

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

GENERAL PROPERTY TAX ACT: Exemption from state real estate transfer taxes

STATE REAL ESTATE TRANSFER TAX ACT:

REAL PROPERTY:

TAXATION:

An exemption from the requirement imposed by the State Real Estate Transfer Tax Act, MCL 207.521 *et seq.*, to pay state real estate transfer taxes upon the transfer or sale of real property may be claimed under MCL 207.526(t) if, on the date a parcel occupied as a principal residence is transferred, its state equalized value is less than or equal to its state equalized value on the date the owner purchased or acquired the parcel *and* the property is sold for not more than its true cash value at the time of sale.

Opinion No. 7214

April 3, 2008

Honorable Martin J. Griffin
State Representative
The Capitol
Lansing, MI

You have requested my opinion concerning the requirements for claiming an exemption from the state real estate transfer tax when owners transfer their interests in their principal residences.

The State Real Estate Transfer Tax Act (Act), 1993 PA 330, MCL 207.521 *et seq.*, imposes a tax upon each instrument of conveyance transferring an interest in real property. MCL 207.523 The burden of the tax is placed upon the seller. MCL 207.523(2). The tax is due at the

time the deed, easement, assignment, or other instrument of conveyance is offered to the Register of Deeds for recording. MCL 207.533.¹

Certain conveyances, however, are exempt from this tax.² MCL 207.526. As you note in your letter, section 6(t) of the Act, MCL 207.526(t),³ provides an exemption for qualifying principal residences:

The following written instruments and transfers of property are exempt from the tax imposed by this act:

* * *

(t) A written instrument conveying an interest in property for which an exemption is claimed under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc [this applies to a "principal residence"], if the state equalized valuation of that property is equal to or lesser than the state equalized valuation on the date of purchase or on the date of acquisition by the seller or transferor for that same interest in property.

Section 6(t) also requires that a penalty be assessed if certain circumstances relating to the property's "true cash value" are present:

If after an exemption is claimed under this subsection, the sale or transfer of property is found by the treasurer to be at a value other than the true cash value, then a penalty equal to 20% of the tax shall be assessed in addition to the tax due under this act to the seller or transferor. [MCL 207.526(t).]

¹ The tax is \$3.75 for each \$500.00 or fraction of \$500.00 of the total value of the interests in real property being transferred. MCL 207.525. (This equates to approximately $\frac{3}{4}$ of 1% of the value of the property.)

² For questions regarding whether a particular conveyance is exempt from this tax and for guidance regarding other frequently asked questions, see the Department of Treasury's website at <http://www.michigan.gov/taxes/0,1607,7-238-43868---F,00.html>.

³ No similar exemption is found in the County Real Estate Transfer Tax Act, 1966 PA 134, MCL 207.501 *et seq.*

Your letter advises that the struggling housing market has resulted in increased reliance on this provision and created the potential for its inconsistent application by county registers of deeds. You therefore ask for guidance concerning the correct application of this exemption.

Analysis begins by examining the section of the General Property Tax Act (GPTA), MCL 211.1 *et seq*, referred to in MCL 207.526(t) above. Section 7cc of the GPTA provides an exemption from local school operating tax for principal residences:

A principal residence is exempt from the tax levied by a local school district for operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section. [MCL 211.7cc(1).]

This exemption, added to the GPTA by 1994 PA 237, and the state real estate transfer tax first imposed by 1993 PA 330 were enacted along with other laws to implement the significant shift in tax burdens for the funding of public education that was approved by the electorate as Proposal A in 1993.⁴

A "principal residence"⁵ is defined by section 7dd(c) of the GPTA, MCL 211.7dd(c):

"Principal residence" means the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established.

⁴ Proposal A amended Const 1963, art 9, § 11, which describes the source of funding for the state school aid fund, distributions from that fund, and the state guarantee with respect to providing funding to local school districts for school operating purposes.

⁵ Initially the term utilized was "homestead." Since the enactment of 2003 PA 140 (effective January 1, 2004), the term "principal residence" has been utilized.

Each parcel of real property, including land occupied as a principal residence, is assigned four different values for each tax year (calendar year)⁶: (1) a true cash value; (2) an assessed value; (3) a state equalized value; and (4) a taxable value. Throughout this opinion, these terms may be referred to by their corresponding acronyms TCV (true cash value), AV (assessed value), SEV (state equalized value), and TV (taxable value).

"True cash value" is defined in the GPTA:

As used in this act, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. [MCL 211.27(1).]

The local assessor annually reaches a tentative determination of the true cash value and assessed value as well as the taxable value for a parcel for the current calendar year, considering its status and condition as of the 31st day of December of the immediately preceding year known as the "tax day." MCL 211.2 and 211.29. These tentative value determinations are to be made by the assessor and entered on the assessment roll not later than the first Monday in March. MCL 211.24. Each parcel's assessed value is set at 50% of its "true cash value." MCL 211.27a. The taxable value is then established in accordance with MCL 211.27a, which allows for various adjustments under specified circumstances.

⁶ For real property and personal property subject to tax under the GPTA, the tax year is the calendar year. See OAG, 1965-1966, No 4463, p 207 (February 21, 1966). See also 1 OAG 1955, No 2074, p 257 (May 11, 1955).

At least ten days prior to the meeting of the local board of review, the assessor is required to give notice to each owner or person or persons listed on the assessment roll of the assessor's tentative determinations in accordance with MCL 211.24c(1) and (2), which states:

(1) The assessor shall give to each owner or person or persons listed on the assessment roll of the property a notice by first-class mail of an increase in the tentative state equalized valuation or the tentative taxable value for the year. The notice shall specify each parcel of property, the tentative taxable value for the current year, and the taxable value for the immediately preceding year. The notice shall also specify the time and place of the meeting of the board of review. The notice shall also specify the difference between the property's tentative taxable value in the current year and the property's taxable value in the immediately preceding year.

(2) The notice shall include, in addition to the information required by subsection (1), all of the following:

(a) The state equalized valuation for the immediately preceding year.

(b) The tentative state equalized valuation for the current year.

(c) The net change between the tentative state equalized valuation for the current year and the state equalized valuation for the immediately preceding year.

(d) The classification of the property as defined by section 34c.

(e) The inflation rate for the immediately preceding year as defined in section 34d.

(f) A statement provided by the state tax commission explaining the relationship between state equalized valuation and taxable value. If the assessor believes that a transfer of ownership has occurred in the immediately preceding year, the statement shall state that the ownership was transferred and that the taxable value of that property is the same as the state equalized valuation of that property.

A person objecting to these tentative values may appeal to the local board of review.

MCL 211.28. The board, by law, is required to meet in March. MCL 211.29. If aggrieved by the board's determination, an appeal may be taken to the Michigan Tax Tribunal. MCL

211.30(4). At its March meeting, the board reviews the tentative values, hears any appeals, and

after making any changes or corrections it finds appropriate, approves the values to be set forth on the assessment roll. MCL 211.30.

The values approved by the board are subject to equalization at the county and state levels to assure that, in the aggregate, property is uniformly assessed at 50% of true cash value by all taxing authorities. See Const 1963, art 9, § 3 and MCL 211.34. Generally, equalization at both levels seeks to achieve uniformity of property tax assessment among the cities or townships within a county, in the case of intracounty equalization, and among all counties within the State, in the case of state equalization. *Washtenaw County v State Tax Comm*, 422 Mich 346, 351 n 1; 373 NW2d 697 (1985). This process concludes in May (absent any pending appeal), MCL 211.34, and establishes the SEV, TV, AV, and TCV that apply throughout that entire calendar year.

On the date a parcel occupied as a principal residence is transferred, it has an established SEV or one that is in the process of being established as discussed above. If the SEV for the property at the time of transfer by the owner is less than or equal to that property's SEV on the date the owner purchased or acquired the property, the seller may claim an exemption under MCL 207.526(t), provided that the property is sold for not more than its true cash value.

Some hypothetical examples will help to illustrate how the exemption is to be applied under commonly arising factual scenarios. Each will assume that a husband and wife purchased or acquired real property in 2006 and conveyed the parcel to another person in 2008. It is further

assumed that the husband and wife occupied the property as their principal residence, exempted from school operating millage under section 7cc of the General Property Tax Act, MCL 211.7cc.

EXAMPLE 1:

SEV when acquired in 2006 = \$74,000.00.

SEV when transferred in 2008 = \$72,000.00.

TCV in 2008 = \$144,000.00.

Transfer or sale price in 2008 = \$140,000.00.

OUTCOME: This transfer qualifies for exemption from the state real estate transfer tax because the SEV for 2008, the year of sale, is less than the SEV for 2006, the year of acquisition, *and* the sale price does not exceed the true cash value.

EXAMPLE 2:

SEV when acquired in 2006 = \$74,000.00.

SEV when transferred in 2008 = \$72,000.00.

TCV in 2008 = \$144,000.00.

Transfer or sale price in 2008 = \$148,000.00.

OUTCOME: This transfer is not exempt under MCL 207.526(t) because the sale price exceeds the true cash value for 2008, the year of sale.

EXAMPLE 3:

SEV when acquired in 2006 = \$74,000.

SEV when sold in 2008 = \$75,000.

OUTCOME: This transfer, regardless of the sale price, is not exempt under MCL 207.526(t) because the SEV for 2008, the year of sale, exceeds the SEV for 2006, the year of acquisition.

In summary, to determine whether a transfer of an interest in real property is eligible for the exemption under MCL 207.526(t), the following must be established:

- (a) The property must have been occupied as a principal residence, classified as exempt from taxes for school operating purposes under MCL 211.7cc;
- (b) The property's SEV for the calendar year in which the transfer is made must be less than or equal to the property's SEV for the calendar year in which the transferor acquired the property; and
- (c) The property cannot be transferred for a consideration exceeding its true cash value for the year of transfer.

You have also asked about the applicability of the penalty provision of MCL 207.526(t), which states:

If after an exemption is claimed under this subsection, the sale or transfer of property is found by the treasurer to be at *a value other than the true cash value*, then a penalty equal to 20% of the tax shall be assessed in addition to the tax due under this act to the seller or transferor. [Emphasis added.]

This provision has been interpreted by the Michigan Department of Treasury as calling for an assessment of tax and the imposition of the prescribed penalty only if *the sale price is in excess of the true cash value*.⁷ In its February 1998, publication entitled STATE REAL ESTATE TRANSFER TAX QUESTIONS & ANSWERS, the Department of Treasury explains:

⁷ This interpretation is consistent with the rule of construction that recognizes language in a statute "does not stand alone, and thus it cannot be read in a vacuum." *Sweatt v Dep't of Corrections*, 468 Mich 172, 179; 661 NW2d 201 (2003). Statutory text must be read in context with the entire act and "assigned such meanings as are in harmony with the whole of the statute, construed in the light of history and common sense." *Id.*, quoting *Arrowhead Dev Co v Livingston County Rd Comm*, 413 Mich 505, 516; 322 NW2d 702 (1982).

Homestead Property ^[8]

[A] transfer of homestead property for which a homestead exemption is claimed under the School Code of 1976 or the State Education Tax Act is exempt under MCL 207.526(t) of the SRETT [State Real Estate Transfer Tax] Act only if both of the following conditions are satisfied:

- a. The sale price is *not in excess of the true cash value of the property* assigned to the property by the local assessor.
- b. The current SEV is equal to or less than the SEV for the property on the date the transferor acquired the property. [Emphasis added; Official State of Michigan Department of Treasury Michigan Tax Guide, pp 375, 379 (Thomson-West 2006).]

This interpretation best effectuates the legislative intent in accordance with the governing rules of statutory construction.⁹ The plain language of the exemption evidences a clear legislative purpose to afford tax relief to persons selling their homes when the market or true cash value of their homes, as evidenced by a comparison of the SEV at the time of acquisition and the time of sale, has fallen. Given that evident purpose, an intent cannot logically be ascribed to the Legislature to penalize seller-homeowners when the price they secure in selling their homes is less than or equal to the property's diminished true cash value. Only where an exemption is claimed *and* the consideration received by the seller exceeds true cash value does the penalty provision call for assessment of the tax along with a penalty.

Your question also raises timing issues that warrant consideration. Because true cash value, taxable value, assessed value, and state equalized value represent tentative values from

⁸ As indicated in n 5 earlier, as a result of amendments, the "homestead" exemption is now a "principal residence" exemption, and the exemption is now found at section 7cc of the GPTA, MCL 211.7cc, rather than in the School Code and State Education Tax Act.

⁹ See, e.g., *Halloran v Bhan*, 470 Mich 572, 576-578; 683 NW2d 129 (2004) (the courts must discern and give effect to the Legislature's intent as expressed in the statutory language).

January 1 of a given tax year until finalized by the local board of review in March, and equalization is concluded in May, the question arises how parties may proceed with confidence in (a) determining whether to assert eligibility for the exemption and (b) proceeding with closing on the property sale or transfer before the values become final.


In the absence of any court cases or interpretive guidance provided by the Michigan Department of Treasury, but recognizing the need for uniformity in the application of MCL 207.526(t) in the interim, the most prudent course to follow is for the parties to utilize the tentative values set forth in the assessment roll figures until the time the values become final. The tentative values are available not later than the first Monday in March, but the assessors may have the tentative values at an earlier date.¹⁰ If the transfer is effectuated before the tentative values are entered on the assessment roll or otherwise available, the values from the preceding year should be utilized. If the seller does not claim an exemption and later determines that the finalized SEV and true cash values would justify a claim, a refund may be sought at that time from the Michigan Department of Treasury.

In that regard, it should be noted that the State Real Estate Transfer Tax Act is administered under the Revenue Act, MCL 205.1 *et seq.* MCL 207.536. The Revenue Act governs administration of the several public acts imposing state taxes, including the state real

¹⁰ Any questions regarding the tentative or final values determined for a particular parcel may be addressed to the local assessor's office having jurisdiction over the parcel. Assessors often will be able to advise what the tentative SEV is for a principal residence very early in the calendar year.

estate transfer tax. Thus, claims of refund are to be made under the Revenue Act, consistent with that act's deadlines for filing refund claims.

It is my opinion, therefore, that an exemption from the requirement imposed by the State Real Estate Transfer Tax Act, MCL 207.521 *et seq.*, to pay state real estate transfer taxes upon the transfer or sale of real property may be claimed under MCL 207.526(t) if, on the date a parcel occupied as a principal residence is transferred, its state equalized value is less than or equal to its state equalized value on the date the owner purchased or acquired the parcel *and* the property is sold for not more than its true cash value at the time of sale.

A handwritten signature in black ink, appearing to read "Mike Cox", written in a cursive style.

MIKE COX
Attorney General