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MEMORANDUM

TO: ELEVENTH ANNUAL REAL ESTATE SYMPOSIUM ATTENDEES

FROM:

RE: REAL ESTATE PROPERTY AND TRANSFER TAXES – TWO TAXES,
TWO APPLICATIONS, ONE SIMPLE TRANSACTION

DATE: MAY 4, 2004

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Real property located in Michigan may be subject to several different taxes. For example, the General Property Tax Act (MCLA §211 et seq.) levies a property tax based on the value of the property. Additionally, the State Real Estate Transfer Tax Act (MCLA §207.521 et seq.) levies a value-based tax on the “transfer” of real property. Determining whether a “transfer” of real property has occurred for a particular transaction is pivotal for applying both of these taxes. Although seemingly harmless, any number of thorny issues may be encountered when making that determination. This situation is exacerbated by the fact that a transaction may be deemed a “transfer” for purposes of one of the taxes but not for the other.

The General Property Tax

The General Property Tax is levied on real property by applying a millage rate to the taxable value of the property. The taxable value of the property is the lesser of the state equalized value and a capped value. The state equalized value is measured by 50% of the true value of the property, and the taxable value is measured by the taxable value from the previous year (minus any losses, adjusted for inflation, plus additions). However, if property is “transferred”, the taxable value is increased (i.e., “uncapped”) to

the new state equalized value for the next year. Therefore, even though the General Property Tax is levied on the ownership (as opposed to the transfer) of the property, determining when a “transfer” occurs is crucial with respect to the amount of that tax.

The General Property Tax Act provides that a “transfer of ownership” means the conveyance of title to (or of a present interest in) property, including the beneficial use of the property. It includes, but is not limited to, a conveyance by deed or land contract, certain conveyances to or from a trust, certain changes in the sole present beneficiary of a trust, certain conveyances under the terms of a will or a lease, certain conveyances of ownership interests in entities (e.g., corporation, L.L.C.s, etc.), certain transfers of property held as tenants in common, and certain conveyances of ownership interests in cooperative housing corporations.

The General Property Tax Act also provides exceptions whereby certain transactions will not constitute a “transfer”. Examples of conveyances that do not constitute “transfers” include the conveyance of property between spouses, certain conveyances to a trust by spouses if one of them is the sole present beneficiary, a conveyance of real property or other ownership interests among members of an “affiliated group”, and a conveyance of real property or other ownership interests among certain entities.

A “transfer” of property for purposes of the General Property Tax is reported on a Property Transfer Affidavit (see the attached form L-4260). There is no statute of limitations for any property transfer that should have been, but was not, reported to the assessor. If the assessor determines that there has been an unreported transfer, the property value can be “uncapped” retroactive to the date of the transfer. Liability would then apply for any additional taxes, plus interest and penalties, that would have been levied if the transfer of ownership had been timely reported. Interestingly, if a subsequent transfer of the real estate to a new owner occurred, the accrued tax liability would be imposed on the seller (as opposed to the new owner).

The Real Estate Transfer Tax Act

The Real Estate Transfer Tax Act imposes a tax, separate and apart from the General Property Tax, on the “transfer” of real property. This concept alone makes determining if and when a “transfer” occurs crucial with respect to the *applicability* of this tax. Generally, the Real Estate Transfer Tax is imposed on contracts, deeds, or instruments for the sale, exchange, assignment, transfer, or conveyance of an interest in property.

As one might expect, the Real Estate Property Tax Act also provides exceptions whereby certain transactions will not constitute a “transfer”. Examples of conveyances that do not constitute “transfers” include certain conveyances between spouses, a conveyance to a child or grandchild, certain land contracts, and a conveyance where the transferor and transferee are considered a “single employer”.

Although the exceptional language of the Real Estate Property Tax Act seems quite similar to the exceptional language of the General Property Tax Act, a closer review of both statutes reveals otherwise. The contrasting language can result in a particular transaction being considered a “transfer” for purposes of one of the taxes, but not for the other. Perhaps this can best be illustrated by an example. Suppose a person conveys a majority ownership interest in a corporation or L.L.C. to a third-party buyer. The taxable value of any real property owned by the entity would be “uncapped” for purposes of the General Property Tax. However, based on the Real Estate Transfer Tax Act, this type of conveyance generally would not be a “transfer” for purposes of that tax.

As indicated above, it is necessary to determine if a “transfer” has occurred with respect to a particular transaction prior to calculating the amount of the General Property Tax or ascertaining the applicability of the Real Estate Transfer Tax. Many conveyances will result in a “transfer” for purposes of both taxes. In each circumstance, it is crucial to consider the statutory exceptions to determine whether the facts result in a “transfer” for purposes of either or both of the taxes. The correct result may be that a “transfer” has occurred for purposes of one of the taxes but not for the other.

Our firm and its real estate attorneys have extensive hands on knowledge regarding the application of these statutes to real estate and corporate transactions. It is not unusual for us to be able to suggest a deal structure or planning opportunity which can help minimize transfer taxes and uncapping of assessments. Uncapping events can also have serious implications for tenants under long term triple net leases. Additionally, even in “ordinary” residential transactions or estate planning and trust funding transactions can have homestead exemption and assessment cap implications. We would be happy to provide counsel when issues arise in any of these circumstances. If you would like additional information about these matters, please feel free to contact me at (248) 359-7524 or e-mail me at cam@maddinhauser.com.

PROPERTY TRANSFER AFFIDAVIT

This form must be filed whenever real estate or some types of personal property are transferred (even if you are not recording a deed). It is used by the assessor to ensure the property is assessed properly and receives the correct **taxable value**. It must be filed by the new owner with the **assessor for the city or township** where the property is located within **45 days** of the transfer. If it is not filed timely, a penalty of \$5/day (maximum \$200) applies. The information on this form is NOT CONFIDENTIAL.

1. Street Address of Property	2. County	4. Date of Transfer (or land contract was signed)
3. City/Township/Village of Real Estate <input type="checkbox"/> City <input type="checkbox"/> Township <input type="checkbox"/> Village		5. Purchase Price of Real Estate \$
6. Property Identification Number (<u>PIN</u>). If you don't have a PIN, attach legal description.		PIN. This number ranges from 10 to 25 digits. It usually includes hyphens and sometimes includes letters. It is on the property tax bill and on the assessment notice.

7. Seller's (Transferor) Name	8. Buyer's (Transferee) Name and Mailing Address
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Items 9 - 13 are optional. However, by completing them you may avoid further correspondence.

Transfers include deeds, land contracts, transfers involving trusts or wills, certain long-term leases and interest in a business. See the back for a complete list.

9. Type of Transfer

<input type="checkbox"/> Land Contract	<input type="checkbox"/> Lease
<input type="checkbox"/> Deed	<input type="checkbox"/> Other (specify) _____

10. Is the transfer between related persons? Yes No

11. Amount of Down Payment
\$

12. If you financed the purchase, did you pay market rate of interest? Yes No

13. Amount Financed (Borrowed)
\$

Exemptions

The Michigan Constitution limits how much a property's **taxable value** can increase while it is owned by the same person. Once the property is transferred, the **taxable value** must be adjusted by the assessor in the following year to 50 percent of the property's usual selling price. Certain types of transfers are exempt from adjustment. Below are brief descriptions of the types of exempt transfers; full descriptions are in MCL Section 211.27a(7)(a-n). If you believe this transfer is exempt, indicate below the type of exemption you are claiming. If you claim an exemption, your assessor may request more information to support your claim.

- transfer from one spouse to the other spouse
- change in ownership solely to exclude or include a spouse
- transfer of that portion of a property subject to a life lease or life estate (**until** the life lease or life estate expires)
- transfer to effect the foreclosure or forfeiture of real property
- transfer by redemption from a tax sale
- transfer into a trust where the settlor or the settlor's spouse conveys property to the trust and is also the sole beneficiary of the trust
- transfer resulting from a court order unless the order specifies a monetary payment
- transfer creating or ending a joint ownership if at least one person is an original owner of the property (or his/her spouse)
- transfer to establish or release a security interest (collateral)
- transfer of real estate through normal public trading of stocks
- transfer between entities under common control or among members of an affiliated group
- transfer resulting from transactions that qualify as a tax-free reorganization
- transfer of qualified agricultural property when the property remains qualified agricultural property and affidavit has been filed
- other, specify: _____

Certification

I certify that the information above is true and complete to the best of my knowledge.

Owner's Signature	Date	If signer is other than the owner, print name and
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Instructions

This form must be filed when there is a transfer of real property or of the following types of personal property:

- buildings on leased land.
- leasehold improvements (as defined in MCL Section 211.8(h)).
- leasehold estates (as defined in MCL Section 211.8(i) and (j)).

Transfer of ownership means the conveyance of title to or a present interest in property, including the beneficial use of the property. It includes, but is not limited to, the following conveyances:

- deed.
- land contract.
- transfer into a trust, **unless** the sole beneficiary is the settlor (creator of the trust), the settler's spouse, or both.
- transfer from a trust, **unless** the distributee is the sole present beneficiary, the spouse of the sole present beneficiary, or both.
- changes in the sole present beneficiary of a trust, **unless** the change only adds or substitutes the spouse of the sole present beneficiary.
- distributions by a will or intestate succession, **unless** to the decedent's spouse.
- leases, if the total duration of the lease is more than 35 years, including the initial term and all options for renewal, or if the lease grants the lessee the right to purchase the property at the end of the lease for not more than 80 percent of the property's projected true cash value at the end of the lease. This only applies to the portion of the property subject to the lease described above.
- transfers of more than a 50 percent interest in the ownership of a business, **unless** the ownership is gained through the normal public trading of shares of stock.
- transfers of property held as a tenancy in common, except the portion of the property not subject to the ownership interest conveyed.
- a conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed.

For complete descriptions of qualifying transfers, please refer to MCL Section 211.27a(6)(a-j).

Excerpts from Michigan Compiled Laws (MCL), Chapter 211

Section 211.27a(8)

"...the buyer, grantee, or other transferee of the property shall notify the appropriate assessing office in the local unit of government in which the property is located of the transfer of ownership of the property within 45 days of the transfer of ownership, on a form prescribed by the state tax commission that states the parties to the transfer, the date of the transfer, the actual consideration for the transfer and the property's parcel identification number or legal description."

Section 211.27(5)

"Beginning December 31, 1994, the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. In determining the true cash value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction."