

December 9, 2008

House Passes Expansion of State Real Estate Transfer Tax

On December 4, 2008, the Michigan House passed HB 6122, which expands the state real estate transfer tax (SRETT) to apply to the transfer of a controlling interest in an entity that owns real property comprising 90% or more of the fair market value of that entity. If enacted, the bill provides for an effective date of January 1, 2009.

There are two real estate transfer taxes in Michigan, one levied by the state, the SRETT, and the other by the counties. Both taxes are now imposed only when ownership of real property is transferred by written instrument. Each tax is based on the consideration, or "fair market worth" of the property transferred. The SRETT rate is \$3.75 per \$500 (0.75%) and the County tax rate is \$0.55 per \$500 (0.11%).

Currently, if real estate held by a limited liability company (LLC) is transferred by selling the membership interests in the LLC, record title remains in the name of the LLC, no documents are recorded with the Register of Deeds and no transfer tax is due. HB 6122 was introduced to impose SRETT liability in this situation and close what the Michigan Department of Treasury has termed a "loophole."

As passed by the House, HB 6122 is a more limited expansion of the SRETT than originally introduced. Under the House-passed bill, the SRETT is imposed on the transfer of a controlling interest in an entity, if the real property owned by that entity comprises 90% or more of the fair market value of that entity. Controlling interest is defined as more than 80% of the total value of the corporation, partnership, LLC, association, trust or other unincorporated entity. Transfer is defined to include the interest in real property acquired through the acquisition of a controlling interest in the entity with an interest in the property.

HB 6122 also includes exemptions from the SRETT for certain transfers. Among these exemptions, the SRETT does not apply to certain transfers of real property necessary to effectuate a dissolution of an entity or transfers in connection with the reorganization of an entity where the beneficial ownership does not change.

HB 6122 is currently before the Senate and is expected to be referred to the Senate Finance Committee.

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