the first transfer of ownership. Also, the additional taxes, etc. do not become a lien on the property.

  Note: 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.