



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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DATE: March 22, 2005

TO: Assessors
Equalization Directors

FROM: State Tax Commission

SUBJECT: County Drains and Inter-County Drainage Districts

This correspondence is intended to advise assessing and equalization personnel regarding the exemption of land associated with County drains. Michigan Compiled Law (MCL) 211.7e.(2) states the following:

“The value of land over the surface of which is located a public right of way shall not be considered when the real property is being assessed.”

This statute provides an exemption for public road rights-of-way. This statute has also been interpreted by the Attorney General to apply to public rights-of-way for drains and drainage ditches. Specifically, the Attorney General has given the opinion that **“only land over the surface of which public rights-of-way for drains, roads, drainage ditches, highways and streets are located shall be excluded from consideration in making the appraisal valuation for assessment purposes. Private easements, private public utility rights-of-way and swamps not within the limits of a public right-of-way shall not be excluded from the valuation process for assessment purposes.”** (1981-1982 OAG No. 6007, November 18, 1981.) Based on this Attorney General Opinion and on other informal guidance from the Attorney General, it is the opinion of the State Tax Commission that this exemption applies to public rights-of-way for **surface** drains. It DOES NOT, in the opinion of the Commission, apply to public rights-of-way for **subsurface (buried)** drains. The exemption also does not apply to **private** easements or **private** rights-of-way for drain purposes.

When assessors value property affected by a public right-of-way for surface drains, the exemption of the easement area is to be handled in much the same way that the exemption for a public road right-of-way is handled. Assessors should include the area of the known public surface drain right-of-way in the affected parcel’s acreage, but assessors must exclude the surface drain right-of-way area from the **assessable acreage** of the parcel. **No value is to be placed on the area of the public surface drain right-of-way even though the area for the right-of-way should be included in the parcel’s overall acreage.**

Example: A public road right-of-way runs along the entire north side of a square parcel, 40.00 acres in size. The area of this right-of-way is 1.00 acre (1,320.0 feet x 33.0 feet = 43,560 square

feet, or 1.00 acre). A second public right-of-way for a **surface** drain runs across the southeast corner of this parcel (it does not overlap the road right-of-way at any point). The area of this public right-of-way for a **surface** drain is 0.17 acre (450.0 feet x 16.5 feet = 7,425 square feet, or 0.17 acre). A third public right-of-way also crosses this parcel. This third right-of-way is for a **subsurface (underground)** drain and traverses the parcel near the southwest corner of the parcel (this third public right-of-way does not overlap either of the other public rights-of-way at any point on the parcel). The area of the third right-of-way is 0.42 acre (550.0 feet x 33.0 feet = 18,150 square feet, or 0.42 acre). The assessor has determined that a value of \$2,000 per acre is appropriate for this parcel. The area, the assessable area, and the land value of this parcel are as follows given the above facts:

Area: 40.00 acres (all 40.00 acres are included in the parcel's acreage)

Assessable area: 38.83 acres (40.00 acres - 1.00 acre public road right-of-way - 0.17 acre public surface drain right-of-way = 38.83 acres)

Note that the area of the public subsurface drain right-of-way is not subtracted from the area of the parcel in determining the assessable area of the parcel since the area of a subsurface drain right-of-way is not exempt from taxation.

Land value: \$77,660 (38.83 acres x \$2,000 per acre = \$77,660)

Further, the Commission expects that assessors will investigate the existence and location of public drain rights-of-way in their assessing jurisdictions (if they have not already done so) to ensure that lands entitled to this exemption are afforded the exemption. It is suggested that assessors contact the appropriate County Drain Commissioner for information on the existence and location of public surface drain rights-of-way. In preparing appraisals for equalization purposes, equalization personnel shall treat public surface drain rights-of-way in the same manner that is described above for assessors.

The views of the Commission expressed in the preceding paragraphs are not new. These views have previously been expressed in the State Tax Commission *Assessor's Manual* (see pages 2-30, 4-2, and 10-32 of Volume III). These views regarding the exemption of public rights-of-way for drains are consolidated here in this communication to call these matters to the attention of assessors in an effort to ensure uniform and correct application of the exemption.

This communication also provides an opportunity for the Commission to inform assessors and equalization personnel of another exemption related to drains that has not previously been addressed by the Commission on a statewide basis. The Attorney General has given the opinion that lands **owned** by an inter-county drainage district which are used for drain purposes are exempt from property taxes (1979-1980 OAG No. 5701, May 5, 1980). (Note: This opinion was based on the language of MCL 211.7 as it existed at that time. The language of MCL 211.7 which the Attorney General relied on in rendering his opinion was subsequently removed from MCL 211.7 and placed in MCL 211.7m virtually unchanged.) Based on this opinion, the Commission advises assessors and equalization personnel that lands **owned** by an inter-county drainage district which are used for drain purposes are exempt from ad valorem property taxes.