



STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

JENNIFER M. GRANHOLM  
GOVERNOR

JAY B. RISING  
STATE TREASURER

**BULLETIN NO. 9 of 2005**  
**June 28, 2005**  
**AUTHORITY OF THE JULY**  
**OR DECEMBER BOARD OF**  
**REVIEW TO CORRECT AN**  
**INCORRECT UNCAPPING**

**DATE:** June 28, 2005

**TO:** Assessors  
Equalization Directors

**FROM:** State Tax Commission (STC)

**RE:** CHANGES DUE TO PUBLIC ACT (PA) 23 of 2005

Public Act (PA) 23 of 2005 was enacted into law on May 23, 2005 with an effective date of May 23, 2005. A copy of the act is available on the Internet at [www.michiganlegislature.org](http://www.michiganlegislature.org). When you reach the site, click on **Public Acts** and enter the act number and the year **2005**.

This law grants the July or December Board of Review the authority to correct the taxable value of property which was previously uncapped (due to a perceived transfer of ownership) **if the assessor later determines that there had NOT been a transfer of ownership of that property after all. This authority applies to the current year and the 3 immediately preceding years. (This will be discussed in more detail later in this bulletin.)**

**Note:** Please see STC Bulletin No. 16 of 1995, as supplemented by Bulletin No. 3 of 1997 and Bulletin No. 10 of 2000, for information regarding transfers of ownership and the uncapping of taxable value. These bulletins may be found on the Treasury Department Web site at [www.michigan.gov/treasury](http://www.michigan.gov/treasury). When you reach the site, click on **Local Government** and then click on **State Tax Commission** to reach the bulletins. You may also wish to refer to the Transfer of Ownership and Taxable Value Uncapping Guidelines contained on the annual Property Tax Information CD provided by the Michigan Department of Treasury and the State Tax Commission.

## 2005 SUPPLEMENT TO STC BULLETIN NO. 12 OF 1997

**Note:** While the materials which follow are part of STC Bulletin 9 of 2005, they are labeled as a **Supplement to STC Bulletin No. 12 of 1997** with the thought that they will also be copied and added to STC Bulletin No. 12 of 1997 in order to keep all information regarding July and December Boards of Review together in one place.

**Prior to PA 23 of 2005**, if an assessor determined that a situation was a transfer of ownership and uncapped the taxable value of the property involved in the following year but then later discovered that no transfer of ownership had actually occurred, the July or December Board of Review DID NOT have the authority to reverse the taxable value uncapping. If the property owner had been properly notified of the uncapping and had not appealed the uncapping to the March Board of Review (and to the Michigan Tax Tribunal if necessary), the uncapping was final and the taxable value could not be corrected for that year even though the uncapping was incorrect.

**Example of Situation Prior to PA 23 of 2005:** In 2003 a parcel of real property was conveyed from John Smith to Jane Doe. The assessor received the deed for this transaction. No Property Transfer Affidavit was filed in conjunction with this conveyance. This appeared to be a transfer of ownership to the assessor and the assessor uncapped the taxable value of the property involved for 2004. Jane Doe was properly notified of the uncapping by means of an assessment change notice. However, no appeal regarding the uncapping was filed with the 2004 March Board of Review. In July of 2004, after receiving the summer tax bill, Jane Doe and John Smith approached the assessor and informed the assessor that they were married at the time of the 2003 conveyance. They stated that no transfer of ownership had occurred (by law a transfer of property between spouses is not a transfer of ownership) and they provided evidence of the marriage. They were upset about the uncapping and desired that the taxable value cap be restored for 2004 (i.e., that the uncapping be reversed). With this additional information, the assessor agreed that no transfer of ownership occurred. Under these circumstances, **prior to PA 23 of 2005**, no change in the taxable value of the property could be made and the uncapping could not be reversed for 2004 because the property owner was properly notified of the uncapping and did not appeal the uncapping to the March Board of Review. By not appealing, the property owner effectively accepted the uncapped taxable value as final for 2004 and no restoration of the cap was possible after the close of the March Board of Review, even though the assessor later realized that no transfer of ownership had occurred. The July and December Boards of Review had no authority to reverse the taxable value uncapping. **This is no longer the case, starting in 2005, due to the provisions of PA 23 of 2005.**

**Starting in 2005**, PA 23 of 2005 provides for the ADJUSTMENT of taxable value by the July or December Board of Review when the assessor determines that a transfer of ownership did not occur (after a parcel has already been uncapped). ADJUSTMENT of taxable value refers to the process of reversing an incorrect uncapping by changing the existing **uncapped** taxable value to the taxable value the property would have if it had not been uncapped. This process will require going back to the year when the taxable value was (incorrectly) uncapped and recalculating the capped value from that point forward to the current year to determine the revised taxable value(s).

**Note: ADJUSTMENT of taxable value by the July or December Board of Review under PA 23 of 2005 must NOT be confused with the RECAPPING of taxable value as authorized by PA 260 of 2000 for QUALIFIED AGRICULTURAL PROPERTY in certain instances. 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. This is a different situation than the RECAPPING of taxable value under PA 260 of 2000. RECAPPING of taxable value under PA 260 of 2000 is prospective only and no refund of taxes already paid (before the RECAPPING) is permitted, whereas, with ADJUSTMENT of taxable value under PA 23 of 2005, a refund of some or all of the additional taxes paid due to an incorrect uncapping can be made. July and December Boards of Review did not previously have, and continue not to have, the authority to perform a RECAPPING of taxable value under PA 260 of 2000. Only an assessor has the legal authority to perform a RECAPPING of taxable value under PA 260 of 2000. See STC Bulletin No. 10 of 2000 for additional information on the RECAPPING of taxable value under PA 260 of 2000.**

The amending language of **PA 23 of 2005** reads, in part, as follows:

...If the taxable value of property is adjusted under subsection (3) [Michigan Compiled Law (MCL) 211.27(3)] and the assessor determines that there had not been a transfer of ownership, the taxable value of the property shall be adjusted at the July or December board of review. Notwithstanding the limitation provided in section 53b(1) [MCL 211.53b(1)] on the number of years for which a correction may be made, the July or December board of review may adjust the taxable value of property under this subsection for the current year and for the 3 immediately preceding calendar years...

Additional information regarding this change in the law is provided below, in question-and-answer format:

**1) What criteria should the assessor use to make a determination under this new law that a particular transfer was not a “transfer of ownership”?**

The assessor is required to make this decision based on the provisions of the applicable law. MCL 211.27a describes those transactions and situations that are “transfers of ownership” and those that are not. As with other transfer of ownership determinations, it is the duty of assessors to evaluate under the law whether a transfer of ownership occurred. If a transfer of ownership as defined by law DID occur, the property’s taxable value MUST remain uncapped for the following year. Please see STC Bulletin No. 16 of 1995, as amended by Bulletins No. 3 of 1997 and 10 of 2000, regarding transfers of ownership and the uncapping of taxable value. You may also wish to refer to the Transfer of Ownership and Taxable Value Uncapping Guidelines contained on the annual Property Tax Information CD provided by the Michigan Department of Treasury and the State Tax Commission.

**Example:** John Doe and Joe Smith are friends. John Doe owns two parcels of vacant land, parcel A and parcel B. Joe Smith wants to build a new home and is looking for a vacant piece of land for this purpose. John Doe agrees to sell parcel A to Joe Smith and does so in 2004. After the sale, Joe Smith discovers that the soil conditions of parcel A are not suitable for

development and he cannot build a house on the parcel as he desired. No one was aware of this problem before the transaction (and no representation was made by John Doe that the parcel was buildable). The soil conditions of parcel B were then checked and it was determined that parcel B was suitable for development as a home site. Although he was not obligated to do so, John Doe agreed to buy back parcel A and sell parcel B to Joe Smith. The conveyance of parcel B and the reconveyance of parcel A also occurred in 2004. The assessor uncapped parcel A and parcel B for 2005. The property owners were properly notified of the taxable value uncapping and did not appeal the uncapping to the March Board of Review. After receiving his summer tax bill for parcel A, John Doe approaches the assessor with the argument that since parcel A was returned to him, no transfer of ownership occurred and the taxable value uncapping of parcel A should be reversed. Under these circumstances, however, the deed conveying parcel A to Joe Smith was valid to change title, hence the need for a second deed to reconvey the property. A change in title of parcel A therefore occurred (actually two changes in title of parcel A occurred) and no transfer of ownership exemption or exception applied. The conveyance of parcel A to Joe Smith was a transfer of ownership under the law (as was the reconveyance). **The uncapping of parcel A must stand.**

- 2) **Can the July or December Board of Review take action to reverse a taxable value uncapping under this new law if the assessor has not even made a determination regarding the occurrence of a transfer of ownership ?**

It is the opinion of the State Tax Commission that a determination by the assessor is required before the July or December Board of Review can act to reverse a taxable value uncapping under this change to the law. Therefore, if the assessor has not made such a determination, the July or December Board of Review does NOT have the authority to act under this new law.

- 3) **If the assessor has reached the conclusion that a parcel of property was properly uncapped (i.e., that a transfer of ownership did occur), does the July or December Board of Review have the authority under PA 23 of 2005 to determine that a particular transaction or situation was not a “transfer of ownership” and reverse the uncapping?**

No. It is the opinion of the State Tax Commission that, if the assessor has reconsidered whether a particular transfer was a “transfer of ownership” and continues to be of the opinion that it was a “transfer of ownership”, the assessor has not made a determination that there was not a “transfer of ownership” and the July or December of Review DOES NOT have the authority to reverse the taxable value uncapping.

- 4) **If the assessor determines that a particular transaction or situation WAS NOT a “transfer of ownership” and that the uncapping should be reversed, can the July or December Board of Review disagree with the assessor and refuse to reverse the taxable value uncapping?**

Yes. It is the opinion of the State Tax Commission that, after the assessor determines that a particular transaction or situation WAS NOT a “transfer of ownership”, the matter has come within the jurisdiction of the July or December Board of Review which then DOES HAVE the

authority to overrule the decision of the assessor and refuse to reverse the taxable value uncapping.

**5) Can a decision of the July or December Board of Review under this new law be appealed?**

It is the opinion of the State Tax Commission that a decision of the July or December Board of Review regarding the reversal of an uncapping can be appealed to the Michigan Tax Tribunal within 30 days of the Board of Review action.

**6) To which years does the authority of the July and December Boards of Review to reverse an incorrect taxable value uncapping apply?**

While the usual authority of the July and December Boards of Review to correct clerical errors applies only to the current year and 1 previous year, the authority to reverse an incorrect taxable value uncapping provided by PA 23 of 2005 applies to the **CURRENT YEAR AND THE 3 IMMEDIATELY PRECEDING YEARS**. This means that the 2005 July and December Boards of Review have the authority to reverse an incorrect uncapping, as determined by the assessor, for the years 2002, 2003, 2004, and 2005.

It is not necessary that the current year and the 3 immediately preceding years include the year in which the incorrect uncapping occurred. For example, if an incorrect uncapping occurred in the year 2000, the 2005 July or December Board of Review could reverse the incorrect uncapping and adjust the taxable value for the years 2005, 2004, 2003, and 2002 even though the years 2000 and 2001 could not be corrected. However, it would be necessary that the assessor go back to the year 2000 and determine what the taxable values would have been for 2000 through 2005 (using the capped value formula) if the incorrect uncapping had not occurred in 2000. Then, using these newly calculated taxable value figures, the revised taxable values for 2002 through 2005 could be established by the 2005 July or December Board of Review.

**7) Can the March Board of Review adjust a taxable value for the current year to reflect an incorrect uncapping from a prior year even though the July or December Board of Review has not yet corrected the incorrect uncapping for the prior year ?**

It is the opinion of the State Tax Commission that the March Board of Review **DOES HAVE** the authority to adjust the taxable value for the current year in such situations even though the original uncapping occurred in a prior year and the incorrect uncapping has not yet been corrected by the July or December Board of Review. For example, an assessor discovers in February of 2006 that an erroneous uncapping occurred in 2005 (for what was erroneously thought to be a 2004 transfer of ownership). The 2006 **March Board of Review** can adjust the 2006 taxable value to what this figure would have been without the incorrect uncapping even though the 2005 taxable value has not yet been adjusted by the July or December Board of Review to reflect the incorrect uncapping. Note that the **assessor** does not have the same power in this example as the March Board of Review to deviate from the capped value

formula in determining the 2006 taxable value. The assessor must use the 2005 taxable value of record as the base in calculating the 2006 taxable value even though the 2005 taxable value was the result of an incorrect uncapping. Note also that the **March** Board of Review continues to have no authority to alter a taxable (or assessed) value for a prior year. In this example, the 2006 **March** Board of Review could not correct the 2005 taxable value. If the assessor concurs that the uncapping for 2005 was incorrect, only the **July or December** Board of Review would have the power in this example to correct the 2005 taxable value. It should also be noted that the **March** Board of Review does not need the assessor to determine that a parcel was incorrectly uncapped in a prior year to adjust the **current year's** taxable value. It is the opinion of the State Tax Commission that the **March** Board of Review has the authority to adjust the current year's taxable value to reflect an incorrect uncapping in a prior year without the assessor first determining that the uncapping was incorrect.

- 8) **Due to PA 23 of 2005, the July and December Boards of Review now have authority to REVERSE an incorrect taxable value UNCAPPING. Can the July or December Board of Review also UNCAP a parcel's taxable value if a parcel is mistakenly not uncapped (i.e., if an uncapping was missed by the assessor)?**

PA 23 of 2005 does not expand the authority of the July or December Board of Review with regard to UNCAPPING a parcel's taxable value. In the past, July and December Boards of Review had the ability to uncap a parcel's taxable value only if the parcel's taxable value was not uncapped due to a clerical error or mutual mistake of fact. See State Tax Commission Bulletin No. 12 of 1997 for information regarding the term "clerical error". This bulletin may be obtained from the Treasury Department Web site at [www.michigan.gov/treasury](http://www.michigan.gov/treasury). When you reach the site, click on **Local Government** and then click on **State Tax Commission** to reach the bulletins. See the back of Form 4031, which can also be obtained on the Treasury Department Web site, for information concerning the term "mutual mistake of fact". Given the courts' definition of these terms, it was rare that a clerical error or mutual mistake of fact was the reason a parcel had not been uncapped. **This is still the case.** PA 23 of 2005 had no effect on the authority of the July or December Board of Review to **uncap** a property's taxable value. See State Tax Commission Bulletin No. 8 of 1996 for information regarding the authority of the July and December Boards of Review to perform delayed uncappings. This bulletin is also available on the Treasury Department Web site.

**Note:** If a parcel's taxable value was not uncapped due to a failure on the part of a property owner to file a Property Transfer Affidavit as required by law to notify the assessor of the transfer of ownership, the assessor is required to perform a delayed uncapping (unless another transfer of ownership of the same parcel has occurred) when the transfer of ownership is discovered. See State Tax Commission Bulletin No. 8 of 1996, as supplemented by Bulletin No. 3 of 1997, for additional information regarding delayed uncapping. These bulletins are available on the Department of Treasury Web site.

**Note:** It sometimes happens that a transfer of ownership occurs, a Property Transfer Affidavit is properly filed concerning the transfer, and the parcel's taxable value is mistakenly not uncapped (i.e., the uncapping is missed). The assessor lacks the authority to perform a delayed uncapping under such circumstances for the reason that a Property Transfer Affidavit was properly filed. And, assuming this was not the result of a clerical error or mutual mistake

of fact, the July and December Boards of Review similarly lack the authority to perform a delayed uncapping under such circumstances. However, in the opinion of the State Tax Commission, the assessor can approach the March Board of Review in the year following the discovery of such a missed uncapping and request the March Board of Review to change the taxable value for that next year to the taxable value the parcel would have had if the uncapping had not been missed in a prior year. In the opinion of the State Tax Commission, the March Board of Review can adjust the current year's taxable value as requested by the assessor. Notice is to be given to the property owner that the March Board of Review is to consider this action so the property owner can appear and oppose the uncapping. Note that the **assessor** does not have this same power as the March Board of Review to deviate from the capped value formula in determining the taxable value for the year after the year the missed uncapping is discovered. The assessor must use the taxable value of record as the base in calculating the next year's taxable value even though the taxable value of record was the result of a missed uncapping. The assessor would then notify the March Board of Review which does have authority to uncap the taxable value for the current year. Note also that the **March** Board of Review continues to have no authority to alter a taxable value for a prior year.

**Example:** In 2002, John Smith acquired property. This acquisition was a transfer of ownership. John Smith filed a properly completed Property Transfer Affidavit as required by law, keeping a date-stamped copy of the document for his records. However, the Property Transfer Affidavit was misplaced by the assessor after it was filed and the taxable value of the parcel involved was not uncapped for 2003. In 2005, after the close of the 2005 March Board of Review, the assessor discovered this missed uncapping when the misplaced Property Transfer Affidavit was found. In this situation, the assessor is not authorized to perform a delayed uncapping since the property owner properly filed a Property Transfer Affidavit. Also, since the missed uncapping was not the result of a clerical error or mutual mistake of fact, the July and December Boards of Review have no authority to perform a delayed uncapping; nothing in PA 23 of 2005 provides this authorization. Under these circumstances, the proper course of action for the assessor is to determine the 2006 taxable value using the 2005 taxable value of record as the base for the capped value formula (even though the 2005 taxable value is the result of a missed uncapping). The assessor can then approach the 2006 March Board of Review and request that the 2006 taxable value be adjusted to what this figure would have been if the uncapping had not been missed. Mr. Smith is to be notified that the March Board of Review will consider this matter so he can oppose the uncapping if he desires. The March Board of Review can then adjust the 2006 taxable value as requested by the assessor. The taxable values for the years 2003 through 2005 cannot be adjusted (the additional taxes missed due to the missed uncapping cannot be recovered).

- 9) **A form (Form 4031, *July/December Board of Review Affidavit*) has been developed for use as an affidavit to memorialize the actions of the July and December Boards of Review as required by law. Will this form be revised to reflect the change in July and December Board of Review authority due to PA 23 of 2005?**

Yes. A revised version of Form 4031 is now available on the Treasury Department Web site, [www.michigan.gov/treasury](http://www.michigan.gov/treasury). To reach this revised form, go to the Web site, click on **Property Tax Forms**, and then click on **Property Tax – Board of Review**. Form 4031 (or

another similar affidavit) is to be used to document a July or December Board of Review action reversing an incorrect uncapping. One Form 4031 will be needed for each year affected by the reversal of an incorrect uncapping. Also, the State Tax Commission directs that a completed Form 4031 (or another similar affidavit) be filed with the appropriate officials for every year for every July and December Board of Review action reversing an incorrect taxable value uncapping in the same manner that affidavits are filed for other actions of the July and December Boards of Review regarding clerical errors and mutual mistakes of fact.

**Note:** PA 23 of 2005 specifically states that the reversal of an incorrect uncapping shall be considered the correction of a clerical error under MCL 211.53b.

**10) When the July or December Board of Review reverses a taxable value uncapping, how will the property taxes be refunded and will the refund be with interest?**

PA 23 of 2005 requires that “[a] corrected tax bill shall be issued for each tax year for which the taxable value is adjusted by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll.” This language covers the situation where a local unit issues a summer tax bill for a property on July 1 and, later that month, the July Board of Review reverses a taxable value uncapping for that property for only the current year and before the issued bill is paid. PA 23 of 2005 makes it clear that the local collecting unit is to issue a revised bill reflective of the July Board of Review action. However, many (perhaps most) reversals of incorrect uncappings under PA 23 of 2005 will occur after the property taxes have been paid for the affected year(s). The issuance of a revised, reduced bill after a higher bill has already been paid will not achieve a refund for the affected property owner. PA 23 of 2005 is silent regarding the issuance of a refund of taxes due to the reversal of a taxable value uncapping after the taxes have been paid. The authority granted by PA 23 of 2005 to issue revised billings does not extend to the issuance of a refund associated with the lowered taxable value(s).

**However,** MCL 211.53b is the primary statute governing July and December Board of Review activity. Under this statute, it is clear that a July or December Board of Review action can result in a refund. It is also clear under MCL 211.53b that a refund is to be made without interest. Despite the lack of language in PA 23 of 2005 regarding issuance of refunds, it seems apparent that refunds will need to be made when incorrect taxable value uncappings are reversed by the July or December Board of Review. Therefore, under the authority granted the State Tax Commission by MCL 211.150, the State Tax Commission directs that, when the July or December Board of Review acts to reverse an incorrect uncapping of taxable value after the property taxes for the year involved have been paid, the local tax collecting unit if the local tax collecting unit has possession of the tax roll or the county treasurer if the county has possession of the tax roll shall issue the appropriate refund of taxes within 30 days. The State Tax Commission also directs that this refund shall not include any interest, although interest already paid shall be included in the refund.