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# DEFER SENIOR PROPERTY TAXES

House Bill 4001 (Substitute H-3)
First Analysis (4-27-93)

Sponsor: Rep. Ilona Varga
Committee: Taxation

## THE APPARENT PROBLEM:

One of the criticisms of the property tax system is that elderly homeowners who fail to pay their property taxes, whether due to a lack of money on hand or due to confusion or carelessness, can lose their homes despite having far more equity in their property than they owe in taxes. They can lose their property to the state or to private parties. The property tax delinquency system (see BACKGROUND INFORMATION) allows entrepreneurs to "buy" unpaid taxes and charge property owners interest to "redeem" their property. This system sometimes leads to homeowners losing their homes to private investors or being forced to buy them back to save their property and their equity. Defenders of the tax lien buying system say it gets delinquent tax dollars into the hands of local government faster than would otherwise be the case and through the redemption process helps property owners to keep their property rather than losing it to the state. Critics say the process can be abused in a number of ways (since people behind in their taxes probably do not understand how the system works), including people being misled as to the nature of a "tax deed," which is issued to a tax lien investor if property is not redeemed in the first year after the sale of taxes. This deed does not itself convey absolute title to property, although reportedly it can be misrepresented as doing so. Critics also point to instances where special lenders take advantage of homeowners behind in taxes by offering them home equity loans at extraordinarily high interest rates. Advocates for elderly taxpayers say more efforts should be made to assist them in the property tax foreclosure process so that they are not forced out of their homes.

## THE CONTENT OF THE BILL:

The bill would amend the General Property Tax Act to permit the deferral of property taxes for low-income senior citizen homeowners. The delinquent taxes on the homesteads of those who qualify would be withheld from the annual tax lien sale upon request. If taxes had already been sold to a private buyer or had been bid off to the state, the property would not be subject to the usual subsequent proceedings. Local units would be reimbursed by the state. Before a homestead could be withheld from the sale, the state treasurer would have to deliver to the county treasurer an amount equal to the taxes, interest, and penalty that would otherwise be collectable at the sale from which the property was excluded. Deferred taxes on a homestead would be limited to 80 percent of the owner's equity. Overall, deferred taxes in a county could not exceed two percent of the delinquent taxes in all taxing units in the county in that year.

The bill would apply to a senior citizen with a household income in the immediately preceding calendar year under 187.5 percent of the federal poverty level for two persons or for the number of persons in the household, whichever is greater. (Tax specialists say 187.5 percent of poverty is set at $17,232 currently, and is the maximum income for which publicly funded legal services are available.) It would also apply to an adult in need of protective services. To qualify, a person must have applied for and assigned to the state all homestead property tax credits claimable during the period taxes are deferred. The term "senior citizen" would refer to a person 65 years of age or older and would include the unremarried surviving spouse of a person 65 years of age or older at the time of death. The bill would define a "homestead" as a dwelling or unit in a multiple-unit dwelling subject to property taxes that is owned and occupied as a principal residence by the owner of the dwelling unit, including all unoccupied contiguous property not classified as commercial, industrial, residential, or timber cutover.

The application for the withholding of property from sale would be made upon an affidavit to the county treasurer, who would forward the affidavit to the state treasurer for a determination of eligibility. The affidavit would have to identify any mortgagee of the property. If the state treasurer notified the county treasurer that a person was qualified and delivered the required payment of no later than the Tuesday before the sale, the county treasurer would withhold the property from the sale. The state treasurer would have to notify any mortgagee than a property owner qualified for the tax deferral.

In the event taxes had already been sold or bid off, an owner would have to apply to the treasury department to halt any subsequent proceedings. If the applicant qualified, the department would notify the county treasurer and any holder of a tax sale certificate or tax deed of its finding. (Tax purchasers would be "conclusively presumed" to know without notice that any purchase is made subject to the provisions of this bill. However, if taxes were deferred, a purchaser could redeem the tax sale certificate or tax deed from the state treasurer for the purchase price.) If property of a qualified owner had been conveyed to the state, the state treasurer would issue a certificate canceling the deed and record the certificate with the county register of deeds. In such cases, taxes and special assessments that otherwise would have been canceled would not be canceled or omitted from the tax roll.

Taxes would be deferred without penalty and would bear interest of three-quarters of one percent per month (that is, nine percent annually). Only taxes that had been advertised for sale could be deferred; the deferral of subsequent taxes would require additional applications. A deferment would end when a person no longer qualified; one year after a qualified owner's death; or when any part of a homestead was conveyed or transferred or the owner entered a contract to sell the homestead. The bill also says the death of a spouse would not terminate a deferment of taxes on a homestead owned by a husband and wife unless the surviving spouse remarried. The treasury department would be required to verify annually that a person remained qualified and still lived in the property, and would be required to secure assignments to the state of homestead property tax credits and the proceeds from property and casualty insurance on the property sufficient to pay the amount of the lien. The state would have to pay for insurance if the property owner did not and add that amount to the lien. Taxes so deferred would be a lien against the property and take precedence over other liens to the same extent as if the taxes were not deferred.

The bill would not apply to taxes returned delinquent before March 1, 1992, or after February 28, 1996. (Tax specialists say this means the bill would apply to tax sales from 1994 through 1997.) For taxes returned delinquent before March 1, 1993, however, an application for deferment could not be made unless the redemption period had expired or the taxes had been paid (by someone other than the owner) through the issuance of a certificate of sale or a tax deed.

The bill also would require that tax sale advertising include the street address of parcels when available.

MCL 211.70b

## *BACKGROUND INFORMATION:*

Property taxes not paid by March 1 of the year after they are levied are declared delinquent, and most are turned over to county treasurers for collection. (County revolving funds can be established to disburse money to cover revenue lost by local governments due to tax delinquencies.) If taxes remain delinquent after three years, they are put up for "sale" in May, at which time tax lien investors can pay the taxes, along with fees and interest, and gain the right to collect a premium from property owners who want to reclaim or "redeem" their property. (For example, taxes due in 1990 and returned as delinquent in March of 1991 would be put up for "sale" in May of 1993.)

The sale is conducted by the county treasurer, and the property available is advertised in a newspaper circulating in the county. According to tax specialists, the sale is competitive and tax liens are sold to those who will pay the accumulated taxes and take the least undivided interest in the premises. Taxes not bought by investors are "bid off" to the state, and the property can be redeemed during the following year for all outstanding taxes and 15 percent interest. Before the state can acquire or sell the property, according to tax officials, property owners must be given an additional six months to pay all delinquent taxes and special assessments and then, the treasury department must give all those with an interest in the property notice and an opportunity for a hearing (called a "Dow" hearing, after the court case that led to the procedure). After the hearing, redemption of the property is permitted for another 30 days. At that point, the Department of Natural Resources can attempt to sell the property.

If investors do buy taxes, they must allow owners to redeem the property during the next year for the price of the taxes and 15 percent annual interest from the date of the sale to the date of redemption. If the property is not redeemed during that period, the tax lien investor is issued a "tax deed" and can send a demand for payment of taxes plus a 50 percent penalty from all those with a recorded interest in the property. (Notice must be served within five years after the issuance of the tax deed.) A copy of the notice must also be sent to the county social services department if residential property is involved, and the local department may (but is not required to) investigate the situation. If the taxes and penalty are not paid within the six months after notice is served, tax experts say, the tax lien buyer can become the owner of the property and can evict anyone occupying the property. (Tax buyers have testified that they are not as a rule interested in acquiring property but buy taxes as an investment and thus are interested in having property owners redeem the property. Their value to the process, they say, is in paying much needed property taxes to governments earlier than would otherwise be the case.)

## FISCAL IMPLICATIONS:

Staff to the House Taxation Committee reports that the gross cost to the state from the bill would be about $10 million with the cap on the amount of taxes that can be deferred in each county set at two percent of delinquent taxes per year. (4-21-93)

## ARGUMENTS:

### For:

The aim of the bill is to protect low-income senior citizen homeowners who are in danger of losing their property because they are behind on property tax payments. Some people can lose their homes even though the equity in the property exceeds the taxes they owe. In some areas, assessments have increased rapidly and taxes have increased faster than incomes. Elderly homeowners on low, fixed incomes have seen the market value of their homes increase dramatically, producing higher property taxes without any significant increase in their ability to pay them. The bill provides a means of deferring taxes for some homeowners up to a certain percentage of equity in their property. This protects vulnerable homeowners from the tax sale process, which can lead to their losing their homes to private tax investors. It keeps people in their own homes. Taxes are not waived, merely deferred. Interest will accumulate on deferred taxes, so this is not a "free ride." The bill only applies to homesteads, primary residences. Local units will be reimbursed by the state for deferred taxes. A cap on the total of taxes that can be deferred in any county is intended to protect the sale of notes for the delinquent tax revolving funds of the counties. This is a practical, humane approach to a real problem.

***Response:***

While it is terrible for elderly persons to lose their homes because they do not pay their taxes, the suffering is just as great for others in the same circumstances, including newly unemployed middle-aged people and struggling younger families whose incomes have been reduced through plant closings and layoffs.

### Against:

A number of concerns and objections have been raised about this approach.

* Is this bill likely to lead to fewer people paying their property taxes? Basically, the bill says taxes for certain seniors will be deferred if they don't pay. So, why should those who qualify for a deferment pay their taxes?

* The bill imposes an income test for tax deferments, not an asset test. Some homeowners might qualify despite having substantial assets while those with incomes slightly above the threshold but with few assets will not qualify. Is this the best approach?

* Is it possible the sale price of a house with deferred taxes could be less than the tax liens on the house? What happens to such property?

* Will it be possible for taxes to be deferred on a home in which the owner qualifies for deferred taxes but which is also occupied by other family members who would not qualify and who have the wherewithal to keep the taxes current? Shouldn't the income test be applied to the combined incomes of those living in a home?

* Given that there would be a cap on the amount of taxes that could be deferred, how would it be determined who gets a deferment if there are more applicants for deferments than could be granted under the cap?

* The bill deals with symptoms, not with the disease. If the problems are the level of property taxes versus the taxpayers' ability to pay, the rate of increase in property assessments, and the overreliance on the property tax for school financing, then those issues should be addressed comprehensively. The bill's approach merely singles out some people and gives them special treatment.

* It should be noted that local units can currently provide poverty or hardship property tax exemptions.

* Representatives of county treasurers have expressed concern about the requirement that street addresses be included in the listings of delinquent tax sale properties. They say that "generally the public is not accepting" of such listings.

***Response:***

While this bill does deal with symptoms, it deals with them in a sensible way. There have been efforts to change the whole property tax foreclosure process, to speed it up where possible while protecting vulnerable property owners, but no legislation has been enacted. There are constant efforts to change the property tax system in its entirety, and they will continue no matter what happens to this bill. It should also be noted that senior citizens who defer taxes will have to pay interest on the taxes due, which will discourage the bill's use as a tax dodge. Further, circuit breaker payments will go to the state to help defray costs. And, there is a limit on the amount of taxes that can be deferred, based on the amount of equity in a home. As to the requirement that street addresses be given in delinquent tax sale notices, it provides better identification of properties and thus a better warning of the potential loss of a property to family members and others interested in helping the property owner.

## *POSITIONS:*

The Michigan Association of County Treasurers supports the substitute. (4-21-93)

The Michigan Association of Counties supports the substitute. (4-21-93)

A representative of the City of Ann Arbor testified in support of the bill. (4-21-93)

A representative of the Area Agency on Aging 1-B testified in support of the bill. (4-21-93)

The Department of Treasury is opposed to the bill. (4-21-93)