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BILL



ANALYSIS

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Senate Bill 540 (as introduced 9-7-17)
Sponsor: Senator Tonya Schuitmaker
Committee: Local Government

Date Completed: 5-22-18

CONTENT

The bill would amend the General Property Tax Act to revise the conditions under which certain conveyances are not considered a "transfer of ownership", for the purpose of adjusting the property's taxable value, by including transfers to a parent, sibling, child, grandchild, or spouse of a sole present beneficiary or to a trust if the sole present beneficiary were one of those individuals. The transfers would include distributions from a trust, changes in the sole present beneficiary of a trust, conveyances by will or intestate succession, and transfers of property subject to a life estate, for residential real estate, as well as the conveyance of an ownership interest in a legal entity. The bill also would replace the term "settlor" with "transferor" in these provisions.

In addition, the bill provides that a transfer of ownership would not include a transfer of an ownership interest in real property to or from a legal entity if the ownership of the entity and the property were identical before and after the transfer.

"Transferor" would mean a person that makes a transfer. The term would include, but not be limited to, the settlor of a trust, or an individual or entity for whom a transfer is made by a representative.

Various provisions that the bill would add or amend would be retroactive and effective for taxes levied after December 31, 2016. These provisions are identified below.

(Under the Act, the taxable value of a parcel of property (adjusted for additions and losses) may not increase from one year to the next by more than 5% or the increase in the consumer price index, whichever is lower, until there is a transfer of ownership. At that time, the assessment is "uncapped" and the parcel is taxed upon its State equalized valuation (50% of its true cash value). The Act defines "transfer of ownership" for this purpose and identifies transactions that do not constitute a transfer of ownership.)

Conveyance by Distribution from a Trust

A conveyance by distribution from a trust is considered a transfer of ownership of property, except under the following conditions:

- The distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.

- Beginning December 31, 2014, a distribution of residential real property if the distributee is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the property is not used for any commercial purpose following the conveyance.

Under the bill, instead, the conditions would be as follows:

- The distributee was the sole present beneficiary or the spouse of the sole present beneficiary, or both, or was a trust and the sole present beneficiary or beneficiaries were either or both of these individuals.
- Beginning December 31, 2014, a distribution of residential real property if the distributee were the mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter of a sole present beneficiary or beneficiaries, or the spouse of a sole present beneficiary or beneficiaries, or were one or more of these individuals, or were a trust and the sole present beneficiary or beneficiaries were one or more of these individuals, for so long as the residential property classification did not change following the conveyance.

Change of Trust Beneficiary

Under the Act, a change in the sole present beneficiary or beneficiaries of a trust is considered a transfer of ownership of property, except under the following conditions:

- A change that adds or substitutes the spouse of the sole present beneficiary.
- Beginning December 31, 2014, for residential real property, a change that adds or substitutes the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance.

Under the bill, the conditions would be as follows:

- A change that added or substituted the spouse of the sole present beneficiary, or a trust and the sole present beneficiary was the spouse of the sole present beneficiary.
- Beginning December 31, 2014, for residential real property, a change that added or substituted the mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter of a sole present beneficiary or beneficiaries, or of the spouse of a sole present beneficiary or beneficiaries, or added or substituted one or more of these individuals, or was a trust and the sole present beneficiary or beneficiaries were one or more of these individuals, for so long as the residential property classification did not change following the conveyance.

Conveyance by Will or Intestate Succession

Currently, a conveyance by distribution under a will or by intestate succession (the absence of a valid will) is considered a transfer of ownership, except under the following conditions:

- The distributee is the decedent's spouse.
- Beginning December 31, 2014, for residential real property, the distributee is the decedent's or the decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter, and the property is not used for any commercial purpose following conveyance.

Under the bill, instead, a conveyance to a transferee as the result of the death of a property owner because the transferee was a distributee under a will or intestate succession, grantee of a deed, trust beneficiary, beneficiary of a beneficiary designation, appointee, or taker in

default of a power of appointment would be considered a transfer of ownership, except under any of the following conditions:

- The transferee was the decedent's spouse, or was a trust and the sole present beneficiary was the decedent's spouse.
- Beginning December 31, 2014, for residential real property, the transferee was the decedent's or the decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter, or was one or more of these individuals, or was a trust and the sole present beneficiary or beneficiaries were one or more of these individuals, for so long as the residential property classification did not change following the conveyance.

Conveyances of Ownership Interests in Legal Entity

Currently, a conveyance of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity is a transfer of ownership if the ownership interest conveyed is more than 50% of the entity. Under the bill, a conveyance or successive conveyances of an ownership interest in a legal entity would be considered a transfer of ownership if the ownership interest conveyed on a cumulative basis since the date taxable value was first established for taxes levied in 1995 under Section 27a(2) or the date that taxable value was last adjusted under Section 27a(3), whichever date was later, were more than 50% of the total ownership interest in the entity.

(Section 27a(2) states that, for taxes levied in 1995 and for each year after, the taxable value of each parcel of property is the lesser of the following:

- The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions.
- The property's current State equalized valuation.

Section 27a(3) specifies that, upon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's State equalized valuation for the calendar year following the transfer.)

Also, under the bill, these provisions would be subject to both of the following beginning on December 31, 2016:

- A conveyance during the transferor's lifetime, or by inheritance, or by distribution from a trust, or otherwise of an ownership interest, of any percentage, in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity would not be a transfer of ownership if the transferee were the transferor's spouse or were a trust and the sole present beneficiary or beneficiaries were the transferor, the transferor's spouse, or both.
- A conveyance during the transferor's lifetime, or by inheritance, or by distribution from a trust, or otherwise of an ownership interest, of any percentage, in a limited liability company would not be a transfer of ownership of residential real property owned by the limited liability company if the transferee were the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, granddaughter, aunt, uncle, niece, or nephew, or were a lineal descendant of one or more of these individuals.

Upon request by the Department of Treasury or assessor, the transferee would have to furnish proof within 30 days that the transferee met the requirements of the second condition. If the transferee failed to comply with the request, the transferee would be subject to a fine of \$200.

The provisions beginning on December 31, 2016, would be retroactive for taxes levied after that date.

Property Subject to a Life Estate or Life Lease

Currently, a transfer of ownership does not include a transfer of that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease.

That portion of property transferred that is not subject to a life lease must be adjusted according to Section 27a(3). The bill would delete this provision.

Under the bill, beginning December 31, 2016, the expiration or termination of the life estate or life lease also would not be a transfer of ownership if either of the following were true:

- The transferee was the transferor's spouse, or was a trust and the sole present beneficiary was the transferor's spouse.
- The property was residential real property and the transferee was the transferor's or transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter, or was one or more of these individuals, or was a trust and the sole present beneficiary or beneficiaries were one or more of these individuals, for so long as the residential real property classification did not change following the conveyance.

Upon request by the Department or assessor, a transferee would have to furnish proof within 30 days that the transferee met the requirements above. If the transferee failed to comply with the request, the transferee would be subject to a fine of \$200.

These provisions would be retroactive for taxes levied after December 31, 2016.

Under the Act, beginning December 31, 2014, a transfer of ownership does not include a transfer of that portion of residential real property that had been subject to a life estate or life lease retained by the transferor resulting from expiration or termination of that life estate or life lease, if the transferee is the transferor's or transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the transfer. Upon request by the Department or assessor, the transferee must furnish proof within 30 days that the transferee meets these requirements. If the transferee fails to comply with the request, the transferee is subject to a fine of \$200. The bill would delete these provisions.

Transfer of Residential Real Property

Under the Act, beginning December 31, 2014, a transfer of residential real property is not considered a transfer of ownership if the transferee is the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. Under the bill, this would apply if the transferee were the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter, or were one or more of those individuals, or were a trust and the sole present beneficiary or beneficiaries were one or more of these individuals, for so long as the residential property classification did not change following the conveyance.

Conveyance from a Trust

Under the Act, beginning December 31, 2014, for residential real property, a conveyance from a trust is not considered a transfer of ownership if the person to whom the property is conveyed is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the property is not used for any commercial purpose following the conveyance. Under the bill, this would apply if the person to whom the residential real property was conveyed were the mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter of a sole present beneficiary or of the spouse of a sole present beneficiary, or were one or more of these individuals, or were a trust and the sole present beneficiary or beneficiaries were one or more of these individuals, for so long as the residential property classification did not change following the conveyance.

Real Property Transfer from Legal Entity

Under the bill, beginning December 31, 2016, the transfer of an ownership interest in real property to or from a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity would not be considered a transfer of ownership if the ownership of the entity after the transfer were identical to the ownership of the real property before the transfer or if the ownership of the property after the transfer were identical to the ownership of the entity before the transfer. "Identical" would mean the same both in the identity of the owner or owners and the percentage owned if owned by more than one person.

These provisions would be retroactive for taxes levied after December 31, 2016.

MCL 211.27a

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would have a negative fiscal impact on the State and local government by reducing State School Aid Fund revenue and local revenue by an unknown amount. The proposed exclusions from "transfer of ownership" would prevent property transfers that met the criteria in the bill from resetting the property's taxable value at 50% of the State equalized valuation (SEV). For property with taxable value lower than its SEV, this exclusion would result in the continuation of lower taxable value and tax revenue than would otherwise be realized. This impact would continue until the property was transferred by a transaction not covered by an exclusion. The amount of revenue reduction would depend on the number of parcels affected, their specific characteristics, and local millage rates. The bill also would increase School Aid Fund spending to the extent it was necessary to replace foregone local school operating millage revenue in order to fund the foundation allowance.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.