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DEPARTMENT OF TREASURY  
LANSING

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**Transfers of Ownership**

**TO:** Assessors, Equalization Directors and Interested Parties

**FROM:** State Tax Commission

**SUBJECT:** Transfer of Ownership

**Bulletins No. 16 of 1995, No. 8 of 1996, No. 10 of 2000, and No. 15 of 2014 are rescinded.**

This Bulletin combines previous guidance offered by the State Tax Commission on the topic of Transfers of Ownership as defined pursuant to MCL 211.27a. Additional guidance, including examples, can be found in the Transfer of Ownership Guidelines issued by the State Tax Commission.

This update also includes statutory changes resulting from Public Act 243 of 2015, which renumbered the subsections and added a provision regarding the conveyance of a property resulting from the expiration or termination of a life estate or life lease, and statutory changes resulting from Public Act 375 of 2016, which added a provision regarding creation of a separate tax parcel for qualified agricultural property. Additionally, recent statutory changes have been made exempting certain real property transfers to and from family members. This Bulletin will further define conveyances that are considered transfers of ownership.

#### **A. TRANSFERS OF OWNERSHIP**

In accordance with the Michigan Constitution as amended by Michigan statutes, a “transfer of ownership” causes the taxable value of the transferred property to be uncapped in the calendar year following the year of the transfer of ownership. This “uncapping” results in the taxable value being equal to the State Equalized Value in the assessment year following the conveyance of property. In subsequent years, the taxable value is “capped” and the change of taxable value is subject to the limitation set forth in MCL 211.27a(2).

The law requires in MCL 211.27a(3) that in the year following a transfer of ownership, the Taxable Value shall be uncapped. The assessor does not have the authority to refuse to uncapped the Taxable Value in the year following a transfer of ownership.

Some transfers are not transfers of ownership and their Taxable Values are not uncapped in the year following the transfer. These exclusions are provided in statute and will be addressed individually later in this Bulletin. The assessor is responsible for determining whether each individual transfer meets the definition of a transfer of ownership.

The assessor shall continue to determine the SEV of all properties each year. The assessor is not required to calculate a capped value for a property which has experienced a transfer of ownership in the immediately preceding year since the SEV will become the Taxable Value for that year. Even though it is unnecessary to calculate a capped value for properties that have experienced a “transfer of ownership” in the previous year, it is still necessary to keep track of additions and losses for those properties since that information is needed for equalization and millage rollback calculations.

## **B. TRANSFER OF OWNERSHIP EVENTS**

A “transfer of ownership” is defined in MCL 211.27a(6) as “the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest.” Specific transfers may involve a conveyance of title or present interest in the property but be specifically exempted. These specific exemptions will be addressed later. Transfer of ownership of property includes, but is not limited to, the following:

(a) A conveyance by deed.

A conveyance is a written instrument (such as a deed or lease) that passes an interest in real property from one person to another. Two of the most common types of deeds are a warranty deed and quitclaim deed, though many others exist.

(b) A conveyance by land contract.

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

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

(c) A conveyance to a trust is a transfer of ownership, except under certain conditions:

- i. If the settlor or the settlor’s spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries at the settlor, the settlor’s spouse, or both.
- ii. Beginning December 31, 2014, for residential real property, if the settlor, the settlor’s spouse, or both conveys the property to the trust and the sole beneficiary or beneficiaries are the settlor’s or settlor’s spouse’s mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the property is not used for any commercial purpose following the conveyance.

It is important to provide some general information about trusts. There are many types of trusts which have many different purposes. The most common type of trust is the revocable family trust. The following definitions will assist the reader understand the revocable family trust.

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

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

A **contingent beneficiary** is a person who is not now a beneficiary but will become a beneficiary if some specified event occurs in the future.

(d) A conveyance by distribution from a trust, except under certain conditions:

- i. If the distributee (defined below) is the sole present beneficiary, the spouse of the sole present beneficiary, or both.
- ii. Beginning December 31, 2014, a distribution of residential real property if the distributee is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the property is not used for any commercial purpose following the conveyance.

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

(e) A change in the sole beneficiary or beneficiaries of a trust, except under certain circumstances:

- i. A change that adds or substitutes the spouse of the sole present beneficiary.
- ii. Beginning December 31, 2014, for residential real property, a change that adds or substitutes the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the property is not used for any commercial purpose following the conveyance.

(f) A conveyance by distribution under a will or by intestate succession, except under certain circumstances:

- i. If the distributee is the decedent's spouse.
- ii. Beginning December 31, 2014, for residential real property, if the distributee is the decedent's or the decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance.

(g) A conveyance by lease if one or both of the following conditions exists:

- i. The lease term exceeds 35 years, including all options to renew the lease.
- ii. The lessee has a bargain purchase option. A bargain purchase option is defined by law as the right to purchase the leased property at the end of the lease for 80 percent or less of what the property's projected true cash value at the end of the lease. Even if the lease agreement qualifies as a "transfer of ownership" under MCL 211.27a(6)(g), the lessee is still required to follow the notification requirements under 211.27a(10), which states the transferee must notify the assessing officer on the proscribed form within 45 days of the transfer of ownership, to qualify as a transfer of ownership by the taxing unit. (*Walgreen's Co. v. Macomb Twp.* (2008) 760 N. W.2d 594, 280 Mich. App. 58).

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

(h) A conveyance of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than 50% of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity.

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

Both of the following apply to a corporation subject to 1897 PA 230, MCL 455.1 to 455.24:

- A transfer of stock of the corporation is a transfer of ownership only with respect to the real property that is assessed to the transferor lessee stockholder.
- A cumulative conveyance of more than 50% of the corporation's stock (such as through the course of normal public trading between unrelated individuals) does not constitute a transfer of ownership of the corporation's real property.

Normal public trading of shares of stock or other ownership interest that, over any period of time, cumulatively represents more than 50% of the total ownership interest in a corporation or other legal entity and are traded in multiple transactions involving unrelated individuals, institutions, or other legal entities is not a transfer of ownership. Note that this exception involves normal public trading and unrelated individuals. A further explanation of "normal public trading" is provided later in this Bulletin.

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

- a) A transfer among members of an affiliated group.
- b) A transfer among legal entities which are commonly controlled.
- c) A transaction that qualifies as a tax-free reorganization.

A further explanation of these types of transfers is provided starting on page 6 of this Bulletin.

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

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

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

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

- (j) A conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed.
- (k) Notwithstanding the provisions of section 7ee(5), at the request of a property owner, an assessor's establishment of a separate tax parcel for a portion of a parcel that ceases to be qualified agricultural property but is not subject to a land division under the land division act or any local ordinance.

A transfer of ownership occurs only as to that portion of the parcel established as a separate tax parcel and only that portion shall have its taxable value uncapped and shall be subject to the recapture tax provided for under the agricultural property recapture act. The uncapping shall be made as of the December 31 in the year that the portion of the parcel established as a separate tax parcel ceases to be qualified agricultural property.

Pertaining to conveyances involving a trust (c, d, and e above), statute permits the assessor or the Department of Treasury to request the sole present beneficiary or beneficiaries furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements to allow the conveyance to be an exempt transfer of ownership. If a present beneficiary fails to comply

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

### C. TRANSFER OF OWNERSHIP EXEMPTIONS

Michigan law specifies that certain transfers of property and ownership interests are not transfers of ownership for taxable value uncapping purposes. These types of conveyances 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)-(x).

It is a solidly established principal that property tax “exemption statutes are to be strictly construed in favor of the taxing unit and against the exemption claimant.” *Association of Little Friends, Inc. v City of Escanaba*, 138 Mich App 302; 362 NW2d 602 (1984); *Town & Country Dodge Inc. v Dep’t. of Treasury*, 420 Mich 226; 362 NW2d 618 (1984); *Inter Co-op Council v Dep’t. of Treasury*, 257 Mich App 219; 668 NW2d 181 (2003).

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

Since a transfer of ownership exemption is simply a form of property tax exemption, it is the opinion of the State Tax Commission that the principals which apply to general property tax exemptions also apply to transfer of ownership exemptions. Therefore, transfer of ownership exemption statutes must be strictly interpreted against the person or entity claiming the exemption and in favor of the local taxing unit. Assessors must not infer a transfer of ownership exemption or grant a transfer of ownership exemption based on implication. Transfers of ownership do not include the conveyances listed in MCL 211.27a(7).

Transfer of Ownership exemptions allowed by statute include:

- (a) The transfer of property from one spouse to the other spouse or from a decedent to a surviving spouse.
- (b) The transfer from a husband, a wife, or a married couple creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.
- (c) A transfer of that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease. That portion of property transferred that is not subject to a life lease shall be uncapped.
- (d) Beginning December 31, 2014, a transfer of residential real property that had been subject to a life estate or life lease retained by the transferor resulting from the expiration or termination of that life estate or life lease is not a transfer of ownership if the transferee is the transferor’s or the transferor’s spouse’s mother, father, brother, sister,

son, daughter, adopted son, adopted daughter, grandson, or granddaughter, and the residential real property is not used for any commercial purpose following the transfer of ownership.

- (e) A transfer through foreclosure or forfeiture of a recorded instrument under chapter 31, 32, or 57 of the revised judicature act of 1961, 1961 PA 236, MCL 600.3101 to 600.3285 and MCL 600.5701 to 600.5759, or through deed or conveyance in lieu of a foreclosure or forfeiture, until the mortgagee or land contract vendor subsequently transfers the property.

The above cited laws deal with: a) the foreclosures of mortgages and land contracts through circuit court proceedings (MCL 600.3101), b) the foreclosure of mortgages by advertisement (MCL 600.3201), and c) the foreclosure of property by summary proceedings (MCL 600.5701). Most mortgages are foreclosed by advertisement (MCL 600.3201). A Sheriff's Deed is used when a foreclosure by advertisement has occurred.

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

If a mortgagee does not transfer the property within one year of the expiration of any applicable redemption period, the property shall be uncapped in the next assessment year. The typical redemption period is six months after the property is sold (usually by the Sheriff).

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

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.

- (g) A conveyance to a trust if the settlor or the settlor's spouse, or both, conveys the property to the trust and any of the following conditions are satisfied:
  - i. If the sole present beneficiary of the trust is the settlor or the settlor's spouse, or both.
  - ii. Beginning December 31, 2014, for residential real property, if the sole present beneficiary of the trust is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance.
- (h) A transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer. If a specific amount of money is noted in the order or judgment for the transfer, a transfer of ownership occurs.

- (i) A transfer creating or terminating a joint tenancy between two or more persons if at least one of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least one of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. For purposes of this exemption, a person is an original owner of property owned by that person's spouse.
- (j) A transfer for security or an assignment or discharge of a security interest. A "transfer of security" is the conveying of an interest in property for the purpose of assuring that a debt will be paid. In the case of a mortgage to a bank, the owner of a property gives a security interest to the bank which allows the bank to foreclose the mortgage and eventually take the property if the payments are not made. As such, the beginning, transfer, or end of a mortgage are not transfers of ownership.
- (k) A transfer of real property or other ownership interests among members of an affiliated group. An "affiliated group" means one or more corporations connected by stock ownership to a common parent corporation.

Upon request by the State Tax Commission, a corporation shall furnish proof within 45 days that the transfer meets the requirements of MCL 211.27a(7)(j). Failure to comply with a request by the STC under this subsection is subject to a fine of \$200.00.

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

Any of the following events that results in transfer of more than 50% ownership of a company does not constitute "normal public trading" and will result in an uncapping following the year of the transfer of ownership:

- The merger of two or more companies.
- The acquisition of one company by another or by an individual.
- The Initial Public Offering (IPO) of the stock of a company.
- A Secondary Public Offering of a stock in the company.
- The trading of the stock of a privately-held company.
- A "takeover" involving public offer by someone to buy stock from present stockholders in order to gain control of a company.

- (m) A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled.



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

- A parent-subsidary group of trades or businesses
  - A brother-sister group of trades or businesses.
  - A combined group of trades or businesses (a specific combination of a parent-subsidary group and a brother-sister group of trades or businesses).
- (n) A direct or indirect transfer of real property or other ownership interests resulting from a transaction that qualifies as a tax-free reorganization under section 368 of the internal revenue code, 26 USC 368.
- (o) A transfer of qualified agricultural property, if the property is to remain qualified agricultural property after the transfer and the person to whom the qualified agricultural property is transferred files Form 3676 (Affidavit Attesting That Qualified Agricultural Property Shall Remain Qualified Agricultural Property) with the assessor of the local tax collecting unit in which the qualified agricultural property is located and with the register of deeds for the county.

MCL 211.27a(7)(o) provides that if qualified agricultural property, which was exempt from being uncapped due to the provisions of PA 260 of 2000, ceases to be qualified agricultural property at any time after being transferred, the following shall occur:

- The taxable value shall be uncapped in the year after the property ceases to be qualified agricultural property. This means that the SEV, for the year after the property ceases to be qualified agricultural property, will become the taxable value of the property for that year.
- The property is subject to the Agricultural Property Recapture Act. Separate instructions regarding the recapture tax are provided in this bulletin as a service to assessors.

The language “ceases to be qualified agricultural property” has been interpreted to include situations where the portion of a parcel that is qualified agricultural property decreases (i.e., the qualified agricultural property exemption percentage decreases).

Procedures for handling instances where a change in use of the property or uncapping errors are discussed in further detail later in this Bulletin.

- (p) A transfer of qualified forest property, if the person to whom the qualified agricultural property is transferred files Form 4508 with the assessor of the local tax collecting unit in which the qualified agricultural property is located and with the register of deeds for the county. Only the value of the land is exempt from a transfer of ownership. All structures, buildings, and other land improvements shall be recognized as a transfer of ownership and their taxable value uncapped.

Should a change in use of the property occurs, a recapture tax will apply. Additionally, the taxable value of the property will be uncapped as of December 31 in the year that the property ceases to be qualified forest property.

- (q) Beginning on December 8, 2006, a transfer of land, but not buildings or structures located on the land, which meets one or more of the following requirements:
- The land is subject to a conservation easement under subpart 11 of part 21 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140 to 324.2144. As used in this subparagraph, "conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.
  - A transfer of ownership of the land or a transfer of an interest in the land is eligible for a deduction as a qualified conservation contribution under section 170(h) of the internal revenue code, 26 USC 170.
- (r) A transfer of real property or other ownership interests resulting from a consolidation or merger of a domestic nonprofit corporation that is a boy or girl scout or camp fire girls organization, a 4-H club or foundation, a young men's Christian association, or a young women's Christian association and at least 50% of the members of that organization or association are residents of this state.
- (s) A change to the assessment roll or tax roll resulting from the application of section 16a of 1897 PA 230, MCL 455.16a pertaining to summer resort and park associations.
- (t) From December 31, 2013 through December 30, 2014, a transfer of residential real property is not a transfer of ownership if the transferee is related to the transferor by blood or affinity to the first degree and the use of the residential real property does not change following the transfer of ownership.
- A first degree blood relative is a person who shares approximately 50% of their genes with another member of the family. These relatives include spouse, father or mother, father or mother of spouse, son or daughter, adopted son or daughter, son or daughter of spouse, and siblings.
- (u) Beginning December 31, 2014, a transfer of residential real property is not a transfer of ownership if the transferee is the transferor's or the transferor's spouses mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter and the residential real property is not used for any commercial purpose following the conveyance.

Assessors should note that the provisions only apply to residential real property and not to any other property classification. The residential real property classification includes vacant and improved parcels. However, the provisions in this act **are not** limited to homestead property (meaning this exemption includes any residential real property regardless of whether there is a Principal Residence Exemption on the real property or how many residential real parcels the taxpayer owns). Assessors should review the

classification of the real property in the year of the conveyance. Even if there has not been a subsequent conveyance, if the residential real property is later used for any commercial purpose, the assessor should uncap the taxable value of the real property in the following year.

- (v) Beginning December 31, 2014, a conveyance of residential real property from a trust, if the person to whom the residential real property is conveyed is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter and the property is not used for any commercial purpose following the conveyance.

This exception includes a conveyance by distribution under a will or by intestate succession if the person to whom the residential real property is conveyed is the decedent's or the decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter and the property is not used for any commercial purpose following the conveyance.

Assessors should note that the provisions only apply to residential real property and not to any other property classification. The residential real property classification includes vacant and improved parcels. However, the provisions in this act **are not** limited to homestead property (meaning this exemption includes any residential real property regardless of whether there is a Principal Residence Exemption on the real property or how many residential real parcels the taxpayer owns). Assessors should review the classification of the real property in the year of the conveyance. Even if there has not been a subsequent conveyance, if the residential real property is later used for any commercial purpose, the assessor should uncap the taxable value of the real property in the following year.

- (w) A conveyance of land by distribution under a will or trust or by intestate succession, but not buildings or structures located on the land, which meets one or more of the following requirements:

- The land is made subject to a conservation easement under subpart 11 of part 21 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140 to 324.2144, prior to the conveyance by distribution under a will or trust or by intestate succession. As used in this subparagraph, "conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.
- The land or an interest in the land is made eligible for a deduction as a qualified conservation contribution under section 170(h) of the internal revenue code, 26 USC 170, prior to the conveyance by distribution under a will or trust or by intestate succession.

- (x) A conveyance of property under section 2120a(6) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2120a.

#### **D. REPORTING OF TRANSFERS**

Statute places the burden of reporting a transfer of ownership on the buyer, grantee, or other transferee of the property, not on the transferor or any other party. It is the responsibility of the buyer, grantee, or other transferee to file a Property Transfer Affidavit (Form 4260) with the local assessor within 45 days of the transfer of ownership. Information that is required by statute to provide on the affidavit includes the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description.

Local units must make all filed affidavits available to the equalization department of the county in which the property is located.

The register of deeds of the county where deeds or other title documents are recorded shall notify the assessing officer of the appropriate local taxing unit not less than once each month of any recorded transaction involving the ownership of property and shall make any recorded deeds or other title documents available to that county's tax or equalization department.

#### **E. FAILURE TO NOTIFY OF A TRANSFER OF OWNERSHIP**

If the buyer, grantee, or other transferee does not notify the assessing office of a transfer of ownership within 45 days of the transfer by filing a Property Transfer Affidavit (Form 4260) the failure to file the Property Transfer Affidavit may result in the following taxes, interest, and penalties being levied against the property owner:

1. Any additional taxes that would have been levied if the transfer of ownership had been recorded as required from the date of transfer.
2. Interest and penalty from the date the tax would have been originally levied.
3. For property classified as industrial real or commercial real pursuant to section 34c:
  - With a sales price of \$100 million or less the penalty is \$20 per day up to a maximum of \$1,000. Penalties begin to accrue after the 45-day filing deadline has passed.
  - With a sales price over \$100 million the penalty is \$20,000 unless the taxpayer can demonstrate that the failure to file was due to reasonable cause and not due to willful neglect. If the taxpayer can make that demonstration then the penalty is \$20 per day up to a maximum of \$1,000. Penalties begin to accrue after the 45-day filing deadline has passed.
4. For real property classified other than industrial real or commercial real, Michigan law provides a penalty of \$5.00 per day for each separate failure to file a Property Transfer Affidavit up to a maximum of \$200.00 for each parcel. Penalties begin to accrue after the 45-day filing deadline has passed.

The governing body of a local unit may pass a resolution, electing to waive the per diem penalty. It is the opinion of the State Tax Commission that the local unit may not waive the taxes, penalty, and interest.

If "additional taxes", interest, and penalties are not paid within 30 days of billing, they should be added to the delinquent tax roll(s) for the year(s) that the taxes were originally levied, (assuming there already is a delinquent tax roll for the year in question).

**If the assessor discovers a transfer of ownership which was not reported by the buyer, grantee, or other transferee on a Property Transfer Affidavit, the assessor is still required to uncap the Taxable Value of the parcel in the year following the uncapping event.** If the assessor is uncertain whether a particular transfer is a "Transfer of Ownership", the assessor shall send a copy of the Property Transfer Affidavit (Form L-4260) to the Transferee (Buyer). The assessor should advise the transferee of the obligation under the law to file the form and the penalties which apply.

The assessor shall allow at least 2 weeks for the transferee to return the form L-4260.

Whether or not the form L-4260 is returned, the assessor must decide whether a "Transfer of Ownership" has occurred.

If the assessor believes that a "Transfer of Ownership" has occurred in the previous year and the current year Taxable Value has not been "uncapped", the assessor shall immediately "uncap" the current year Taxable Value of the property and enter the new Taxable Value on the current year assessment roll. The current year Tax Roll shall also be corrected. The assessor shall also enter on the assessment roll the date of the last "transfer of ownership."

The assessor shall immediately notify the property owner in writing that the determination has been made that a "transfer of ownership" has occurred and that the Taxable Value on his/her property has been "uncapped". The assessor shall also advise the owner of his/her right to appeal to the Michigan Tax Tribunal by filing a written petition within 35 days of the notice.

Within 30 days of the "uncapping" of Taxable Value, the assessor shall file an Affidavit Regarding "Uncapping" of Taxable Value (Form 3214 (L-4054) and the additional taxes to be levied with the proper officials who are involved with the assessment figures, rate of taxation, or mathematical calculations and all affected official records shall be corrected. A separate affidavit must be filled out for each property and for each year affected. Therefore, if the Taxable Value for a property is changed for two years, two affidavits must be filed.

If the "uncapping" occurs after a current year tax bill has already been sent out, the assessor shall certify to the treasurer any additional taxes due because of the "uncapping". This is done on the Affidavit Regarding "Uncapping" of Taxable Value (Form 3214 (L-4054) discussed above. This certification is made to the treasurer of the local tax collecting unit if the local unit has possession of the tax roll or to the county treasurer if the county has possession of the tax roll.

If the "uncapping" occurs before the next current year tax bill has been sent, the current year tax roll shall be corrected so that when the current year bill is sent, it will be based on the corrected Taxable Value.

The treasurer shall immediately prepare and submit a corrected tax bill including any interest and penalty which may be due. The interest and penalty originate from the date the tax would

have been originally levied if the Taxable Value had been uncapped at the proper time. For example, if a Taxable Value should have been uncapped in 2015, for a tax levied on December 1, 2015, and this fact was discovered several years later, the penalty and interest on the "additional taxes" would be calculated starting on February 15, 2016, because February 14 is the last day to pay taxes without incurring a penalty.

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

#### **F. FAILURE TO UNCAP DUE TO CLERICAL ERROR**

An example of a clerical error would be the situation where a Property Transfer Affidavit (Form L-4260) was received by the assessor prior to the adjournment of the March Board of Review but, due to a clerical error, the Taxable Value was not "uncapped" even though there was a "Transfer of Ownership" in the previous year.

Another example of a possible situation involving a clerical error would be where a deed is recorded in January of one year and the assessor "uncaps" Taxable Value in the following year. Later, the assessor discovers that the "Transfer of Ownership" actually occurred in December of the prior year even though the deed was recorded in January. Because the transfer actually occurred the year prior to being recorded, the Taxable Value should not have been "uncapped" the year following the year it was recorded, but, rather, the year the sale was recorded.

Situations involving clerical errors related to the "uncapping" of Taxable Value should be corrected by the July or December Board of Review using the same procedures that are used to correct other clerical errors. This includes notifying the property owner of the action being recommended by the assessor to the July or December Board of Review so that the owner has the opportunity to appear at the Board of Review session and advising the taxpayer of the right to appeal to the Michigan Tax Tribunal by filing a written petition within 35 days of the Board of Review action.

For future years, when there is a missed "uncapping" of Taxable Value due to a clerical error or a mutual mistake of fact, it will be necessary to recalculate Taxable Value for each year following the "Transfer of Ownership" (from the year of the error to the current year). Although it may be necessary to recalculate Taxable Value for more than two years, a correction by the July or December Board of Review due to a clerical error by the assessor or a mutual mistake of fact can only be made for the current year and one previous year.

#### **G. DEFINITIONS**

**Transferee** is defined as the person to whom the conveyance is made.

**Transferor** is defined as the person who conveys a title, right or interest in property.

A "**first degree blood relative**" is a person who shares approximately 50% of their genes with another member of the family. These relatives include spouse, father or mother, father or mother of spouse, son or daughter, adopted son or daughter, son or daughter of spouse, and siblings.

The term “**used for any commercial purpose**” means used in connection with any business or other undertaking intended for profit, but does not include the rental of residential real property for a period of less than 15 days in a calendar year.