



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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Bulletin 7 of 2017
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Transfer of Qualified
Agricultural Property

TO: Assessors, Equalization Directors and Interested Parties

FROM: State Tax Commission

RE: Transfer of Qualified Agricultural Property

Bulletin No. 7 of 2006 is rescinded.

PA 260 of 2000 [MCL 211.27a(7)(o)] first became effective for transfers on, or after, January 1, 2000. Therefore qualifying transfers were first exempt from uncapping under this Public Act beginning with the 2001 assessment roll. This Bulletin restates and clarifies the State Tax Commission's previous guidance relating to the implementation of PA 260. This Bulletin also addresses statutory changes resulting from Public Act 375 of 2016, which added a provision regarding creation of a separate tax parcel for qualified agricultural property.

1. The Effect of Public Act 375 of 2016

PA 375 of 2016 was signed into law on December 28, 2016, and given immediate effect. This Act amends MCL 211.27a(6)(k) to allow a property owner to request that the assessor establish a separate tax parcel for a portion of a parcel that will no longer be qualified agricultural property. The establishment of the separate parcel *is not* a land division under the Land Division Act, Public Act 288 of 1967, until and unless the separate tax parcel is conveyed. The status of the remainder of the original parcel as qualified agricultural property is not affected by the establishment of the separate parcel that is not qualified agricultural property.

The separately established parcel which is no longer qualified agricultural property is immediately subject to the qualified agricultural property recapture tax, MCL 211.1001 et seq. Although the property is subject to the qualified agricultural property recapture tax, the taxable value of the separate parcel of property does not uncap until and unless there is a transfer of ownership.

Note: This statutory language does not modify the assessor's already existing authority to establish two or more tax parcels for real property which is held by the owner as one parcel. The establishment of two or more tax parcels for property held by an owner as a single legal parcel may be justified by a variety of circumstances and the use of multiple tax parcels for that single legal parcel is not itself a land division, and the separation does not itself constitute a division of the property for any purpose other than for property tax assessment.

2. Certain Transfers of Qualified Agricultural Property Are Not "Transfers of Ownership"

PA 260 of 2000 provided that a transfer of qualified agricultural property is not a "transfer of ownership" if the following occurs:

- a. The property remains qualified agricultural property after the single most immediate transfer, and
- b. The person to whom the property is transferred files an affidavit with the assessor and the register of deeds. (The State Tax Commission recommends that the assessor verify that an affidavit has also been filed with the register of deeds.)

The signer of the affidavit must attest that the qualified agricultural property shall remain qualified agricultural property. The affidavit, Form 3676, can be obtained at the Department of Treasury Web site, www.michigan.gov/treasury.

When a property is transferred and the transfer is not a "transfer of ownership", the taxable value of the property is not uncapped in the year following the transfer. Therefore, if an owner files a form 3676 with the assessor and records the form with the register of deeds, the taxable value does not uncap in the year following the transfer. However, if a purchaser who thereafter acquires property under an existing PA 260 filing does not properly submit a form 3676 to reaffirm the commitment that the property will remain qualified agricultural property, then a transfer of ownership may occur unless other exception to uncapping applies. If qualified agricultural property is transferred and does not remain qualified agricultural property, the taxable value may still be exempt from uncapping if the transfer qualifies under some other section of law, such as a qualifying transfer to a trust, etc.

3. Procedure to Follow When Qualified Agricultural Property Which Has Been Exempt from Uncapping Under the Provisions of PA 260 of 2000 Later Ceases to be Qualified Agricultural Property

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:

- i. 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.
- ii. 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.

Important Note: 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). Notice, however, that if a separate tax parcel has been established prior to the change in use then only the portion as to which the change in use has occurred will be subject to uncapping. Please see question 3 contained in the addendum to this bulletin.

4. Procedure to Follow When Qualified Agricultural Property Which Has Been Exempt From Uncapping Under the Provisions of PA 260 of 2000 is Conveyed or Otherwise Transferred to a Person Who Does Not File a Form 3676 and/or Who is Entitled to Claim Another Exception to Uncapping Pursuant to MCL 211.27a and the Property Ceases to be Qualified Agricultural Property.

When a property is conveyed or otherwise transferred to a successive owner, the successor in ownership must file with the assessor **and** record with the register of deeds a form 3676 to attest that the qualified agricultural property shall remain qualified agricultural property. If the successor owner does not do so, then the taxable value will uncap, but the recapture tax is not initiated unless there is also a change in use which results in the property no longer being qualified agriculture property

5. Procedure to Follow When a Purchaser of Qualified Agricultural Property Does Not Timely File An Affidavit to Claim the Exemption From Uncapping, Then Later Discovers This Exemption From Uncapping, and Files Form 3676 After the Taxable Value Has Been Uncapped by the Assessor

PA 260 of 2000 provided for the recapping of taxable value when all of the following five conditions exist.

- a. A purchaser of qualified agricultural property qualifies for the exemption from uncapping except that the purchaser does not timely file the affidavit required, and
- b. The assessor uncaps the taxable value in the year following the transfer, and
- c. The purchaser later discovers (or chooses to claim) this exemption from uncapping, and
- d. The purchaser then files the affidavit (Form 3676),and
- e. The property was qualified agricultural property for each year back to and including 1999.

When all five of these conditions exist, the local tax collecting unit shall immediately revise the current tax roll by changing the existing uncapped taxable value to the taxable value the property would have if it had not been uncapped after the transfer. (This applies only to uncapping which occurred in 2001 or later.) This will require going back to the year when the taxable value was uncapped and recalculating the capped value for each intervening year from that point forward to the current year. However, only the current year's tax roll is actually changed. (A notation is also made in the *change column* of the current assessment roll.)

When an assessor recaps taxable value, the STC requires that the assessor file Form 3675. This is a mandatory form that provides a paper trail for an action not occurring at a meeting of the Board of Review. Form 3675 can only be used for the recapping authorized by PA 260 of 2000 and cannot be used for other purposes.

When a taxable value is recapped, the owner of the recapped property is not entitled to a refund of taxes already paid. However, if a tax bill has not been paid and the due date for the bill occurs after the recapping, the recapped taxable value shall be used for that bill. The due date is the last date on which taxes can be legally paid without the addition of interest or penalty.

Important Note: The recapping of taxable value as authorized by PA 260 of 2000 for qualified agricultural property must not be confused with adjustment of taxable value by the July or December Board of Review to correct an incorrect uncapping of taxable value. Adjustment of taxable value by the July or December Board of Review is now authorized only when the assessor has determined that no transfer of ownership occurred after a property has been incorrectly uncapped. Uncapping that occurs when qualified agricultural property transfers ownership and the new owner does not file the affidavit to keep the cap in place, resulting in an uncapping of the taxable value by the assessor, is not an incorrect uncapping.

THE RECAPTURE TAX

1. When is the recapture tax imposed?

The recapture tax is imposed when all of the following conditions are met:

- a. Property was transferred after December 31, 1999.
- b. The taxable value of the property was not uncapped in the year following the transfer because it qualified for the exemption from uncapping provided by PA 260 of 2000.
- c. The qualified agricultural property is converted by a change in use after December 31, 2000. There is a change in use when one of the following occurs:
 - i. There is a change in use and the assessor determines that the property is no longer qualified agricultural property, or
 - ii. A purchase is about to occur but, prior to the purchase, the future purchaser files a Notice of Intent to Rescind the Qualified Agricultural Property Exemption (Form 3677) with the local tax-collecting unit.

Please Note: Form 3677 - The Notice of Intent to Rescind the Qualified Agricultural Property Exemption is different from Form 2743 - The Request to Rescind the Qualified Agricultural Property Exemption. Form 3677 is filed before a change in use occurs. Form 2743 is filed after a change in use actually occurs.

Property is converted by a change in use on the date that the notice (Form 3677) is filed with the local tax collecting unit. If the sale is not consummated within 120 days of the filing with the local unit, then the property is not converted by a change in use.

PA 261 of 2000 (MCL 211.1001, et seq.), in Section 2, states that the phrase “Benefit Period” which means “the **period in years between the date of the first exempt transfer and the conversion by a change in use**, not to exceed the 7 years immediately preceding the year in which the qualified agricultural property is converted by a change in use.” (Emphasis added.) Therefore, the benefit period used in calculating the recapture tax is not limited to the period of time that the current owner has held title and, instead, extends for the full period over which the property has been benefited, or seven years, whichever is less.

2. How is the recapture tax calculated?

The recapture tax is calculated on the benefit period, which consists of up to seven years of tax savings received by the person and/or by that person's predecessor(s) in ownership to whom qualified agricultural property has been transferred with a capped taxable value under PA 260 of 2000. When a conversion by a change in use occurs, the tax benefit that occurred during the period of up to seven years is recaptured. The year that the property is converted by a change in use is not included in this calculation.

For example:

Qualified agricultural property is transferred on October 1, 2005. The property remained qualified agricultural property after the transfer and an affidavit (Form 3676) was filed by the new owner. Therefore, the property was not a transfer of ownership due to the provisions of PA 260 of 2000 and the taxable value was not uncapped in 2006. The property then is converted by a change in use on September 1, 2015.

In this example there is a seven year recapture tax period consisting of the tax savings for the years 2008 through 2014. The tax savings for the years 2001 through 2007 are not included because these years are before the most recent 7 years. The tax savings for the year 2015 are not included because the tax savings for the year that a property is converted by a change in use are not recaptured.

The following procedures are recommended for use in calculating the recapture tax:

- a. Determine the number of mills levied on the property during each year of the benefit period.
- b. Determine the taxable value the property would have had during the benefit period if it had been uncapped in the year following the transfer. This is called the true cash taxable value.
- c. Determine the actual taxable value for the benefit period.
- d. Subtract the actual taxable value for each year of the benefit period from the true cash taxable value for each year of the benefit period.
- e. Multiply the millage for each year determined in step a) by the taxable value difference for each year determined in step d) and add the results.

3. Who calculates the recapture tax?

The county treasurer calculates and collects the recapture tax. However, the assessor of the local tax collecting unit must notify the county treasurer of the date on which the property is converted by a change in use and must calculate the true cash taxable as described in item 2(b) above.

Please Note: The State Tax Commission recommends that assessors keep a record of properties which have been exempt from uncapping due to PA 260 of 2000 and annually calculate the true cash and taxable values of these properties. If, for example, a conversion by a change in use were to occur 25 years in the future, it might be very difficult to go back and calculate true cash taxable values 25 years after the exemption from uncapping was initially granted.

Important Note: The recapture tax must include the tax savings for the entire benefit period of up to seven years. In calculating the benefit period, the treasurer must consider not only the benefit received by the most immediate owner but also the benefit received, of up to seven total years, by a previous owner or by previous owners, from the year following the year that the initial owner first filed form 3676 with the assessor and recorded the form 3676 with the register of deeds. The county treasurer does not have the authority to reduce the recapture tax.

4. Who pays the recapture tax?

The recapture tax is sometimes paid by the person who owns the property at the time that the property is converted by a change in use. However, under certain circumstances, the recapture tax is paid by the person who transfers a property even though the actual change in use occurs after the transfer. This is the case when, prior to the transfer, the future purchaser files a Notice of Intent to Rescind the Qualified Agricultural Property Exemption (Form 3677) with the local tax collecting unit and delivers a copy of the notice to the future seller. Please review Section 2(c)(ii), and 3(3) of PA 261 of 2000.

Important Note: If a property is transferred after receiving an exemption from uncapping (as provided by PA 260 of 2000) and if the status of the property later changes so that the property is no longer qualified agricultural property to the same extent it was before the transfer, the entire recapture tax is paid by the owner who owned the property when the qualified agricultural property exemption percentage was reduced. It is not split between the current owner and the previous owner. This is generally the current owner unless that owner, as purchaser, completed form 3677 prior to purchase

For Example:

Person A sells a farm property (which is 100 percent qualified agricultural property) to person B. Person B qualifies for the exemption from uncapping provided by PA 260 of 2000. After five years, person B sells the property to person C who also qualifies for the exemption from uncapping provided by PA 260 of 2000. After another three years, person C develops the property into a commercial use and the property is no longer qualified agricultural property to the same extent it was before the transfer. In this example, seven years of recapture tax are due and the recapture tax is paid entirely by person C. Person B pays none of the recapture tax.

5. When is the recapture tax collected?

Section 3(2) of PA 261 applies when there is a change in use as defined in Section 2(c)(i) of PA 261, and requires that the tax be paid within 90 days of the date the property was converted by a change in use. If it is not paid within 90 days, the treasurer may bring a civil action against the owner of the property.

Section 3(3) of PA 261 applies when a future purchaser files a Notice of Intent to Rescind the Qualified Agricultural Property Exemption (Form 3677). In this case, the tax is an obligation of the person who owned the property prior to the transfer and the tax is due when the instruments transferring the property are recorded with the register of deeds.

6. Who gets the recapture tax revenue?

Please see Sections 5 and 6 of PA 261 of 2000 for specific wording. The recapture tax is collected by the county treasurer and deposited with the state treasurer where it is credited to the fund in which the proceeds from lien payments made under part 361 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.36101 to 324.36117, are deposited.

The interest earned on the money collected while held by the county may be retained by the county treasurer as reimbursement for the costs incurred by the county in collecting and transmitting the tax. The money retained by the county shall be deposited in and credited to the general fund of the county in which the tax is collected.

ADDENDUM

Question 1: What happens if the property being transferred has a qualified agricultural property exemption of less than 100 percent – for example a 75 percent exemption – and the transfer qualifies to be exempt from being uncapped due to the provisions of PA 260 of 2000?

In this situation, there is a partial uncapping of 25 percent of the taxable value and 75 percent remains capped.

Question 2: What happens if a property has a 100 percent exemption as qualified agricultural property and only 75 percent will remain qualified agricultural property after the transfer due to a partial change in use? (**Note: This example does not involve a split.**)

There will be a total uncapping of the taxable value of this parcel (assuming that the transfer does not qualify to be exempt from uncapping under some other provision of the law). It is the opinion of the STC that a reduction in the percentage of the qualified agricultural property exemption of a parcel results in a total uncapping of that parcel's taxable value in the situation described above. PA 260 of 2000 did not provide for a partial uncapping in this situation. Note, however, the possible application of PA 375 of 2016, which is discussed at the beginning of this Bulletin, and which, at the request of the owner, permits the assessor to divide the parcel into two or more tax parcels which result in triggering the recapture tax on one or more of the tax parcels while continuing the PA 260 treatment on the portion of the parcel which remains qualified agricultural property. It is the State Tax Commission's interpretation that the separation of the legal parcel into two or more tax parcels must be requested before the change in use occurs.

Question 3: In terms of uncapping, what happens if only part of a qualified agricultural property is converted by a change in use after a transfer, which was exempt from uncapping by PA 260 of 2000?

If part of the property is split off, 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 and the recapture procedure is applied. The taxable value of what remains of the original parcel remains capped (assuming that the

original portion remains qualified agricultural property to the same extent it was before the split). 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 uncapped in the year following the change in use and the recapture procedure is applied.

Question 4: An 80-acre property is classified agricultural but the owner lives on the property and claims the homeowner's principal residence exemption so that he/she can also claim a homeowner's principal residence exemption on a contiguous vacant property, which is classified residential. If this 80-acre parcel is being transferred to someone who will continue to farm the property, can the buyer file an affidavit (Form 3676) and claim the exemption from uncapping that is provided for qualified agricultural property even though the property is receiving the homeowner's principal residence exemption (and not the qualified agricultural property exemption)?

Yes. Properties which are classified agricultural meet the definition of "qualified agricultural property" even though the property has a homeowner's principal residence exemption. PA 260 of 2000 simply required the property be qualified agricultural and remain qualified agricultural after a transfer in order to avoid uncapping. The act did not require that the property be receiving the qualified agricultural property exemption if it was receiving the principal residence exemption instead.

Furthermore, if the 80-acre parcel was classified residential but was qualified agricultural property because more than half its acreage was devoted to agricultural use, a transfer of the parcel could qualify for the exemption from uncapping even though it is classified residential. (Please see the current Qualified Agricultural Property Exemption Guidelines published by the State Tax Commission regarding the 50 percent test for qualified agricultural property.)

Question 5: A 40-acre property is classified agricultural real property and the previous owner, at the time of that owner's purchase of the property in 2011, properly filed and recorded form 3676 attesting that the property would remain qualified agricultural property. In 2015 that owner conveys the property pursuant to a sale of the property. The new owner did not file a form 3676, indicating that the use of the property for agriculture would continue, and did not file a form 3677 notifying the assessor and the seller of his intention to change the use of the property. However, the property continued to be used for agriculture to the same extent as previously, resulting in continued classification of the property as agricultural real property. In 2017 the new owner changes the use of the property from its agricultural use to a commercial use, by constructing a retail shopping center on the site. Did the taxable value uncap and, if so, in what year or years? Will recapture tax be due and, if so, when will the tax become due, and how many years of recapture are included in the calculation?

Since the new owner did not file a form 3676 attesting that the property would remain qualified agricultural property when he or she acquired title, the taxable value will uncap unless another exception to uncapping applies. However, while the failure to file and record form 3676 may be an uncapping event, the recapture tax will not be due until and unless there is a change in use of the property. Further, if there is a subsequent change in use then the change in use is a transfer of ownership on the date of the change in use. Under the facts given, transfers of ownership occurred in 2015 (for the 2016 assessment year) and in 2017 (for the 2018 assessment year). In calculating the benefit period, the year of the change in use (2017) is not considered and the benefit period begins in 2011 and ends in 2016 (seven years), even though the current owner has owned the property only since 2015. The recapture tax is calculated over the entire benefit period and must be paid in its entirety by the current owner.