

December 22, 2008

Legislature Passes Expansion of State Real Estate Transfer Tax

On December 19, 2008, the Michigan Senate and 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 the assets of the entity.

As passed by the Legislature, the bill makes the tax RETROACTIVE to January 1, 2007.

The Senate changed the effective date to January 1, 2007 in the bill it passed on December 19 and the House concurred in the change. The bill is expected to be signed by the Governor. As indicated in a previous client alert, the bill first passed the House on December 12, 2008.

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%).

Previously, if real estate held by a limited liability company (LLC) was transferred by selling the membership interests in the LLC, record title remained in the name of the LLC, no documents were recorded with the Register of Deeds and no transfer tax was due. HB 6122 imposes SRETT liability in this situation and closes what the Michigan Department of Treasury has termed a "loophole."

As enacted, HB 6122 imposes SRETT liability 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 the assets 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.

Many transactions will be affected by this legislation.

*This Alert provides general information only and does not constitute legal advice for any particular situation.
© Honigman Miller Schwartz and Cohn LLP 2008. All rights reserved.*

If you have questions regarding the information in this bulletin or would like to receive additional information regarding our national real estate practice, you may contact any of these attorneys by e-mail (address is their first initial and last name @honigman.com):

Joel S. Adelman
313.465.7300

C. Leslie Banas
248.566.8406

Maurice S. Binkow
313.465.7324

Jonathan D. Block
313.465.7624

Jonathan R. Borenstein
248.566.8412

Amy M. Brooks
248.566.8424

Richard J. Burstein
248.566.8430

Gregory J. DeMars
313.465.7356

Frederick J. Frank
313.465.7384

Margaret E. Greene
313.465.7376

Carl W. Herstein
313.465.7440

Wayne D. Hillyard
248.566.8444

Alan M. Hurvitz
248.566.8454

David J. Jacob
248.566.8446

Martin L. Katz
248.566.8456

Jeffrey R. Kravitz
313.465.7448

Joel M. Krugel
248.566.8458

Denise J. Lewis
313.465.7464

David G. London
248.566.8464

Howard N. Luckoff
248.566.8466

Lawrence D. McLaughlin
313.465.7474 - 248.566.8592

Mitchell R. Meisner
313.465.7478

Karen R. Pifer
248.566.8472

J. Adam Rothstein
248.566.8478

Phyllis G. Rozof
313.465.7532

Roberta R. Russ
313.465.7534

Alan J. Salle
248.566.8426

Laurence J. Schiff
248.566.8484

Margaret Van Meter
313.465.7642

Sheldon P. Winkelman
313.465.7606