

Legislative Analysis



SUMMER RESORT ASSOCIATION PROPERTY: ASSESSMENTS & TRANSFER OF OWNERSHIP

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House Bill 4668 (Substitute H-2)

House Bill 4669 (Substitute H-1)

Sponsor: Rep. Frank Foster

Committee: Tax Policy

Complete to 2-8-12

A SUMMARY OF HOUSE BILLS 4668 & 4669 AS REPORTED FROM COMMITTEE

House Bill 4668 would amend Public Act 230 of 1897, which is one of several acts under which summer resort associations can be organized. House Bill 4669 would amend the General Property Tax Act. Together, the bills would revise how real property within these summer resort communities (where the land is leased by the corporation to stockholders who own the improvements on the land) is to be treated for purposes of assessing and collecting property taxes. In particular, the bills address when a transaction involving property within an association is considered a "transfer of ownership" and when it is not.

Generally speaking, the bills would prevent the "uncapping" of the taxable value of the commonly held land within these associations when the ownership interests in an individual residence is transferred. Under the bill's provisions, the value of the property of an individual stockholder lessee would be uncapped when there was a transfer, but property in the association not subject to the transaction would not be uncapped. In other words, the transfer of one residence (through the assignment of a lease and a transfer of stock) would not affect the assessment for tax purposes of the other residences within the association property.

The term "transfer of ownership" is a relevant term under the General Property Tax Act because of its application to the cap, or limit, on property assessments. Under Michigan law, the taxable value of a parcel of property cannot increase from one year to the next by more than the rate of inflation or five percent, whichever is less. However, when there is a transfer of ownership, the assessment of a parcel "pops up" to 50% of market value. That is, the taxable value is "uncapped" and the cumulative benefit of the cap falls away. (In other words, new owners pay more in property taxes than longtime owners for equivalent property.) The act defines when a transfer of ownership has occurred for the purpose of re-setting the assessment based on market value.

Currently, the provisions dealing with transfers of ownership say, generally, that a conveyance of ownership interest in a corporation or similar legal entity is a transfer of ownership if the ownership interest conveyed is more than 50% of the corporation or other legal entity. When such a conveyance occurs, the legal entity must notify the local assessor. This provision applies to summer resort associations as corporations. It is

understood to require the uncapping of taxable value on property when, cumulatively, more than 50% of the association's property has been transferred. House Bills 4668 and 4669 would provide an exception to that requirement so that the transfer of one residence (through the assignment of a lease and a transfer of stock) would not affect the assessment for tax purposes of the other residences within the association property.

House Bill 4668 would apply in cases where a corporation subject to the act has real property that has been platted and lots in the plat have been leased to stockholders in the resort association. In that case, all of the taxable value and assessed value of a corporation's real property within that plat would be allocated to the stockholder lessees so that each stockholder lessee is fairly assessed for: (1) the real property each stockholder lessee leases from the corporation; and (2) any of the corporation's real property improvements that are within the plat and are available for the common and exclusive use of the lessees, including the guests of the lessees.

Under the bill, a corporation could propose to the local assessor the percentage the assessor should use to allocate the taxable and assessed values of the corporation's property within the plat to the property that the stockholder lessees lease from the corporation. The percentage proposed would have to meet the following requirements: (1) the total allocation would have to equal 100 percent; and (2) the allocation would be the same as the corporation used (or calculated using the same methodology used to determine the allocation) in the immediately preceding tax year to allocate its real property taxes to the stockholders for payment to the corporation, if the corporation made such an allocation.

If the assessor allocates taxable and assessed values as proposed, that allocation is presumed to be a fair assessment of the allocated taxable and assessed values. If a stockholder lessee appeals the allocation, he or she has the burden of proof to establish by clear and convincing evidence that the values violate the law.

If the taxable and assessed values are allocated as provided, all of the following would apply to the real property owned by the corporation and available for the common and exclusive use of the stockholder lessees in any subsequent tax year:

- (1) The taxable and assessed values are zero, because the value of that real property is included in the assessment of the real property leased by the stockholder lessees; and
- (2) If a stockholder lessee assigns a lease of the real property and transfers the related corporation stock, the value of the property subject to that lease is deemed to be included in the price paid for the transfer of the real property interests. The purchase price is not the presumptive true cash value of the property transferred.

If a stockholder lessee assigns a lease of the corporation's real property and transfers the related stock, a property transfer affidavit would have to be filed, as required by the General Property Tax Act.

As provided in Section 27a of the General Property Tax Act (as amended by the companion bill, House Bill 5669), an assessment roll change or tax roll change resulting from the application of these new provisions is not a transfer of ownership.

House Bill 4669 would amend Section 27a of the General Property Tax Act, which deals with the assessment of property, to amend the section of the act that determines which transactions constitute a "transfer of ownership" and which do not.

As noted earlier, currently the provisions dealing with transfers of ownership say, generally, that a conveyance of ownership interest in a corporation or similar legal entity is a transfer of ownership if the ownership interest conveyed is more than 50% of the corporation or other legal entity. Under House Bill 4669, for the purposes of a corporation that is a summer resort association under House Bill 4668, the following would apply instead:

- (1) A transfer of stock of the corporation is a transfer of ownership only with respect to the real property that is assessed to the transferor lessee stockholder; and
- (2) A cumulative conveyance of more than 50 percent of the corporation's stock does not constitute a transfer of ownership of the corporation's real property.

The bill says that a change to the assessment roll or tax roll that results from the procedures described in House Bill 4668 would not constitute a transfer of ownership for the purpose of the redetermination of taxable value (the "pop-up").

FISCAL IMPACT:

As written, the bill would result in an indeterminate loss of revenue to state and local government. Because the number of affected properties, the respective taxable values, and the corresponding millage rates are not known, a fiscal impact cannot be determined.

POSITIONS:

The Department of Treasury supports the bills. (12-7-11)

The Michigan Assessors Association supports the bills. (12-7-11)

The Supervisor of Little Traverse Township submitted a letter in support of the bills as introduced. (11-28-11)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.