

Legislative Analysis



REAL ESTATE TRANSFER TAX AMENDMENTS

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House Bill 6122

Sponsor: Rep. Steve Bieda

Committee: Tax Policy

Complete to 9-9-08

A SUMMARY OF HOUSE BILL 6122 AS INTRODUCED 5-15-08

The State Real Estate Transfer Tax Act imposes a tax of \$3.75 for each \$500 (or fraction thereof) of the value of the property being transferred. (Put another way, this is roughly three-quarters of one percent of the sale price.) The tax is payable by the seller or grantor of property, and is generally imposed upon (1) contracts for the sale or exchange of property, or the assignment or transfer of property or any interest in property; and (2) deeds or instruments of conveyance of property or any interest in property. The act includes a lengthy list of written instruments and transfer that are exempt from the tax including, among other things, a written instrument evidencing an interest that is assessable as personal property.

Controlling Interest/Personal Property

House Bill 6122 provides that the transfer tax would be imposed on contracts for the transfer or acquisition of a *controlling interest* in any entity with an interest in property, even though that interest may be designated as personal property. The bill also provides that, unless otherwise exempted, the tax is imposed on documents conveying or transferring any beneficial interest in property, even though designated as personal property. The bill would define controlling interest to mean more than 80 percent of the following: the total value of all classes of stock; the total interest in capital and profits of a partnership, association, LLC, or other unincorporated form of business; or the beneficial interest in a trust.

Exempted Transfers

The bill would exempt a transfer between a corporation and its stockholders or creditors, or between limited liability companies (LLCs) and its members or creditors, in order to carry out the dissolution of the corporation or LLC and that is necessary to transfer title of real property to stockholders, members, or creditors. The bill would also exempt a transfer between any LLC and its members if the ownership interests in the LLC are held by the same persons in the same proportion before and after the transfer.

The bill would delete an exemption from the tax for land contracts where the legal title does not pass to the grantee until the total consideration has been paid.

Tax Collection

The bill provides that the tax would be payable to the treasurer of the county in which the property is located no later than 15 days after the date of delivery of the instrument. [Under the act, the tax collections are remitted to the Department of Treasury by the county treasurer on the 15th of each month.]

Previously Paid Taxes

The act provides that the tax shall not be imposed on a written instrument transferring property if the transfer is made under a written executory contract where the tax was previously paid. The bill provides, instead, that if there is a conveyance of real estate that was previously sold by a seller or grantor under a land contract or other executory contract, a credit would be provided equal to the amount of taxes previously paid by the transferor (or related person) on the prior transfer. The tax due on the transfer of that same real estate, then, would be imposed on the new consideration for that property. If the amount of tax due exceeds the credit, the seller or grantor would be liable to the tax. If the credit exceeds the amount of tax due, no tax would be due, although there would not be a refund or carryforward either.

Definitions

The act would add a definition of "transfer" to mean, unless otherwise exempt, the conveyance of title to or other transfer of a present interest or beneficial interest or any other interest in the property by any method, including, but not limited to, sale, exchange, assignment, surrender, mortgage, foreclosure, transfer in lieu of foreclosure, option, trust, or conveyance upon liquidation, or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in the property.

The bill specifies that the "value" of the property being transferred (current or fair market worth) includes monetary exchange, whether actually paid or required to be paid for the property interest (including payment for an option or contract to purchase property), expressed or not expressed in the deed and paid or required to be paid by money, property, or other thing of value. For a controlling interest in an entity that owns real property, "value" means the apportioned value based on the percentage of ownership interest transferred or acquired in the entity.

MCL 207.522 et al.

FISCAL IMPACT:

This bill would increase real estate transfer tax revenue by an indeterminate amount. The real estate transfer tax is earmarked to the School Aid Fund. This bill would have no direct local fiscal impact.

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