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HOMESTEAD EXEMPTIONS

House Bill 4077 as enrolled
Public Act 74 of 1995
Sponsor: Rep. Willis Bullard, Jr.

Second Analysis (7-6-95)
House Committee: Tax Policy
Senate Committee: Finance

THE APPARENT PROBLEM:

Michigan's new school financing system includes, among other things, a state property tax of 6 mills on all property and a local tax of 18 mills in most school districts on property other than homesteads and agricultural property. This means homesteads (private owner-occupied principal residences) and certain agricultural property will pay 6 mills and non-homesteads (rental, commercial, industrial, etc.) will pay 24 mills for school operating purposes. (However, under the somewhat complicated plan, more local mills can be levied under certain circumstances.) To implement this new system, some mechanism is required to determine who is eligible for a homestead or agricultural exemption.

Public Act 237 of 1994 (House Bill 5345) established a procedure for claiming these exemptions. Generally speaking, an owner of a homestead must file an affidavit by May 1 with the local tax collecting unit where the property is located. (No affidavit is required for agricultural property unless one is requested or the property is not already classified for tax purposes as agricultural.) If the claim is approved, property will be exempt through the 1998 tax year (or until transferred, if earlier) and new affidavits will have to be filed in 1999 and every four years thereafter. Denials of claims can be appealed to the Department of Treasury. Other than special appeal provisions for 1994, late applications for exemptions can be made to the board of review only based on a claim that an affidavit was filed and not acted upon. (The final judgment on eligibility rests with the Department of Treasury, which can review the validity of exemptions in the current year and the three immediately preceding years.) Some people believe additional appeals or late exemption claim opportunities should be provided and taxpayers notified of those opportunities. Further, after one

year of experience with this procedure, a number of administrative and enforcement problems have arisen that need to be addressed, including the need for penalties for people who wrongfully obtain an exemption or maintain an exemption for which they are no longer eligible.

In a related matter, the General Property Tax Act contains a so-called poverty or hardship exemption, under which the homesteads of persons who, in the judgment of the supervisor and board of review, are unable by reason of poverty to contribute toward "the public charges" are eligible for exemption in whole or in part from property taxes. This is a very old provision that was modified somewhat last year. Public Act 390 of 1994 put in statute guidelines for determining who is eligible to apply for an exemption and spelled out an application process. Local units were required to adopt policies and guidelines for use in granting exemptions, and boards of review were required to follow the policy and guidelines unless they had substantial and compelling reasons to do otherwise. Applicants must file for an exemption after January 1 but before the day prior to the last day of the March board of review. Some people have recommended that homeowners be allowed to seek poverty exemptions at the July and December boards of review as well, so that taxpayers would not have to wait an entire tax year should their financial circumstances change or should it not occur to them to claim an exemption until the arrival of the tax bill, after the March deadline. Currently, the July and December boards of review address only clerical errors and mutual mistakes of fact and, beginning in 1994, appeals of claims for exemptions from local school taxes for homesteads and qualified agricultural property under the new school finance system.

House Bill 4077 (7-6-95)

THE CONTENT OF THE BILL:

Homestead/Qualified Agricultural Exemptions.

The bill would amend several sections of the General Property Tax Act (MCL 211.7cc et al.) that apply to the exemption from local school operating property taxes for homesteads and qualified agricultural property. Among its provisions are the following.

* An owner of property that on May 1 qualified as a homestead but for which an exemption was not on the tax roll would be able to file an appeal with either the July or December board of review in the year for which the exemption was claimed or the immediately succeeding year. If an appeal of a denial of a claim for a homestead exemption was received not later than five days prior to the date of the December board of review, the local tax collecting unit would have to convene a December board of review and consider the appeal. A similar provision would apply to qualified agricultural property.

(Prior to this, the law required an owner to claim that he or she had filed an affidavit for an exemption but did not have an exemption on the tax roll in order to appeal to the July board of review or, where there was no summer school tax levy, the December board of review. For 1994 only, a homestead owner was allowed to appeal in July or December for an exemption, whether or not the owner claimed an affidavit had been filed. An owner of property classified as agricultural does not have to file an affidavit unless requested to do so; if the property is not classified as agricultural, the owner would have to file a claim for an agricultural exemption by May 1.)

* The law provides that, for 1994 only, a person who acquired a homestead after April 30 for which an affidavit had not been filed could file an affidavit until October 1 and then would be entitled to a 50 percent reduction in mills levied in 1994, on the December tax roll. If there was not a December levy in the jurisdiction, the person could appear in person or by mail before the December board of review and obtain a rebate. The bill would amend these provisions so that they would refer to "an owner who owns and occupies a homestead after May 1 and before October 3" in 1994 and would permit the affidavit to have been filed up until October 3. It also would permit an owner who did not file an affidavit in this manner to appear in

person or by mail before the July or December board of review in 1994 or 1995 to obtain a rebate of taxes levied in 1994.

* A property owner is allowed to appeal a decision by the Department of Treasury denying a homestead exemption. The bill would require that the appeal be made within 35 days of receipt of the notice of denial.

* When notified by the treasury department of a denial of an exemption, the local assessor is required to remove the exemption and either correct the current tax roll to reflect, or place on the next tax roll, previously unpaid taxes with interest and penalties computed based on the amounts that would have accrued from the date the taxes were originally levied had there not been an exemption. The bill would say, instead, that if the tax roll was in the local tax collecting unit's possession, the local treasurer would issue a corrected tax bill for previously unpaid taxes, along with penalty and interest. If the tax roll was in the county treasurer's possession, the county treasurer would be required to prepare and submit a supplemental tax bill. (For taxes levied in 1994, interest and penalties would be waived if the owner paid the supplemental tax bill within 30 days.)

* At present, the act says taxes, interest, and penalties due as a result of an exemption denial would not be billed to the purchaser if the property had been transferred to a bona fide purchaser. The bill would say that this would be the case if the property was transferred before additional taxes were billed to the seller as a result of the denial of a claim for an exemption. Then, as now, the local unit would notify the treasury department, which would assess the owner who claimed the exemption.

* Under the bill, an assessor or treasurer of the local tax collecting unit who believed the Department of Treasury had erroneously denied a claim for a homestead exemption could submit written information supporting the owner's claim to the department within 35 days of the owner's receipt of the notice of denial. If the department then determined the claim was erroneously denied, it would grant the exemption and the tax roll would be amended. If granting the exemption resulted in an overpayment of taxes, a rebate (including any interest paid) would be made to the taxpayer by the

local tax collecting unit or the county treasurer within 30 days (depending on who had possession of the tax roll). The rebate would be without interest.

* The bill would permit a property owner to request in writing that the Department of Treasury withdraw an exemption when an exemption had been erroneously granted. (This would apply to homesteads and agricultural property.) The department would issue an order notifying the local assessor that the exemption had been denied based on the owner's request. The property would be placed on the tax roll as if the exemption had never been granted and a corrected tax bill would be issued. If an owner requested that an exemption be withdrawn before being contacted in writing by either the local assessor or the treasury department regarding his or her eligibility and if the owner paid the corrected tax bill within 30 days after it was issued, the owner would not be liable for any penalty or interest on the additional tax. An owner who paid a corrected tax bill more than 30 days after it was issued would be liable for the penalties and interest that would have accrued if the exemption had not been granted from the date the taxes were originally levied.

* The bill would specifically prohibit a person claiming a homestead exemption from making a false or fraudulent affidavit claiming an exemption or a false statement on a affidavit claiming an exemption; aiding, abetting, or assisting another in an attempt to wrongfully obtain an exemption; making or permitting someone to make a false affidavit or a false statement on an affidavit claiming an exemption, either in whole or in part; and failing to rescind an exemption after property was no longer a homestead.

* A person who committed one of the violations cited above with the intent to wrongfully obtain or attempt to obtain a homestead exemption would be guilty of a misdemeanor punishable by imprisonment of not more than one year and punishable by a fine of not more than \$5,000 or public service of not more than 1,500 hours, or both.

* In addition to those penalties, a person who knowingly swore to or verified an affidavit claiming a homestead exemption or an affidavit claiming a homestead exemption containing a false or fraudulent statement, with the intent to aid, abet, or assist in defrauding the state or a political

subdivision of the state would be guilty of perjury, a misdemeanor punishable by imprisonment of not more than one year and punishable by a fine of not more than \$5,000 or public service of not more than 1,500 hours, or both.

* A person who did not commit one of the abovementioned violations but who knowingly violated any other provision of the General Property Tax Act with the intent to defraud the state or a political subdivision would be guilty of a misdemeanor punishable by a fine of not more than \$1,000 or public service of not more than 500 hours, or both.

* The attorney general and the prosecuting attorney of each county would have the concurrent power to enforce the act.

* The penalty provisions would not apply to a violation referred to above or any other violation of the act occurring before December 31, 1995.

Poverty/Hardship Exemptions. The bill would amend the General Property Tax Act to permit appeals of claims for hardship exemptions or poverty exemptions by owner-occupiers of homesteads to be heard at board of review meetings in July and December. The act currently permits those meetings only to address clerical errors and mutual mistakes of fact and appeals of claims for homestead and qualified agricultural exemptions from local school taxes. The bill would provide that if a hardship or poverty exemption (under Section 7u of the act) was approved, the board of review would have to file an affidavit with the proper officials involved in the assessment and collection of taxes and all affected official records would have to be corrected. If the July or December board of review denied a claim for an exemption, the person claiming the exemption could appeal the decision to the Michigan Tax Tribunal within 30 days of the denial.

The bill would be retroactive and take effect December 31, 1994.

MCL 211.53b

FISCAL IMPLICATIONS:

According to information from the House and Senate fiscal agencies and representatives of townships, the bill contains potential administrative

costs to local units of government, and would result in a loss of revenue to local units attributable both to increased poverty exemptions and to refunds to taxpayers who belatedly qualify for a homestead exemption. The cost is indeterminate.

ARGUMENTS:

For:

The bill would make some significant improvements in the administration of the homestead property tax exemption (and the agricultural exemption as well). It would also provide taxpayers more opportunities to gain such exemptions when they qualify. Homeowners who are eligible for a homestead exemption ought to get one. The legislature intended for homesteads to pay a lower rate than non-homesteads; this basic notion should not be overwhelmed by administrative concerns and paperwork issues. The proposal would allow eligible property owners who have not obtained the exemption (for whatever reason) an additional opportunity to do so. It provides an opportunity to go to the board of review in July or December in a manner similar to that available now to taxpayers to correct clerical errors and mutual mistakes of fact in property tax assessments.

Also, the proposal would allow taxpayers to withdraw a claim for an exemption -- so that they could correct a mistaken claim before it was denied or, if it had been erroneously granted, before any penalties could be imposed should it be later disallowed. This, in addition to a delay in the effective date of penalties, provides a kind of amnesty, according to tax specialists. Another provision would allow local officials to provide information in support of a taxpayer's claim for an exemption if it had been denied at the state level. Further, penalties would be added to discourage fraud and cheating. They would not take effect until December of 1995.

Against:

The administration of the homestead exemption has put a tremendous burden on local units. The bill only makes matters worse. There ought to be a date certain when property owners need to file their claim for an exemption. There should not be endless opportunities for appeal. As time goes on, property owners ought to be aware of their responsibilities. If there are to be late appeals for the exemption, they ought to go straight to the Department of Treasury and not to local officials.

Ultimately, the decision of whether property is eligible for a homestead exemption is made at the state level. Keep in mind that when late claims are approved, tax dollars (intended for schools) must be rebated. At best, additional opportunities for homestead exemption claims should be limited to next year (and perhaps the year after). Beyond that date, people should be aware of their obligations, and procedures will be in place so that claims for exemptions will be a routine part of closing when property is transferred.

Against:

Does it really make sense to impose such harsh penalties on those who fraudulently seek a homestead affidavit? Do we really want to imprison people for this offense? An earlier version of the bill imposed treble damages (three times the amount of tax due). This seems sufficient.

Response:

In one version of this proposal, the penalties were even stiffer. Some offenses were felonies carrying prison terms of up to five years and fines of up to \$10,000. Some people believe such penalties are appropriate to discourage and punish tax cheats. They are consistent with other penalties in the revenue act for similar behavior. Treasury officials have recounted cases of major abuse of the homestead exemption, involving landlord coercion of tenants on a large scale to make claims for the exemption.

For:

The bill would provide two additional opportunities for homeowners to claim a poverty or hardship exemption from property taxes. This kind of exemption is aimed at preventing people from losing their homes because they cannot pay their property taxes. The bill does nothing to change eligibility standards; it does not affect local decision making. It simply permits a claim to be made at the July and December meetings of the local board of review, rather than only at the March board of review. Many homeowners in dire economic circumstances are not aware of this option, and the bill permits them more opportunities to find out about the exemption and make a claim.

Against:

Representatives of local officials complain that the poverty or hardship exemption provisions were just re-written last year. Local units are only just beginning to adjust to that new legislation. There is no way of knowing, until there has been some

experience with the new provisions, whether any problem exists of the kind that this bill proposes to address. Why not allow the local units to gain some experience under the revised hardship exemption law before imposing an additional, perhaps unnecessary, burden? This potential burden should be understood, as well, in the context of the enormous number of changes to the state's property tax system stemming from the creation of the new school finance system, the addition of the cap on property assessments, and other recent legislation. Assessors and other local officials have many adjustments to make. Furthermore, to the extent that this bill increases the number of poverty exemptions, it will affect the budgets of local units. Tax specialists say tax rates are set and budgets developed after the March board of review has met. Poverty claims after that date could produce unanticipated losses of revenue. It also will increase administrative costs by expanding the purposes of the July and December board of review meetings

Response:

It's hard to imagine that a few additional exemptions will affect local units of government significantly. They must already set aside reserves in anticipation of appeals of board of review decisions by the state's tax tribunal, say tax specialists. Even if costs do increase, isn't that offset by the need to help people stay in their homes?