

State Tax Commission Bulletin No. 10 of 2000 Preliminary Draft

December 6, 2000

"Transfers of Qualified Agricultural Property"

PRELIMINARY DRAFT

This bulletin is labeled PRELIMINARY DRAFT because it is written as if 3 minor technical changes to the law have already been made. These changes are expected to occur in the next few months.

Rather than wait for these technical changes to occur, this PRELIMINARY DRAFT is being sent out now so that assessors and treasurers can have some lead time to study this new law. The STC will inform you when the 3 technical changes in the law have been made. At that time, this PRELIMINARY DRAFT is expected to become the final version of Bulletin 10 of 2000.

BULLETIN NO. 10

December 6, 2000

Transfers of Qualified Agricultural Property

TO: Assessors

Equalization Directors

Treasurers

FROM: State Tax Commission (STC)

RE: PUBLIC ACT 260 OF 2000 REGARDING THE TRANSFER OF QUALIFIED AGRICULTURAL PROPERTY

Attached is a copy of Public Act (PA) 260 of 2000 which was signed by Governor Engler on June 29, 2000 with an effective date of the 91st day after adjournment of the legislature, counting Sundays and holidays but not counting the date of adjournment. The legislature typically adjourns around the end of December.

This act amends section 27a of the General Property Tax Act (GPTA) by providing an exemption from the uncapping of taxable value for certain transfers of qualified agricultural property. The parts of the law which were added or changed by PA 260 of 2000 have been underlined on the copy of the act included with this bulletin.

The purpose of this bulletin is to instruct assessors regarding the provisions of PA 260 of 2000.

2000 SUPPLEMENT TO STC BULLETIN NO. 16 OF 1995

NOTE: While the materials which follow are part of STC Bulletin 10 of 2000, they are labeled as a **Supplement to STC Bulletin No. 16 of 1995** with the thought that they will also be copied and added to STC Bulletin No. 16 of 1995 in order to keep all information regarding transfers of ownership together in one place.

1. **Certain Transfers of *Qualified Agricultural Property* Are NOT "Transfers of Ownership" Starting With the 2001 Assessment Roll.**

PA 260 of 2000 provides that a transfer of *qualified agricultural property* is NOT a "transfer of ownership" PROVIDED THAT:

- a. the property remains *qualified agricultural property* after the transfer

AND

- b) the person to whom the property is transferred files an affidavit with the assessor and the register of deeds. (The STC 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*. A copy of the affidavit ([Form 3676](#)) which PA 260 of 2000 requires is included with this bulletin.

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.

Please see Questions 1 and 2 contained in the Addendum to this bulletin.

Important Note: PA 260 of 2000 first affects the analysis of transfers which occur starting January 1, 2000. Therefore qualifying transfers will first be exempted from uncapping beginning with the 2001 assessment roll. This is true in spite of the fact that the effective date of the act is the 91st day after adjournment of the legislature. The reason is that subsection 8 of PA 260 of 2000 permits the law to be effective for the year 2001 by allowing a re-capping of transfers on the 2001 tax roll. (Please see page 4 of this bulletin regarding "Recapping.")

Each assessor is advised to consider whether any transfers of Qualified Agricultural Property have occurred in his/her unit after December 31, 1999 but before the affidavit forms (Form 3676) provided with this bulletin were available. If so, the STC

recommends that the assessor make copies of the affidavit form available to the parties to whom the properties were transferred so that they can file the forms if the transfers qualify for the exemption from uncapping provided by PA 260 of 2000.

Important Note: If a *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.

Note: Enclosed with this bulletin is a copy of updated [form L-4260](#) (Property Transfer Affidavit).

Note: Please see STC Bulletin No. 4 of 1997 for a discussion of *Qualified Agricultural Property*.

1. **Procedure When *Qualified Agricultural Property* Which Has Been Exempt from Uncapping Is Later *Converted by a Change in Use***

MCL 211.27a(7)(n) provides that if *qualified agricultural property*, which was exempt from being uncapped due to the provisions of this new law, is *converted by a change in use* at any time after being transferred, ALL of the events described in paragraphs **a, b, and c** below shall occur: Please see the **Important Note** below regarding *conversion by a change in use*.

a) The taxable value shall be uncapped in the year after the property is *converted by a change in use*. 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.

EXAMPLE:
Assume:

- *Qualified Agricultural Property* transfers on October 15, 2000.
- The Affidavit (Form 3676) is filed on October 15, 2000.
- The taxable value is NOT uncapped in 2001.

- The Property is *converted by a change in use* on February 15, 2001.

Given these events, the taxable value of this property shall be uncapped on the 2002 assessment roll and the 2002 SEV will become the 2002 Taxable Value.

Please see Question 3 contained in the Addendum to this bulletin.

- a. The property is subject to the **recapture tax** provided by PA 261 of 2000 which is known as the Agricultural Property Recapture Act. Separate instructions regarding the *recapture tax* are being provided in this bulletin as a service to assessors. Please see page 6 of this bulletin.
- b. The assessor shall remove the *qualified agricultural property* exemption from local school operating tax in the year following the *conversion by a change in use*.

Important Note: There are 2 ways that a property can be converted by a change in use:

1. If the actual use is changed and the assessor determines that the property is no longer *qualified agricultural property*.
2. If a purchase is about to occur and, **prior to the purchase**, the future purchaser files a notice with the local tax collecting unit, indicating his/her intent to rescind the *qualified agricultural property* exemption.

A copy of the form for rescinding ([Form 3677](#)) is included with this bulletin. The property is *converted by a change in use* on the date that the notice (Form 3677) is filed with the local tax collecting unit. (Form 3677 requires that the buyer deliver a copy of the notice to the seller prior to filing the notice 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*. The Tax Commission recommends that, when a notice (Form 3677) has been filed and the local unit does not know whether the sale has been consummated within 120 days, the local unit should send a letter to the property owner indicating that the *conversion by a change in use* is considered to have occurred unless support is presented that it has not occurred.

1. RECAPPING TAXABLE VALUE: Procedure to Follow When a Purchaser of *Qualified Agricultural Property* Fails to Timely File An Affidavit, Then Later Discovers the Error, and Then Later Files the Affidavit After the Taxable Value Has Already Been Uncapped by the Assessor.

PA 260 of 2000 provides for the RECAPPING of Taxable Value when the following 5 conditions exist. (The term "recapping" will be explained later in this bulletin.)

- a. a purchaser of *qualified agricultural property* qualifies for the exemption from uncapping provided by PA 260 of 2000 but fails to timely file the affidavit required by PA 260 of 2000.

AND

- b. the assessor uncaps the taxable value in the year following the transfer

AND

- c. the purchaser later discovers the error

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.

"RECAPPING" TAXABLE VALUE: In the situation described above, 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 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.) The procedure described in this paragraph will be referred to in this bulletin as "recapping" taxable value.

When an assessor "recaps" taxable value, the State Tax Commission requires that the assessor file [Form 3675](#) (copy attached). This is a new mandatory form which 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. It cannot be used for other purposes.

Important Note: When a taxable value is re-capped as provided above, the owner of the property is NOT entitled to a refund of taxes already paid on the taxable value which is being revised. However, if a tax bill has not been paid and the due date for the bill occurs after the "re-capping", the "re-capped" 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.

EXAMPLE:

Assume:

- o A *Qualified Agricultural Property* is purchased on 9/15/2000.
- o The purchaser does not file the affidavit (Form 3676) required by PA 260 of 2000.
- o The assessor uncaps the taxable value for the year 2001.
- o On 10/1/2002 the purchaser discovers that the affidavit (Form 3676) was not filed and then files the affidavit.

Given these circumstances, the following actions shall be taken:

- o The taxable value is recalculated from the year 2001 forward.
- o The "re-capped" taxable value is placed on the 2002 tax roll and form 3675 is filed. Form 3675 is a new mandatory form which provides a paper trail for an action not occurring at a meeting of the Board of Review. Variations of this form have been used for other similar situations in the past.
- o No refund is granted for taxes levied on July 1, 2002 because the "re-capping" occurred after the due date for those taxes.

- o The taxes billed on December 1, 2002 are based on the "re-capped" taxable value because the "re-capping" occurred before the taxes have been collected.

Note: The reduction in Taxable Value caused by a "recapping" is not LOSSES for the following year's "Headlee" calculations.

The Recapture Tax

Attached is a copy of Public Act (PA) 261 of 2000 which was signed by Governor Engler on June 29, 2000 with an effective date of June 29, 2000. This act shall be known as the **Agricultural Property Recapture Act**. The purpose of this attachment to STC Bulletin No. 10 of 2000 is to explain the administration of this act. This explanation is being provided by the State Tax Commission as a service to assessors and treasurers.

1. When Is the Agricultural Property Recapture Tax Imposed?

The *Agricultural Property Recapture Tax* is imposed when ALL of the following conditions are met:

- a. The property was transferred after 12-31-99.
- 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. (This is the exemption discussed earlier in this bulletin when *qualified agricultural property* is transferred and the property remains *qualified agricultural property* after the transfer.)
- c. The Qualified Agricultural Property is CONVERTED BY A CHANGE IN USE after 12-31-2000.

A property is **converted by 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.
- 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. A copy of Form 3677 is included with this bulletin.

Please note that the **Notice of Intent to Rescind the Qualified Agricultural Property Exemption (Form 3677)** is different from the **Request to Rescind the Qualified Agricultural Property Exemption (Form 2743)**. Form 3677 is filed **before** a change in use occurs. Form 2743 is filed after a change in use actually occurs.

1. How is the Recapture Tax Calculated?

The *Recapture Tax* consists of up to seven years of tax savings enjoyed by the person to whom *qualified agricultural property* was transferred. The seven year period consists of the most recent seven years except that the year of the **conversion by a change in use** is not part of the seven year period. The tax savings occur because the taxable value was not uncapped in the year following the transfer due to the exemption provided by PA 260 of 2000. **THE TAX SAVINGS FOR THE YEAR THAT THE PROPERTY IS CONVERTED BY A CHANGE IN USE ARE NOT RECAPTURED.** This period of up to the most recent 7 years of tax savings (but not including the year the **conversion by a change in use** occurs) is referred to as the **benefit period**.

Assuming the year of the **conversion by a change in use** is the most recent year, the following are all of the possible benefit periods:

- a. the first 1 year of the most recent 2 years
- b. the first 2 years of the most recent 3 years
- c. the first 3 years of the most recent 4 years
- d. the first 4 years of the most recent 5 years
- e. the first 5 years of the most recent 6 years
- f. the first 6 years of the most recent 7 years
- g. the first 7 years of the most recent 8 years

EXAMPLES:

- a. Assume:
 - A *qualified agricultural property* transfers on 10-1-2000.
 - The use of the property is not changed and an affidavit is filed by the new owner.
 - The transfer is NOT a "transfer of ownership" due to the provisions of PA 260 of 2000.
 - The taxable value is NOT uncapped in 2001.
 - The property is then **converted by a change in use** on 9-1-2001.

CONCLUSION:

There is no *recapture tax* because, in this example, there was only 1 year of tax savings and THE TAX SAVINGS FOR THE YEAR THAT THE PROPERTY IS CONVERTED BY A CHANGE IN USE ARE NOT RECAPTURED.

- a. Assume:
 - A *qualified agricultural property* transfers on 10-1-2000.

- The use of the property is not changed and an affidavit is filed by the new owner.
- The transfer is NOT a "transfer of ownership" due to the provisions of PA 260 of 2000.
- The taxable value is NOT uncapped in 2001.
- The property is then **converted by a change in use** on 9-1-2010.

CONCLUSION:

There is a 7 year recapture tax consisting of the tax savings for the years 2003 through 2009. This is the benefit period. The tax savings for the years 2001 and 2002 are not included because these years are before the most recent eligible 7 years. The tax savings for the year 2010 are not included because THE TAX SAVINGS FOR THE YEAR THAT THE PROPERTY IS CONVERTED BY A CHANGE IN USE ARE NOT RECAPTURED.

PROCEDURES FOR CALCULATING THE RECAPTURE TAX

- a. Determine the number of mills levied on the property during the *benefit period*. The *benefit period* consists of up to the most recent 7 years during which tax savings were experienced, BUT NOT INCLUDING THE YEAR IN WHICH THE **PROPERTY WAS CONVERTED BY A CHANGE IN USE**.
- b. Determine the taxable value that 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.

1. Who Calculates the Recapture Tax?

The County Treasurer calculates and collects the *Recapture Tax*. However, the **assessor** of the local tax collecting unit:

- a. shall notify the County Treasurer of the date on which the **property is converted by a change in use**.

AND

- b. calculates the *true cash taxable value* referenced in item b above.

Because of the duties outlined in "a" and "b" above, the STC 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 taxable values** of these properties. This recommendation is made because, if 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 7 years. The Treasurer does not have the authority to reduce the *Recapture Tax*.

1. 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 see section 2(c)(ii) and 3(3) of PA 261 of 2000.

A copy of the **Notice of Intent to Rescind the Qualified Agricultural Property Exemption** (Form 3677) is enclosed with this bulletin.

Important Note: If a property is transferred after an exemption from uncapping (as provided by PA 260 of 2000) AND if the current owner then changes the use to a non-agricultural use, the entire *recapture tax* is paid by the current owner who changed the use. It is not split between the current owner and the previous owner.

EXAMPLE: Person A sells a farm property to Person B. Person B qualifies for the exemption from uncapping provided by PA 260 of 2000. 5 years later Person B sells to Person C who also qualifies for the exemption from uncapping provided by PA 260 of 2000. 3 years later, Person C develops the property into a commercial use. In this example, the 7 year *recapture tax* is paid entirely by Person C. None of the *recapture tax* is paid by Person B.

2. When is the Recapture Tax Collected?

Please see sections 3(2) and 3(3) of PA 261 of 2000 enclosed with this bulletin.

Section 3(2) applies when there is a change in use. Section 3(3) applies when a future purchaser files a **Notice of Intent to Rescind the Qualified Agricultural Property Exemption** (Form 3677).

3. Who gets the Recapture Tax Money?

Please see sections 5 and 6 of PA 261 of 2000 enclosed with this bulletin.

ADDENDUM

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

Answer: In the example above, there is a partial uncapping of 25% of the taxable value and 75% remains capped.

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

Answer 2: 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 does not provide for a partial uncapping in this situation.

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?

Answer 3: 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. The taxable value of what remains of the original parcel remains capped.

If, however, 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.

Question 4: An 80-acre property is classified agricultural but the owner lives on the property and claims the Homestead exemption so that he/she can also claim a homestead exemption on contingent vacant property which is classified residential. If this property is being transferred to someone who will continue to farm the property, can the buyer file an affidavit and claim the exemption from uncapping even though the property is receiving the Homestead exemption?

Answer 4: Properties which are classified agricultural meet the definition of "Qualified Agricultural Property" contained in MCL 211.7dd(e) even though the property has a Homestead Exemption. PA 260 of 2000 requires that property be Qualified Agricultural Property and remain Qualified Agricultural

Property after the transfer in order to avoid uncapping. The act does not require that the property be receiving the Qualified Agricultural Property Exemption. That being the case, the transfer described above does qualify for the exemption from uncapping provided by PA260 of 2000.

Furthermore, if the 80-acre parcel was classified residential but was Qualified Agricultural Property because more than 50% of the acreage was being devoted to agricultural use, a transfer of the parcel could qualify for the exemption from uncapping even though it is classified residential. (Please see page 4 of STC Bulletin 4 of 1997 regarding the 50% test for Qualified Agricultural Property.)