

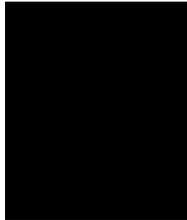


STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

October 20, 2020



Re: Letter Ruling Request – State Real Estate Transfer Tax

Dear [REDACTED]:

Thank you for your correspondence dated December 2, 2019 requesting a letter ruling on behalf of [REDACTED], LLC (LLC A). Specifically, you ask whether potential transfers of interests held by LLC A are qualified for one of the two exemptions from the state real estate transfer tax (SRETT), MCL 207.521, *et seq.*, found in subsections 6(p)(ii) and (v), MCL 207.526(p)(ii) and (v).

We have determined that your request does not meet the criteria for a letter ruling because your request did not provide all information sufficient for the Michigan Department of Treasury (Department) to issue a letter ruling as provided under Revenue Administrative Bulletin (RAB) 2016-20. The Department does conclude, however, that your request satisfies the requirements for a technical advice letter under RAB 2016-20, which, with respect to this taxpayer, has the same level of reliance as a letter ruling issued by the Department.

Summary of Facts as Presented. LLC A is a wholly-owned subsidiary of [REDACTED] Corporation (CORP). LLC A holds a variety of CORP's assets either directly or through subsidiaries wholly-owned by LLC A. The assets held by LLC A include various real estate parcels throughout the United States, several of which are located in the State of Michigan. [REDACTED], LLC (LLC B) is also a wholly-owned subsidiary of CORP. The facts presented to the Department do not indicate what proportion of the value of the assets held by LLC A or by LLC B comprises real estate.

LLC A proposes to transfer the real estate assets it holds in Michigan to LLC B in one of two ways. The claimed purpose of the potential transfers of interests in the real property held by LLC A is to isolate and ensure the risk surrounding the restaurant businesses operated on the real

property. LLC A will engage in only one of the transfers of the real estate parcels to LLC B. The transfers are not part of a reorganization of an entity.

Summary of law. The Michigan State Real Estate Transfer Tax (SRETT) Act, MCL 207.521, *et seq.*, imposes a state transfer tax for “the conveyance of title to or other transfer of a present interest or beneficial interest or any other interest in real property by any method.”¹ SRETT is imposed on contracts for the sale or exchange of property or any interest in the property or any combination of sales or exchanges or transfers of property or any interest in the property.² SRETT is also imposed on deeds or instruments of conveyance of property or any interest in property, for consideration.³ In addition, SRETT is imposed on “contracts for the transfer or acquisition of a controlling interest in any entity only if the real property owned by that entity comprises 90% or more of the fair market value of the assets of the entity determined in accordance with generally accepted accounting principles.”⁴ The seller or grantor of the property is liable for the tax imposed under the SRETT Act.⁵

Certain transfers of interests in real property are exempt from SRETT,⁶ including conveyances that meet one of the following provided in MCL 207.526(p):

(ii) A transfer between any limited liability company and its members if the ownership interests in the limited liability company are held by the same persons and in the same proportion as in the limited liability company prior to the transfer.

* * * * *

(v) A transfer in connection with the reorganization of an entity and the beneficial ownership is not changed.

Analysis and Conclusions

Transfer #1, Section 6(p)(ii): LLC A and LLC B each continue to be wholly-owned by CORP. LLC A transfers its interests in the real estate by deed to LLC B. Does the transfer qualify for the SRETT exemption provided in section 6(p)(ii)?

Response: No, the transfer would not qualify for the SRETT exemption in MCL 207.526(p)(ii). To qualify for the exemption, all parts of the qualification test must be met: the membership interests in LLC A must be held by the same persons; the ownership interests in LLC A must be held in the same proportion both prior to and after the transfer; and the transfer must be between LLC A and its member. The transfer of the real estate is not from LLC A to CORP, LLC A’s sole member. Accordingly, the transfer from LLC A to LLC B would not meet the qualifications for the exemption under MCL 207.526(p)(ii).

¹ MCL 207.522(e).

² MCL 207.523(1)(a).

³ MCL 207.523(1)(b).

⁴ MCL 207.523(1)(c).

⁵ MCL 207.523(2).

⁶ MCL 207.526.

Transfer #1, Section 6(p)(v): LLC A and LLC B each continue to be wholly-owned by CORP. LLC A transfers its interests in the real estate by deed to LLC B. Does the transfer qualify for the SRETT exemption provided in section 6(p)(v)?

Response: No, the transfer would not qualify for the SRETT exemption under MCL 207.526(p)(v). Section 6(p)(v) consists of a two-part qualification test. Failure to meet one part of the test would disqualify the transfer from the SRETT exemption. The first part of the test requires a reorganization of an entity. The facts presented do not include the reorganization of an entity. Accordingly, the proposed transfer would not qualify for the exemption under section 6(p)(v).

Transfer #2, Section 6(p)(ii): CORP assigns 100% of its membership interest in LLC B to LLC A. Subsequently, LLC A transfers its Michigan real property assets by deed to LLC B. At the time of the transfer, LLC B is a wholly-owned subsidiary of LLC A. Does the transfer qualify for the SRETT exemption provided in section 6(p)(ii)?

Response: This proposed transfer by CORP actually consists of two separate and distinct transfers. The first transfer, CORP's assignment of its membership interest in LLC B to LLC A, would constitute a transfer of CORP's controlling interest in LLC B to LLC A. Consequently, the transfer of any real estate assets owned by LLC B to LLC A resulting from the assignment might be subject to the imposition of the tax under MCL 207.523(1), depending upon what proportion of the fair market value of LLC B's assets are comprised of real estate. Under MCL 207.523(1)(c), if the percentage of the fair market value of LLC B's assets prior to the first transfer comprised 90% or more of real estate, the transfer would be subject to the tax. If the percentage was below 90%, no tax is imposed. However, the facts presented in the letter request do not indicate that percentage to permit the Department to provide a definitive conclusion.

The second transfer, involving LLC A's transfer of its Michigan real estate assets by deed to LLC B, would qualify for the exemption under MCL 207.526(p)(ii). The statute requires that the transfer occur between an LLC and its members to qualify for the exemption. In the proposed transfer, LLC B is the LLC; LLC A is the sole member of LLC B after CORP assigned its interest in LLC B to LLC A. Further, the exemption requires that LLC A's ownership interest in LLC B be held by the same persons and in the same proportion prior to and after the transfer. CORP continues as the sole member of LLC A and LLC A continues as the sole member of LLC B. Also, there is no change in the proportion of ownership resulting from the deed transfer. Consequently, the transfer would qualify for the exemption under section 6(p)(ii).

Transfer #2, Section 6(p)(v): CORP assigns 100% of its membership interest in LLC B to LLC A, and LLC A then transfers its Michigan real property assets to LLC B. At the time of the transfer, LLC B is a wholly-owned subsidiary of LLC A. Does the transfer qualify for the SRETT exemption provided in section 6(p)(v)?

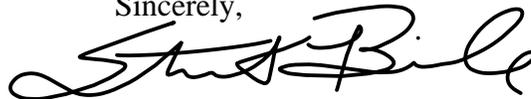
Response: No, the transfer would not qualify for the exemption under MCL 207.526(p)(v). Section 6(p)(v) provides a two-part qualification test. Failure to meet one part of the test would disqualify the transfer from the exemption. The first part requires a reorganization of an entity. The second part requires no change of the beneficial ownership interests in the limited liability company. Although there is no beneficial change in the ownership interests in LLC A, the facts

presented do not include the reorganization of an entity. Consequently, based on the facts presented, the proposed transfer would not qualify for the exemption under section 6(p)(v).

In summary, based on the facts presented, none of the proposed transfers would qualify for a total exemption from the SRETT under MCL 207.526(p)(ii) or (p)(v). While the second part of transfer #2 would be exempt under section 6(p)(ii), the first part of that transfer might result in a taxable event under the statute, depending upon what proportion of the fair market value of LLC B's assets are comprised of real estate.

If you have any questions regarding this letter, please feel free to contact me at 517 335-7477 or at my email address BinkeS@michigan.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Stewart Binke". The signature is fluid and cursive, with the first name "Stewart" written in a smaller, more compact script and the last name "Binke" written in a larger, more prominent cursive style.

Stewart A. Binke, Administrator
Tax Policy Division,
Bureau of Tax Policy