

A "RELATIVELY" NEW WAY TO AVOID UNCAPPING TAXABLE VALUE

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2013 Publication

Beginning December 31, 2013, the State of Michigan will have another exemption from uncapping taxable value - and it is all in the family. Parents and children can transfer residential property between themselves without uncapping taxable value.

Beginning in 2014, a transfer of residential real property is not a statutory "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. MCL 211.27a(7)(s). This law is summarized in Michigan Department of Treasury Bulletin 5 of 2013, issued May 13, 2013.

To qualify, the transaction must involve residential real property. Residential real property is defined as real property classified as residential under MCL 211.34c. This includes platted, unplatted and condominium parcels which are, or probably will be, used for residential or recreational purposes. Property can be classified as residential even if a principal residence exemption is not claimed.

"Affinity to the first degree" includes the following relationships: spouse, father or mother, father or mother of the spouse, son or daughter, including adopted children and son or daughter of the spouse. In short, a parent-child transfer.

Finally, the use of the property may not change. Any change in use may result in an immediate uncapping.

The Property Transfer Affidavit will be updated to include a checkbox under exemptions, for relationship by blood or affinity in the first degree, and a statement that the transferee will not change the use of the property and will notify the assessor should the use change.

Speaking of Property Transfer Affidavits, the Michigan legislature recently added teeth to the late filing penalty for PTAs involving either industrial or commercial real property. If the sale price of the property is \$100,000,000 or less (just about every transaction) the penalty is \$20 per day beginning 45 days after the date of transfer, up to a maximum of \$1,000. If the property sale price exceeds \$100,000,000, the penalty is \$20,000 after 45 days have elapsed. However, if the assessor determines that the failure to notify the assessing office within 45 days was due to "reasonable cause and not the willful neglect of the buyer", then the penalty of \$20 per day, up to a maximum of \$1,000 shall be imposed. If the assessor determines that the failure to file the PTA was a result of the willful neglect of the buyer, then the \$20,000 penalty will be imposed, and the buyer may appeal that determination to the Michigan Tax Tribunal.

In all other situations, the penalty remains at \$5 per day beginning after the 45 days have elapsed, up to a maximum of \$200.

These penalties are set forth on the bottom of the second page of the Property Transfer Affidavit Form, L-4260, revised April 2013.

These late filing penalties are in addition to the current penalties in place: any additional taxes that would have been levied if the transfer of ownership had been timely noted, from the date of transfer, together with interest and penalty from the date the tax would have been originally levied. In most cases, the additional tax, interest and penalty far exceeds the nominal late filing fee.

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