

TRANSFER OF OWNERSHIP: JOINT TENANCIES

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House Bill 4189

Sponsor: Rep. Joel Sheltrown

Committee: Tax Policy

Complete to 2-20-07

A SUMMARY OF HOUSE BILL 4189 AS INTRODUCED 2-1-07

Under Proposal A of 1994, year-to-year increases in a property's taxable value are capped at five percent or the rate of inflation, whichever is less. But when ownership of the land is transferred (e.g. sold), the taxable value "pops-up" to the state equalized value (50 percent of market value). Generally, a "transfer of ownership" is the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest. The General Property Tax Act lists several situations and transactions that are and are not considered to be a "transfer of ownership." If a transaction is not considered a transfer of ownership, then there is no "pop-up," and the assessment cap remains in place as if no transaction had occurred.

In one instance, the act specifies that a "transfer of ownership" does not include a transfer creating or terminating a joint tenancy between two or more persons. This only applies if at least one of the persons was an original owner of the property when the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of the conveyance, at least one of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since its creation. The act further provides that a joint owner at the time of the last transfer of ownership is an original owner, and that a person is an original owner of property owned by that person's spouse.

House Bill 4189 would amend the provision in the General Property Tax Act dealing with joint tenancies (MCL 211.27a) to specify that a "transfer of ownership" does not include:

- (1) A transfer terminating a joint tenancy between two or more persons where the joint tenancy was created before December 29, 1994.
- (2) A transfer creating or terminating a joint tenancy created on or after December 29, 1994.

This means there would be no "pop-up" in these cases. (December 29, 1994 is the effective date of Public Act 415 of 1994, an act amending the General Property Tax Act to implement the Proposal A assessment cap.)

FISCAL IMPACT:

House Bill 4189 would have no fiscal impact on state government. The bill would have a minimal fiscal impact on some local units.

BACKGROUND INFORMATION:

Joint Tenancy

Joint tenancy is a form of property co-ownership where, typically, each co-owner shares an equal, undivided share in the property. The key feature of joint tenancy is the right to survivorship, where upon the death of one joint tenant, the decedent's ownership interest reverts to the surviving tenant, rather than the decedent's heirs. This right to survivorship may be severed ("disjoined") by an act of the parties, by conveyance by either party, or by levy and sale on an execution against one of the parties. If one joint tenant conveys his or her interest to a third party, the remaining joint tenant and the grantee become tenants in common (another form of property co-ownership, where there is no right of survivorship). Joint tenancies where the right of survivorship can only be severed upon an act of both parties (rather than, for instance, by the conveyance by one joint tenant to a third party) is known as a joint tenancy with full right of survivorship.

State Tax Commission Bulletin 16 of 1995

Following passage of Proposal A in March 1994 and enactment of Public Act 415 of 1994, the State Tax Commission issued STC Bulletin 16 of 1995 providing clarification on what is and is not considered to be a transfer of ownership. The STC bulletin notes, based on the General Property Tax Act, that a transfer creating a new joint tenancy between two or more persons is not a transfer of ownership if at least one of the joint owners was an original owner before the joint tenancy was initially created. It cites two examples:

- A owns a property by himself and sells a half interest to B and creates a joint tenancy, rather than a tenancy in common. A transfer of ownership did not occur because A was an original owner before the joint tenancy was created.
- A, who owns the property by himself, sells the property to B and C as joint tenants and does not retain any ownership interest. A transfer of ownership has occurred because neither B nor C were original owners before the joint tenancy was created.

The STC bulletin also notes, based on the General Property Tax Act, that a transfer that expands, shrinks, or terminates a joint tenancy is not a transfer of ownership if: (1) at least one of the persons was an original owner and became a joint tenant when the joint tenancy was originally created and (2) that person has remained a joint tenant since the joint tenancy was originally created. It cites several examples, where person A initially owns the property alone:

- Conveyance #1: A joint tenancy is created consisting of A, B, and C, who are not related to each other by marriage. This is not a transfer of ownership because this is a transfer creating a joint tenancy and A was an original owner before the joint tenancy was originally created.
- Conveyance #2: C sells her interest to A and B and the joint tenancy is retained, but it shrinks. This is not a transfer of ownership because A was an original owner, A became a joint tenant when the joint tenancy was originally created, and A has remained a joint tenant since the joint tenancy began in Conveyance #1.
- Conveyance #3: The joint tenancy is terminated as B sells his interest to A. This is not a "transfer of ownership" because, again, A was an original owner, A became a joint tenant when the joint tenancy was originally created, and A has remained a joint tenant since the joint tenancy began in Conveyance #1.
- Conveyance #4: A joint tenancy is created consisting of A and D who are not related to each other by marriage. This is not a transfer of ownership because this is a transfer creating a joint tenancy and A was an original owner before the joint tenancy was created.
- Conveyance #5: The joint tenancy is expanded by selling a one-third interest to E who is not related to A or D by marriage. This is not a transfer of ownership because A was an original owner, A became a joint tenant when the joint tenancy was originally created, and A has remained a joint tenant since the joint tenancy began in Conveyance #4.
- Conveyance #6: A sells to F, and A and F are not related by marriage. The transfer is structured in such a way that the joint tenancy continues with D, E, and F as co-owners. A transfer of ownership has occurred because D, E, and F were not original owners. However, because the General Property Tax Act states that a joint owner at the time of the last transfer of ownership is an original owner of the property, this means that in the example, D, E, and F become "original owners" for future transactions because Conveyance #6 is a transfer of ownership.

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