



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

HOMESTEAD EXEMPTIONS

House Bill 4539 (Substitute H-2)
Sponsor: Rep. Willis Bullard, Jr.

House Bill 4059 (Substitute H-2)
Sponsor: Rep. Jessie Dalman

First Analysis (3-14-95)
Committee: Tax Policy

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 state 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 appeal 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.

THE CONTENT OF THE BILLS:

House Bill 4539 would amend several sections of the General Property Tax Act (MCL 211.7cc et al.) that apply to the exemptions for homesteads and qualified agricultural property from local school operating property taxes. 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 the July board of review in the year for which the exemption was claimed or the immediately succeeding year -- or for those years with the December board of review if there was no summer levy of school operating taxes. If an appeal of a denial of a claim for a homestead exemption was received not later than the last date for petitioning the December board of review, the local tax collecting unit would convene a December board of review and consider the appeal. (Currently, an owner must claim 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, if there is no summer school tax levy, the December board of review. For 1994, a homestead owner was allowed to appeal in July or December for an exemption, whether or not there was a claim that an affidavit had been filed.) Also, similarly, an owner of property that was qualified agricultural property on May 1 for which an exemption was not on the tax roll could file an appeal with the July or December board of review in the year the

House Bills 4539 and 4059 (3-14-95)

exemption was claimed or the immediately succeeding year. (The 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.)

-- 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 assessor 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.

-- 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 liable for three times the amount of taxes due.

-- 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 liable for three times the amount of tax due.

-- 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 liable for three times the amount of tax due.

-- 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.

House Bill 4059 would amend the General Property Tax Act (MCL 211.44c) to require the township treasurer (or other collector) to include upon each property tax bill (or as an insert) a written statement provided by the state tax commission setting forth the rights of appeal to the July and December boards of review available to the taxpayer under Sections 7cc (homestead exemption), 7ee (qualified agricultural property), and 53b (both exemptions, as well as clerical errors and mutual mistakes of fact). The statement need not be provided to a taxpayer who has been granted a homestead exemption or an exemption for qualified agricultural property.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the two bills contain potential administrative costs to local units of government, and House Bill 4539 would result in a loss of revenue to local units attributable to refunds to taxpayers who should have had a homestead exemption. With both bills, the cost is indeterminate. (3-7-95)

ARGUMENTS:

For:

The bills would make some significant improvements in the administration of the homestead property tax exemption (and the agricultural exemption as well). They would also provide taxpayers more opportunities to gain an exemption if they are eligible. 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. House Bill 4059 makes it more likely taxpayers will be aware of these opportunities by requiring tax bills to carry explanations of the right to go to the board of review for an exemption.

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. Treble damages would be assessed to provide a significant financial penalty on tax cheats.

Against:

The administration of the homestead exemption has put a tremendous burden on local units. These bills only make 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 closings when property is transferred.

Against:

An earlier version of House Bill 4539 contained criminal penalties for a variety of forms of tax cheating in claiming a homestead exemption. Some

offenses were felonies carrying prison terms of up to five years and fines of up to \$5,000. These penalties are needed to discourage tax cheats. They were consistent with penalties in the revenue act for similar behavior. They should be restored. 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. The treble damages in the current version of the bill are not sufficient.

Response:

Does it really make sense to make it a felony to fraudulently seek a homestead exemption? Don't the financial penalties in the committee substitute constitute sufficient deterrence and punishment? At a time of major overcrowding, should property tax cheats be sent to prison?

POSITIONS:

The Department of Treasury supports the bills, but would prefer that the criminal penalties be restored to House Bill 4539. (3-9-95)

The Michigan Townships Association is opposed to the bills. (3-9-95)

The Michigan Municipal League is opposed to the bills. (3-9-95)