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DEADLINE FOR FILING AFFIDAVIT FOR PRINCIPAL RESIDENCE

House Bill 5168 (Substitute H-3)
First Analysis (10-23-03)

Sponsor: Rep. Chris Ward
Committee: Tax Policy

THE APPARENT PROBLEM:

One of the key elements in the new property tax system put in place by Proposal A in 1994 was an exemption from local school operating taxes for “homesteads” or owner-occupied principal residences. To obtain this exemption, a homeowner must file an affidavit with the local tax collecting unit. The deadline for filing the affidavit is May 1; if an affidavit is filed after that date, the exemption does not apply until the following year. For example, an individual who filed on May 1, 2003 would get the exemption for all of 2003 and years thereafter; an individual who filed on June 1, 2003 would not enjoy the benefit of the exemption until 2004. A homeowner need not file every year; the affidavit remains in effect after the initial filing until it no longer applies.

This filing date has been the subject of discussion since enacted, with some tax administrators preferring that an exemption only apply for the first time in a given year if the affidavit had been filed by the end of the previous year (by December 31 or tax day, the day that property values are established for tax purposes), and with other parties advocating the opposing view that a homeowner should be able to receive the exemption in the year a homestead is acquired no matter when the affidavit is filed, perhaps with the exemption prorated based on the date of filing. (This many years into the new property tax system, it should be noted, the deadline is primarily becomes an issue when previously non-homestead property is being converted to a principal residence; for example, when a rental property, vacation home, or newly constructed home is becoming a principal residence.)

The affidavit filing deadline was recently changed with the passage of Public Act 105 of 2003 (Senate Bill 520), although it is not designed to put to use until 2004. Public Act 105’s purpose is to improve the administration and enforcement of the exemption in order to ensure that only the people eligible for exemptions have them and that property owners only

have one such exemption (since the exemption is intended for the principal residence and not for all residences). The act was stimulated by reports of mistakes and fraud. Classic examples include the individual with both a main residence and a summer home (in different counties) with principal residence exemptions on both, and the out-of-state resident claiming the lower property tax rate for vacation property. As the new enforcement program, dubbed “claim it correctly”, worked its way through the legislature, it was amended to make the affidavit filing deadline for the principal residence exemption December 31 of the previous year (also known as “tax day”), as tax administrators generally prefer. Some people, however, believe that the date change was not given sufficient thought when it was added into the much larger new enforcement proposal, and they urge that the old deadline be reinstated.

THE CONTENT OF THE BILL:

The bill would amend the General Property Tax Act to retain May 1 as the deadline for a homeowner to file an affidavit with the local tax collecting unit claiming a homestead or principal residence exemption. A homeowner filing before this date would receive the property tax exemption for the remainder of that year and in future years (until no longer eligible). This would override the change made by Public Act 105 of 2003 (Senate Bill 520), which set the deadline at December 31 (tax day). That new deadline was to be effective for the first time for taxes levied in 2004. That deadline would have required a homeowner to file an affidavit by December 31 of one year in order to be eligible for the tax exemption at any time in the subsequent year.

The bill also contains a new provision that would specify that a person would not be entitled to an exemption if he or she had previously rescinded an exemption for the same property for which an exemption was now being claimed and there had not been a transfer of ownership of that property after the

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rescission of the previous exemption. This would apply in either of two cases: 1) if the person had claimed an exemption for any other property for that tax year; and 2) if that person had rescinded an exemption on other property and that exemption remained in effect for that tax year and there had not been a transfer of ownership of the property.

The bill also contains a number of clarifying technical amendments recommended by the Department of Treasury.

MCL 211.7cc et al.

BACKGROUND INFORMATION:

The exemption at issue in this bill has been traditionally named the “homestead” exemption. Recent legislation has renamed it the “principal residence” exemption. That new name takes effect in statute on January 1, 2004. This analysis uses the terms interchangeably.

FISCAL IMPLICATIONS:

A fiscal analysis is in progress, but is not yet complete, according to the House Fiscal Agency. (10-23-03)

ARGUMENTS:

For:

Simply put, this bill would leave the deadline for submitting the affidavit for a homestead or principal residence property tax exemption where it has been since the exemption process was first created with the enactment of the Proposal A tax system nearly ten years ago. The recently established new deadline has yet to be used, so there should be no serious disruption in tax administration. There are a number of reasons why the affidavit deadline should remain May 1. For one thing, that has been the traditional date, and so new homeowners who buy a home in the first four months of the year expect that they will receive the significantly lower tax rate in the year they file the affidavit. People will be upset to discover otherwise. Second, the new date will adversely affect the sale of real estate in the first four months of the year. What was once an advantageous time to buy a home (because of the tax advantages) would no longer be advantageous.

The May 1 date was a compromise of sorts, to balance the administration of the principal residence exemption with fairness to taxpayers. The property

tax system that finances schools contains an exemption from local school operating taxes for owner-occupied principal residences. They pay a lower tax rate than non-homestead property (rentals, commercial buildings, vacation homes, etc.). For this reason, some people believe that a homestead should receive this lower tax rate no matter at what point in the year it is purchased. If a person buys a home in June that did not previously have an exemption, why should he or she have to pay the non-principal residence tax rate on what is a principal residence? Moving the date to December 31, as Public Act 105 of 2003 did, means that a person who buys a principal residence in January of a given year cannot enjoy the lower tax rate for 12 months.

Response:

It should be noted that the affidavit deadline is not an issue in most principal residence transactions. If a person buys a home with an existing exemption, that exemption continues. The problem arises when someone purchases property that had not been a principal residence with the intention to make it a principal residence; for example, a rental property, a vacation home, or a newly constructed home. It also can apply in some cases with the purchase of a newly constructed home (although that home might well be assessed for its first year of occupancy at a lower level, to reflect that it was in the process of being built when its valuation was assigned.)

Against:

Tax administrators – assessors and county treasurers – have urged that the December 31 deadline put in place earlier this year be retained. The May 1 date has always posed administrative difficulties for them because of where it falls in the property tax process. It would make sense to make the affidavit deadline conform to December 31, which is known for property tax purposes as “tax day” because, generally speaking, the assessed value of property in a given year is based on the condition of the property as of December 31 of the previous year. It makes sense to establish the nature of the property – whether principal residence or not – as of the same date. The December 31 deadline is part of a newly created enforcement effort. The new date contributes to the enhanced scrutiny of principal residence exemptions by allowing an earlier cross-check with state income tax returns. Training and publicity for this new enforcement program has already begun. The Department of Treasury says 61 counties have opted in to the program.

Moreover, some people believe that the December 31 date results in more consistent treatment for

taxpayers. As commonly noted, a person who files the affidavit on May 1 receives the exemption for that entire year, and person who files on June 1 does not receive the exemption until the next year. This treats new purchasers inconsistently. Using the December 31 date, all purchasers of property to be used as a principal residence (and that was not already exempt) would have wait until the year after filing the affidavit to receive the exemption.

For:

The bill contains an amendment attempting to address a problem known as “flipping”. A person with two properties in the state can file a new affidavit each year and alternate which residence is to be considered the principal residence. This practice results in the person having two exemptions in place at all times while perhaps not technically being in violation of the law (although the practice violates the spirit of the law). The amendment would attempt to deny an exemption to property owner’s engaging in this practice.

POSITIONS:

The Department of Treasury is neutral on the bill. (10-22-03)

The Michigan Association of Realtors supports the bill. (10-22-03)

The Michigan Association of Home Builders has indicated support for the bill. (1-22-03)

The Michigan Association of County Treasurers testified in opposition to the bill. (1-23-03)

The Michigan Assessors Association testified in opposition to the bill. (1-23-03)

The Michigan Townships Association has indicated opposition to the bill. (1-23-03)

Analyst: C. Couch

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.