



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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P.A. 204 of 2013

TO: Assessors, Equalization Directors and Interested Parties
FROM: State Tax Commission
SUBJECT: P.A. 204 of 2013 Development Property

Bulletin 3 of 2013 is rescinded.

The purpose of this Bulletin is to provide information regarding Public Act 204 of 2013. This Act amended P.A. 494 of 2012 regarding development property.

A. Definitions

New construction is defined as property not in existence on the immediately preceding tax day and not replacement construction (MCL 211.34d).

Development property is defined as real property (not including land) on which a residential dwelling, condominium unit or other residential structure is located. The residential dwelling, condominium unit or other residential structure must meet all of the following conditions:

1. Is not occupied and has never been occupied
2. Is available for sale
3. Is not leased
4. Is not used for any business or commercial purpose. This restriction does not apply to real property used as an on-site office in a specific development. However in the case of a specific development that consists of multiple units, only one unit is eligible to be designated as an on-site office.

Eligible development property is defined as a residential dwelling, condominium unit or other residential structure that was new construction after December 30, 2012 and the land on which the residential dwelling, condominium unit or other residential structure is located that meets all of the following conditions:

1. Is not occupied and has never been occupied. In the case of a condominium or other residential structure with multiple units, occupancy does not occur until all of the units are occupied. However any unit that is occupied is not eligible for the exemption.
2. Is available for sale
3. Is not leased

4. Is not used for any business or commercial purpose. This restriction does not apply to real property used as an on-site office in a specific development. However in the case of a specific development that consists of multiple units, only one unit is eligible to be designated as an on-site office.

B. Development Property

The intent of the legislation was to allow property that previously qualified as **development property** (as defined above) to continue receiving the exemption from school operating millage until December 30, 2015 or until the new construction is no longer located on development property, whichever is first. However, beginning November 1, 2013, this property will now receive an exemption for a single on-site office.

In order to claim the exemption, an owner of **development property** (as defined above) must file Form 5033, Affidavit Claiming Exemption from School Operating Millage Levied for New Construction Located on Development Property with the local tax collecting unit on or before June 1 for the immediately preceding winter tax levy, immediately succeeding summer tax levy and all subsequent levies or on or before November 1 for the immediately succeeding winter tax levy and all subsequent tax levies.

Upon receipt of Form 5033, assessors are responsible for determining if the real property is **development property** (as defined above) and to exempt qualifying property from the roll for two years or until the new construction is no longer located on development property; whichever comes first.

The owner must file a rescission form with the local unit not more than 90 days after all or a portion of the exempted new construction is no longer located on **development property**. Owners who fail to file the form are subject to a penalty of \$5 per day for each property up to a maximum of \$200. The penalty is to be deposited in the State School Aid Fund. The penalty may be waived by the Department of Treasury.

If an assessor determines the new construction is not located on **development property** and therefore is not eligible for the exemption, the assessor may deny the exemption by notifying the owner in writing not less than 14 days prior to a meeting of the Board of Review. For the March Board of Review, the State Tax Commission has taken the position that "prior to a meeting of the Board of Review" means *at least* 14 days before the first BOR meeting at which the public can appeal; the second Monday in March.

If an exemption was erroneously granted, an owner may request that the local unit withdraw the exemption. If an owner makes this request, the assessor is required to notify the owner that the exemption has been denied and shall immediately place the property back on the tax roll and issue a corrected tax bill for the tax year being adjusted.

An owner who asks for withdrawal of the exemption prior to being contacted by the local unit regarding eligibility and pays the corrected tax bill within 30 days, shall not be subject to penalties and interest. An owner who pays the corrected tax bill more than 30 days after the bill is issued, shall be liable for penalties and interest that would have accrued if the exemption had not been granted from the date the taxes were originally levied.

C. Eligible Development Property

Beginning December 31, 2013 **eligible development property** (as defined above) is exempt from school operating millage for three years or until the property is no longer eligible development property, whichever occurs first.

In order to claim the exemption, an owner of **eligible development property** (as defined above) must file Form 5033, Affidavit Claiming Exemption from School Operating Millage Levied for New Construction Located on Development Property with the local tax collecting unit on or before June 1 for the immediately succeeding summer tax levy and all subsequent levies or on or before November 1 for the immediately succeeding winter tax levy and all subsequent tax levies.

Upon receipt of Form 5033, assessors are responsible for determining if the real property is **eligible development property** (as defined above) and to exempt qualifying property from the roll for three years or until the new construction is no longer located on development property; whichever comes first.

The owner must file a rescission form with the local unit not more than 90 days after all or a portion of the exempted new construction is no longer located on **eligible development property**. Owners who fail to file the form are subject to a penalty of \$5 per day for each property up to a maximum of \$200. The penalty is to be deposited in the State School Aid Fund. The penalty may be waived by the Department of Treasury.

If an assessor determines the new construction is not located on **eligible development property** and therefore is not eligible for the exemption, the assessor may deny the exemption by notifying the owner in writing not less than 14 days prior to a meeting of the Board of Review. For the March Board of Review, the State Tax Commission has taken the position that "prior to a meeting of the Board of Review" means *at least* 14 days before the first BOR meeting at which the public can appeal; the second Monday in March.

If an exemption was erroneously granted, an owner may request that the local unit withdraw the exemption. If an owner makes this request, the assessor is required to notify the owner that the exemption has been denied and shall immediately place the property back on the tax roll and issue a corrected tax bill for the tax year being adjusted.

An owner who asks for withdrawal of the exemption prior to being contacted by the local unit regarding eligibility and pays the corrected tax bill within 30 days, shall not be subject to penalties and interest. An owner who pays the corrected tax bill more than 30 days after the bill is issued, shall be liable for penalties and interest that would have accrued if the exemption had not been granted from the date the taxes were originally levied.

D. Rights of Appeal

An appeal may be filed with the July or December Board of Review for new construction on development property or eligible development property for which an exemption was not on the tax roll. The appeal may be filed in the year the exemption was claimed or the immediately succeeding year.

If an assessor denies an exemption in the year the affidavit was filed, the owner may file an appeal with the July Board for summer taxes or if there is not a summer tax levy, with the December Board of Review.

If an assessor denies or modifies an existing exemption, the owner may appeal to the March Board of Review. The decision of the March Board of Review may be appealed to the Residential and Small Claims Division of the Michigan Tax Tribunal on a form approved by the by the Michigan Tax Tribunal. Michigan Tax Tribunal forms are available at www.michigan.gov/taxtrib.

E. Additional Information

Assessors should note that the Act does not require the new construction to be complete, only that the new construction meet the definitions noted above. Assessors are advised that partial construction would be eligible to receive the exemption if it meets the definitions above. However, an owner can only file one affidavit per property in order to claim the exemption. The Commission advises that the three year limitation begins with the date of that filing, not the date of the completion of the construction.

Due to the fact that the statute indicates that new construction is defined by MCL 211.34d as property not in existence on the immediately preceding tax day and not replacement construction, this Act can only apply to construction that took place in 2012 and subsequent years.