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THE HONORABLE REPRESENTATIVE JAMES LOWER COMMITTEE CHAIR

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Re: COMMENTS IN SUPPORT OF HB 4050

## INTRODUCTION

HB 4050 WAS INTRODUCED JANUARY 16, 2019 BY REPRESENTATIVE, LARRY INMAN,  
DISTRICT 104

HB 4050 IS A REINTRODUCTION OF HB 5546 (2018)

HB 4050 WAS DRAFTED IN CLOSE CONSULTATION WITH MICHIGAN TOWNSHIP  
ASSOCIATION AND MICHIGAN ASSOCIATION OF COUNTIES

## SUMMARY

HB 4050 WILL MODIFY THE GENERAL PROPERTY TAX ACT TO ALLOW THE DISTRIBUTION OF RESIDENTIAL REAL PROPERTY HELD IN OWNERSHIP BY A LIMITED OR GENERAL PARTNERSHIP TO EXISTING PARTNERS, OR THEIR IMMEDIATE FAMILY WITHOUT SUBJECTING THE PROPERTY TO THE RESET OF TAXABLE VALUE TO STATE EQUALIZED VALUE (SEV)

THIS BILL WILL EXEMPT TRANSFER OF RESIDENTIAL REAL PROPERTY FROM PARTNERSHIPS WHOSE PARTNERS ARE ALL CLOSELY RELATED FOR THE ENTIRE DURATION OF THE PARTNERSHIP AND THE TRANSFEREE IS ONE OR MORE OF THE CLOSELY RELATED PARTNERS, OR IS ONE OR MORE INDIVIDUALS EACH OF WHOM IS CLOSELY RELATED TO AT LEAST ONE OF THE PARTNERS

INDIVIDUALS ARE CONSIDERED CLOSELY RELATED TO A PARTNER IN A CLASSIFICATION CONSISTENT WITH OTHER SECTIONS OF MCL 211.27 a

CLASS OF ELIGIBLE INDIVIDUALS ARE: PARTNER AND SPOUSE, MOTHER, FATHER, BROTHER, SISTER, SON, DAUGHTER, ADOPTED SON, ADOPTED DAUGHTER, GRANDSON OR GRANDDAUGHTER OF A PARTNER

## DRAFTING CONSIDERATIONS

PROPOSED EXEMPTION IS NARROWLY DRAFTED TO TREAT DISTRIBUTIONS FROM PARTNERSHIPS USED FOR ESTATE PLANNING PURPOSES - (RATHER THAN BUSINESS PURPOSES)

THIS NEW CATEFORY IS RELATIVELY SMALL - DESIGNED TO PROVIDE EQUAL PROTECTION UNDER THE LAW

HB 4050 NARROWED SCOPE OF EXEMPTION FROM PRIOR DRAFT BY DELETING LIMITED LIABILITY COMPANIES

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## NEED FOR STATUTORY AMENDMENT

HISTORICALLY (PRE-1994- PROPOSAL "A") ESTATE PLANNERS USED FAMILY PARTNERSHIPS (GENERAL AND LIMITED) TO HOLD RESIDENTIAL REAL PROPERTY FOR ESTATE TAX AND SUCCESSION PLANNING PURPOSES

MARCH 15, 1994 MICHIGAN ADOPTED PROPOSAL "A", AMENDING CONSTITUTION CONST 1963, ART 9, SECTION 3 WHICH LIMITED INCREASES IN PROPERTY TAXES, ABSENT A *TRANSFER OF OWNERSHIP*

FOCUS OF ESTATE PLANNERS HAD BEEN ON FEDERAL ESTATE TAXES

RATES BEFORE 1976 - 77%; REDUCED IN 1981 TO 70%; IN 1994 - 55%

ESTATE TAX EXEMPTIONS: 1987-1997 - \$600,000

CAUSED SALE OF FAMILY HOMES AND FARMS TO PAY TAX

TO AVOID CONFISCATORY TAXES, PLANNERS USED PARTNERSHIPS AND GIFTING TO SAVE FAMILY ASSETS

PARTNERSHIPS BECAME A COMMON ESTATE PLAN VEHICLE USED TO TRANSITION REAL PROPERTY TO FUTURE GENERATIONS

PARTNERSHIPS OFFERED OPPORTUNITY FOR PRESERVING ASSETS

ASSETS COULD BE PLACED INTO PARTNERSHIP AND DIVIDE UP OWNERSHIP AMONG FAMILY MEMBERS

TRANSFERS OF PARTNERSHIP INTERESTS BY GIFT COULD BE DISCOUNTED FOR IRS PURPOSES

ANNUAL GIFTING OF INTERESTS WERE ENTITLED TO DISCOUNTS:

- 1.) LACK OF MARKETABILITY
- 2.) LACK OF CONTROL – MINORITY INTERESTS

ADDITIONAL BENEFITS OF PARTNERSHIPS, NOT AVAILABLE FOR ESTATE PLANNING BY WILL OR TRUST INCLUDES:

MAINTAINING FAMILY CONTROL OF FAMILY ASSETS;

CONSOLIDATING FRACTIONAL INTERESTS IN FAMILY ASSETS;

PROTECTING ASSETS IN THE EVENT OF FAILED MARRIAGE;

AFFORDING STREAMLINED CONTROL, FLEXIBLE MANAGEMENT

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AFTER PROPOSAL "A", A FOCUS OF ESTATE PLANNERS WENT TO TRUSTS AS VEHICLE OF CHOICE

#### NEED FOR LEGISLATION

PRESENT LAW PENALIZES VALUABLE ESTATE PLANNING OBJECTIVES BEFORE PROPOSAL "A"

TODAY'S PLANNING OBJECTIVES TAKE INTO ACCOUNT THE UNCAPPING ISSUES

LEGISLATURE HAS RECOGNIZED PROBLEM OF TAXING PEOPLE OUT OF THEIR HOMES AND HAS ESTABLISHED EXEMPTIONS FROM UNCAPPING, SUCH AS:

1. TRANSFER OF REAL ESTATE WHILE RESERVING A LIFE ESTATE OR LIFE LEASE  
MCL - (MCL 211.27a(7)(c))
2. EXPIRATION OR TERMINATION OF LIFE ESTATE - (MCL 211.27a(7)(d))
3. TRANSFERS INTO A TRUST WHERE BENEFICIARIES ARE FAMILY MEMBERS -  
(MCL 211.27a(7)(g))
4. CHANGE BENEFICIARIES OF TRUST - (MCL 211.27a(6)(e))
5. BY WILL - (MCL 211.27a(7)(u))
6. BY INTESTATE SUCCESSION - (MCL 211.27a (7)(u))
7. BY DIRECT CONVEYANCE - (MCL 211.27a(7)(u))
8. DISTRIBUTIONS FROM A TRUST - (MCL 211.27a(7)(v))

ALL OF THE FOREGOING PROTECT FAMILIES AND KEEP FAMILY ASSETS IN THE FAMILY

ALL EMPLOY SAME CLASSIFICATION OF ALLOWABLE FAMILY MEMBERS

YEARS OF CAREFUL PLANNING WITH PARTNERSHIPS ARE NOW PENALIZED BY  
UNCAPPING PROPERTY TAXES UPON A TRANSFER OF REAL ESTATE  
CURRENT LAW CREATES DISPROPORTIONATE ECONOMIC RESULT FOR  
SIMILARLY SITUATED TAX PAYERS

SCRIVENER'S ERROR TO OMIT FAMILY PARTNERSHIPS

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OBJECTIVE OF HB 4050 – MAINTAIN CONTINUITY OF APPLYING TAX BURDEN

MICHIGAN ADMINISTRATIVE PROCEDURES ACT (MCL 24.240) RECOGNIZES  
AND ATTEMPTS TO AMELIORATE DISPROPORTIONATE ECONOMIC IMPACTS  
OF NEW RULES

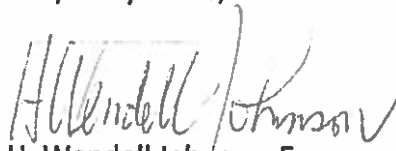
CONCLUSION

FAMILIES SEEKING TO PRESERVE ASSETS AND TRANSFER RESIDENTIAL REAL  
PROPERTY OUT OF A PARTNERSHIP TO FAMILY MEMBERS SHOULD NOT BE  
PENALIZED FOR INITIALLY CHOOSING A PARTNERSHIP AS THE ESTATE PLANNING  
VEHICLE TO ACCOMPLISH THAT PURPOSE.

PROPOSED EXEMPTION ALLOWS MORE FAMILIES TO KEEP RESIDENTIAL REAL  
PROPERTY IN THE FAMILY AS INTENDED

HB 4050 CURES INEQUITY IN THE LAW

Very Truly Yours,



H. Wendell Johnson, Esq.