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FISCAL IMPACT REPORT

ORIGINAL DATE 2/23/15

SPONSOR HSCAC LAST UPDATED 3/14/15 HB 247/S/HSCACS/aHJC

SHORT TITLE Changes In Title & Beneficial Interests SB _____

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
	Minimal	Minimal	Minimal	Minimal	Recurring	State, County, Municipal, Special District Debt and Operating Levies

(Parenthesis () indicate revenue decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department, Property Tax Division (TRD/PTD)

SUMMARY

Synopsis of Amendment

House Judiciary Committee amendment to House Safety and Civil Affairs Committee Substitute for House Bill 247 changes the wording of the essential provision of the bill from: “that only changes the manner of holding title and does not change the proportional beneficial interests in the residential property held before the transfer” to the more precise, “in which the proportional beneficial interests as of January 1 have not changed from January 1 of the immediately preceding tax year.

Synopsis of Bill

House Safety and Civil Affairs Committee Substitute for House Bill 247 adds a technical correction to Section 7-36-21.2 NMSA 1978, which provides for property tax valuation increases limited to 103 percent of the previous year’s value for residential properties. The exception is when properties change hands. At that point, the assessed value becomes equal to the market value at the time of transfer. This bill clarifies that a transfer of residential property that results in a change only in the manner of holding title or maintains proportional interests does not result in a step-up in the value to market in the year of the transfer.

Neither an effective date nor an applicability date is included in this bill. For an effective date assume 90 days after adjournment, or June 19, 2015. This date is beyond the allowed time for protest for the 2015 property tax year. However, given the effective date of the bill, if enacted,

the provisions of this bill would probably affect the outcome of 2015 valuation protests that were timely filed.

FISCAL IMPLICATIONS

This bill could be considered a technical correction to insure a logical outcome and to conform the statute to decisions of most of the Property Tax Protest boards that have been presented with this issue. Therefore, the provisions of the bill would improve equity, since “gotchas” are intrinsically inequitable. In any event, the fiscal impact of the provisions of the bill are zero, since the Property Tax Protest boards have virtually uniformly interpreted the change in ownership provisions consistent with the title and purpose of this bill.

The HJC amendment focuses on net changes to proportional beneficial interests compared on the January 1 valuation date and the beneficial interest on January 1 of the preceding year. This would be an important clarification if multiple transactions occurred in the course of the year. It is also somewhat more verifiable for county assessors.

The primary effect of this bill would be to permit transfer of title from an individual to a grantor trust without subsequent property tax consequences.

This bill may impose additional effort on the County Assessors as they conduct contract review and title research into the substance of property transfers, not just the bare fact that the property has transferred.

SIGNIFICANT ISSUES

TRD/PTD notes that “...this issue has been before PTD’s County Valuation Protest Boards several times. The first protest board decisions on this issue construed the statute tightly ruling against protestants because a change in ownership occurs when the structure of the ownership changes. Subsequent discussions and research progressed to include case law dealing with the same issues from other states. That led to the current thinking in which the boards ruled, more in terms of interpreting what “change in ownership” means. The results were in favor of the protesting parties whom this legislation seeks to protect. The County Valuation Protest Board ruled that ‘mere change in the form of ownership without a change in the identity or proportional ownership interest of the actual ultimate owners of the property’ doesn’t vitiate the protections of 7-36-21.2 NMSA. PTD believes this is consistent with the intention of this bill.”

ADMINISTRATIVE IMPLICATIONS

This is a simple technical change that could not realistically affect more than a few taxpayers each year.

TRD notes that “... the legal due diligence would cause county assessors to incur higher legal expenses for contract review and verification.”

TECHNICAL ISSUES

TRD/PTD notes the following technical issues:

“Page 4, Lines 17-19 “person” is a defined term under the Property Tax Code Section 7-35-2(H) NMSA 1978. “Individual” is not a defined term but is included within the definition of person. Additionally, would a transfer to a child of the beneficial owner of an entity qualify as a non-triggering transfer? Also what is the result if the entity ownership changes due to a sale, merger, additional stock issuance, or change in membership status? The statute as written appears to presume the entity will mirror the primary resident qualifier but contains no such limiting language. For larger properties, this omission could be used to transfer property through the entity ownership change without changing the holder of title for purposes of the cap.”

“Page 5, Lines 14 -17. Beneficial Interest – the definition in (A) includes stock (S & C corporation ownership) and partnership interests but is silent on LLC interests (a common vehicle used for real property ownership) – which is a member interest. This language should be included for clarity and consistency.”

TRD/PTD has concerns about possible abuses of this provision by real estate LLCs. Apparently, a few real estate LLCs have sold their capped residential properties to different owners by transferring the LLC. To forestall this evasion and abuse, TRD/PTD recommends amending the affidavit provisions of 7-38-12.1 NMSA to require real estate LLCs to disclose the sale of their LLCs.

OTHER SUBSTANTIVE ISSUES

TRD/PTD notes, “... the additions this legislation proposes will be challenging to enforce. It will likely require legal opinions regarding corporations and trusts. In practice it will be fairly hard to determine whether the proportional interest changes, because County Assessors are unlikely to have information regarding the LLC or trust which owns the property. It is more likely that the assessor will assume that any change in title is tainted and force the property owners to disclose the terms of the trust or LLC in the protest process. This legislation is unlikely to change current practices. Assessors will be obligated to raise capped property values upon transfer. Beneficiaries of trusts or LLCs will have to prove that they are not attempting to circumvent the law.”

LG/bb/je/aml/je