
Property Tax Uncapping and "That Call"

By Geoffrey N. Taylor, Esq.

I recently received "that call." I've lost count of how many times I've received that call. That call goes something along the lines of "Geoff, I did this without consulting anyone, now I have a problem, and you need to fix it."

A client called to tell me he conveyed his family cottage up north to his wholly-owned LLC and the property taxes for the cottage have skyrocketed as a result (being a Michigander I love the term "up north" as it evokes bucolic images and can refer to properties on the east or west side of the state). My client's grandfather built the cottage by hand. His parents were teachers, so growing up they spent their summers there hiking, swimming, waterskiing, building bonfires, roasting s'mores, and simply enjoying nature and each other. My client's children and guests continue to enjoy the cottage. He would love for his children's children to enjoy the cottage, his children's children's children...you get the idea.

The taxable value of Michigan real property generally cannot increase annually by more than the lower of 5% or the rate of inflation. However, the cap is eliminated and taxable value is reassessed based on current fair market value when there is a transfer of ownership. The statute contains many exceptions to the transfer of ownership rules, including transfers between commonly controlled entities.

In March, 2001, the Michigan Department of Treasury issued uncapping guidelines. The guidelines contained an example regarding the commonly controlled entities exception, providing no uncapping occurs where Individuals A and B own property 50/50 and convey the property to a limited liability company owned 50/50 by Individuals A and B. However, in June, 2013, the Michigan State Tax Commission updated the uncapping guidelines which, without explanation, omitted this example. While the guidelines are not law, they reflect the Commission's policy. Caution suggests omission of the example reflects a change in the Commission policy.

The conveyance to the LLC is not otherwise a bad idea because it can protect my client from liability if someone got injured while at the cottage. The operating

agreement for the LLC can dictate ownership and use of the cottage, who is responsible for paying taxes, utilities, maintenance, repairs, and other expenses, who can make decisions regarding selling the cottage, and what happens when someone dies.

In my client's case, the assessor deemed the conveyance to his LLC a transfer of ownership that uncapped the taxable value of the cottage even though he is the sole owner of the LLC. Although logic suggests this should not be the result because ownership is fundamentally the same before and after the conveyance, prudence demands the owner consult knowledgeable advisors to avoid adverse tax consequences. Perhaps my client could have benefited from a recent addition to the uncapping exceptions for conveyances to those related to him by "blood or affinity" (watch our eNews for future guidance on this important tax reduction opportunity).

My experience has taught me that clients achieve the best results when they consult advisors early and often. Maddin Hauser attorneys frequently advise clients on tax reduction strategies, including avoiding uncapping of real property taxes. If you are planning to convey real property and want to avoid similar consequences, call me.

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