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SENIOR HOUSING TAX EXEMPTION

Senate Bill 265 with Taxation committee amendments
First Analysis (11-9-87)

Sponsor: Sen. William Sederburg
Senate Committee: Finance
House Committee: Taxation

THE APPARENT PROBLEM:

The General Property Tax Act exempts from taxation housing owned and operated by an incorporated, nonprofit organization or the state, if the housing is occupied and used solely by senior citizens or handicappers. The state is required to reimburse local units of government for the total amount of taxes exempted. The act defines "housing" as new or rehabilitated structures "consisting of eight or more residential units."

Until September of 1986 this provision had been interpreted to mean that all housing projects that met the act's requirements were allowed a tax exemption. Attorney General Opinion No. 6385, however, found that the exemption applied only to structures that had eight or more units, not to projects that had eight or more units. The opinion states that tax exemption language must not be liberally interpreted, saying, "Since exemption is the antithesis of tax equality, exemption statutes are to be strictly construed in favor of the taxing unit." The attorney general also opined that the legislature was encouraging the construction of housing for senior citizens and the handicapped, and that, "it is reasonable to assume the legislature intended that the expense of construction or reconstruction of such housing facilities, and the resultant assessment for tax reimbursement purposes, be cost effective by requiring a minimum of eight residential units in a housing structure."

The result of the opinion is that housing projects for senior citizens and handicapped persons, unless they have at least eight units per structure, have lost their tax-exempt status. The legislature made a special appropriation to cover the $600,000 cost of the 1986 tax bills of the 16 affected housing projects, but no such appropriation has been made for 1987. This could result in sharp increases in costs per unit unless the act is clarified before the 1987 property tax bills are sent out to property owners on December 1.

Further, testimony before the House Taxation committee revealed that the Department of Management and Budget interprets the term "residential unit" as a living facility which includes a bedroom, bathroom, kitchen and living room. A small number of adult foster care facilities (perhaps 10 to 20) which otherwise meet the criteria cannot be granted a tax exemption under the DMB's interpretation because, although the facilities contain at least eight bedrooms, they also include shared living, cooking and bathroom facilities. One such facility, Heritage Homes, Inc., of Holland, obtained a tax exemption in 1983, apparently by mistake. Honeycreek Christian Homes of Lowell began construction on a similar facility, David's House, Inc. in Wyoming, in 1986, with the understanding that it would also receive the tax exemption. The home has since opened and is now operating. Further, in a March, 1987 opinion, the attorney general said that the act granting the tax exemption did not apply to adult foster care facilities, because "the principal function of an adult foster care small group home is to receive and to provide foster care for ... adults;" and that "in providing housing for elderly or handicapped adults as an incident to [providing foster care], the adult foster care [facility] does not thereby become a housing facility or project for purpose of the tax exemption." Based on the attorney general's opinion, the DMB has not acted to grant a tax exemption for David's House, Inc., and the legality of the exemption previously granted to Heritage Homes, Inc. is in doubt.

THE CONTENT OF THE BILL:

The bill would amend the General Property Tax Act to define "housing" as new or rehabilitated structures, "with eight or more residential units in one or more of the structures." (This would mean that housing eligible for the exemption would not have to consist of a single structure with eight units.)

Further, as amended by the Taxation Committee, the bill would define a residential unit as an individual self-contained dwelling, or a one-bedroom unit in an adult foster care facility for handicapped adults with shared dining, living or bathroom facilities. Such a facility would qualify for an exemption if it was financed at the time of construction or rehabilitation under section 202 of the federal Housing Act.

MCL 211.7d

HOUSE COMMITTEE ACTION:

The House Taxation Committee amended the bill to add a definition of "residential unit." Further, the committee removed from the bill an amendment adopted on the Senate floor that would have included in the definition of "elderly or handicapped families" a family unit in which an adult was living and caring for a senior citizen or a handicapped person who was unable to live independently.

FISCAL IMPLICATIONS:

According to the Department of Management and Budget, the portion of the bill that would clarify the eligibility of housing projects designed as a cluster of structures (essentially the original intent of the bill) would result in no added cost to the state. The 1987-88 general government budget assumes the cost of paying the property taxes of the 16 housing projects affected by the attorney general's opinion.

With regard to the amendment added by the Taxation Committee that would make certain nonprofit adult foster care facilities eligible for property tax exemptions, DMB estimates an additional cost to the state of $100,000 to $200,000 per year. (11-9-87)

OVER

ARGUMENTS:

For:

The bill would negate the effect of an attorney general opinion and return to tax-exempt status all housing projects for senior citizens and handicappers, if the housing is occupied and used solely by seniors and handicappers, and is owned and operated by an incorporated, nonprofit organization or by the state. The opinion, by removing the tax exemption from housing that does not have eight units per structure, could be costly for a number of housing projects that were built with eight or more units arranged in more than one structure. This provision would remove an ambiguity in the statute so that many valuable projects could remain economically viable. In addition, it would allow future projects employ cluster housing and still receive the tax exemption.

For:

The bill would expand to a small number of adult foster care facilities eligibility for the tax exemption provided by the act. These facilities meet all of the other criteria for eligibility: they are owned and operated by nonprofit organizations for the purpose of providing housing for elderly or handicapped adults, they are financed under the applicable federal housing laws, and they house eight or more people. However, because each bedroom unit does not have its own living, dining and bathroom facilities, the DMB has determined that they do not contain eight or more "residential units." A further obstacle to providing a tax exemption is the March 1987 attorney general opinion, which says that adult foster care facilities do not qualify for tax exemptions at all. The bill would correct this situation and restore what many say was the legislature's intent in expanding the tax exemption provision to housing for the handicapped in 1978. It would also clarify the status of two facilities, one of which already has enjoyed a tax exemption for several years and now stands to lose it, and the other of which was constructed with the expectation that it would be eligible.

Against:

The amendment added by the Taxation Committee would expand the program to new types of housing, increasing the annual cost to the state by up to $200,000. This particular housing program has increased in cost dramatically since its creation. In 1977, the cost to the state for this program was $2 million, and for this year its cost is projected at $9.4 million, even without an expansion in eligibility. Although the specific language in the amendment would qualify only 10 to 20 new facilities at a relatively low cost to the state, the expansion of the program to some nonprofit adult foster care facilities is bound to open the door to others, through further loosening of the criteria. DMB estimates that if all nonprofit adult foster care facilities are eventually granted the tax exemption, the added cost to the program will approach another $1.8 million per year. Given the current projections of the state's fiscal situation, it would be unwise to expand the program at this time.

POSITIONS:

The Michigan Non-Profit Homes Association supports the bill. (11-6-87)

Lutheran Social Services supports the bill. (11-6-87)

The Department of Management and Budget does not support the bill as amended by the Taxation Committee. (11-9-87)