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BILL ANALYSIS

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Senate Bill 520 (as enrolled) **PUBLIC ACT 105 of 2003**
Senate Bill 586 (as enrolled) **PUBLIC ACT 114 of 2003**
Sponsor: Senator Cameron S. Brown
Senate Committee: Finance
House Committee: Tax Policy

Date Completed: 10-2-03

RATIONALE

A number of people apparently have misused the exemption that homeowners may claim from local school operating taxes. Under the Revised School Code, school districts may levy up to 18 mills on property for local school operating taxes. Under the General Property Tax Act, taxpayers who own and occupy a homestead may receive an exemption from the taxes by filing a homestead exemption affidavit with the local tax collecting unit. Once an exemption is in place, it remains until the property is transferred or ceases to be a homestead. A person may claim only one homestead exemption, and a husband and wife who file a joint Michigan income tax return are entitled to only one exemption.

It has been widely reported that many people, either mistakenly or purposely, claim more than one exemption, thus avoiding the 18-mill tax that is supposed to be levied on second or third homes, rental property, and vacation dwellings. Despite the provisions in the General Property Tax Act that allow these claims to be denied, enforcement reportedly has been lacking. According to local officials, it was difficult for them to determine if a homeowner had claimed more than one exemption if the second, third, or additional property was located out of the county in which the homeowner resided. According to the Department of Treasury, it was difficult for the Department to determine if a taxpayer had claimed more than one exemption if local officials did not notify it of a problem; further, the Department stated that it was reluctant to share certain taxpayer information with local officials because of confidentiality provisions in the revenue Act. It was suggested that the General Property Tax Act and the revenue Act be amended to give local and State officials enhanced authority to identify those who illegally claim a homestead exemption.

CONTENT

Senate Bill 520 amended the General Property Tax Act to do the following:

-- **Allow a county treasurer or county equalization director to conduct an audit of homestead exemptions claimed in the local tax collecting units of the county.**
-- **Require the Department of Treasury to conduct annual audits of homestead exemptions in counties that elect not to conduct audits.**
-- **Allow a county treasurer or equalization director, or the assessor for a local tax collecting unit, to deny a claim for a homestead exemption for a current year and the three preceding years if the treasurer, director, or assessor believes that the property is not the homestead of the owner claiming the exemption.**
-- **Require the Department each year to give a county treasurer or equalization director a list of parcels located in that county for which an exemption may have been erroneously claimed.**
-- **Prescribe the distribution of interest that has accrued and been collected on unpaid taxes, based on the governmental agency that denies an exemption.**
-- **Create the "Homestead Property Tax Exemption Fund", to be spent only for the purpose of auditing homestead exemption affidavits.**

-- **Specify that a person is not entitled to a homestead exemption if the person or his or her spouse owns property in another state, for which the person or spouse claims an exemption, deduction, or credit substantially similar to the homestead exemption (unless they file separate income tax returns); and make additional people ineligible for the exemption.**
-- **Change the deadline for filing a claim for a homestead exemption, or an exemption for qualified agricultural property, from May 1 to tax day (December 31 each year) for taxes levied after 2003.**

Senate Bill 586 amended the revenue Act to allow a person to disclose tax information if the disclosure is required for the proper administration of the General Property Tax Act; prohibit a person who receives the information from willfully disclosing it for any other purpose; and make it a felony to violate this prohibition.

The bills took effect on July 24, 2003. They are described in more detail below.

Senate Bill 520

County Election to Audit

The bill allows a county to elect to audit homestead exemptions in all local tax collecting units within the county. The decision to audit exemptions must be made by the county treasurer, or by the county equalization director with the concurrence, by resolution, of the county board of commissioners. The initial election to audit exemptions must require an audit period of two years. Subsequent elections to audit must be made every two years and require two annual audit periods. An election must be made by submission of an election to audit form (as prescribed by the Department) to the assessor of each local tax collecting unit in the county and to the Department of Treasury by October 1 in the year in which an election is made.

Under the Act, the Department may review the validity of an exemption to determine if the property is the homestead of the owner claiming the exemption. If a county elects to audit homestead exemptions under the bill, the Department may continue to review their validity.

If a county does not elect to audit exemptions, the Department will have to conduct an audit in the initial two-year audit period for each local tax collecting unit in the county, unless the Department has entered into an agreement with the assessor of a local tax collecting unit, as provided in the bill.

If a county elects to audit homestead exemptions, the bill requires the Department each year to give the county treasurer or county equalization director a list of parcels of property located in the county for which an exemption may be erroneously claimed. The treasurer or the equalization director must forward copies of the list to each assessor in each local tax collecting unit in the county within 10 days of receiving the list.

For taxes levied after December 31, 2005, for each county in which the treasurer or the equalization director does not elect to audit homestead exemption claims, the Department will have to conduct an annual audit of exemptions claimed for the current calendar year.

Denial of Exemptions

If a county elects to audit homestead exemptions and the county treasurer (or his or her designee) or the county equalization director (or his or her designee) believes that the property for which an exemption is claimed is not the homestead of the owner claiming the exemption, the treasurer or director may deny an existing claim by giving the owner, the assessor of the local tax collecting unit, and the Department written notice of the reason for the denial, and advising the owner that the denial may be appealed to the Residential and Small Claims Division of the Michigan Tax Tribunal within 35 days after the date of the notice. The county treasurer or equalization director may deny a claim for exemption for the current year and for the three immediately preceding calendar years.

If a county treasurer or equalization director denies an existing claim for exemption, the treasurer or the director must direct the assessor of the local tax collecting unit in

which the property is located to remove the exemption of the property from the assessment roll and, if the tax roll is in the local unit's possession, direct the assessor to amend the tax roll to reflect the denial. Within 30 days of the date of the denial, the treasurer of the local tax collecting unit must issue a corrected tax bill for previously unpaid taxes with interest at the rate of 1.25% per month and penalties computed from the date the taxes were last payable without interest and penalty. If the tax roll is in the county treasurer's possession, it must be amended to reflect the denial. Within 30 days of the date of the denial, the county treasurer must prepare and submit a supplemental tax bill for any additional taxes, together with interest at the rate of 1.25% per month and penalties computed from the date the taxes were last payable without interest or penalty.

Additional interest on any tax set forth in a corrected or supplemental tax bill will begin to accrue 60 days after the date the bill is issued, at the rate of 1.25% per month. Taxes levied in the tax bill must be returned as delinquent on March 1 in the year following the year in which the bill is issued.

If a county treasurer or county equalization director denies an existing claim for exemption, the interest due must be distributed as provided in the bill (described below). If the property has been transferred to a bona fide purchaser, however, before additional taxes were billed to the seller as a result of the denial, the taxes, interest, and penalties will not be a lien on the property and may not be billed to the purchaser. The local tax collecting unit, if it has possession of the tax roll, or the county treasurer if the county has the tax roll, must notify the Department of the amount of tax due and interest through the date of that notification. The Department then must assess the owner who claimed the homestead exemption for the tax and interest, plus penalty accruing as a result of the denial, if any, as assessed for unpaid taxes under the revenue Act. The Department must deposit any tax or penalty collected into the School Aid Fund, and distribute any interest collected as provided in the bill.

Denial by Assessor

Under the Act, if the assessor of a local tax collecting unit believes that the property for which a homestead exemption is claimed is not the homestead of the owner claiming the exemption, the assessor may deny a new or existing claim by notifying the owner and the Department in writing of the reason for the denial and advising the owner that the denial may be appealed. The bill retains this provision but requires the owner to be advised that the denial may be appealed to the Residential and Small Claims Division of the Michigan Tax Tribunal (rather than to the Department). Further, the bill allows an assessor to deny a claim for exemption for the current year and for the three immediately preceding calendar years.

Under the bill, if the assessor denies an existing claim for exemption, he or she must remove the exemption of the property and, if the tax roll is in the local tax collecting unit's possession, amend the tax roll to reflect the denial. Within 30 days of the date of the denial, the local treasurer must issue a corrected tax bill for previously unpaid taxes, with interest at the rate of 1.25% per month and penalties computed from the date the taxes were last payable without interest or penalty. If the tax roll is in the county treasurer's possession, the tax roll must be amended to reflect the denial. Within 30 days of the date of the denial, the county treasurer must prepare and submit a supplemental tax bill for any additional taxes, together with interest at the rate of 1.25% per month and penalties computed from the date the taxes were last payable without interest or penalty. Additional interest on any tax set forth in a corrected or supplemental tax bill will begin to accrue 60 days after the date the tax bill is issued at the rate of 1.25% per month. Taxes levied in a corrected or supplemental tax bill must be returned as delinquent on March 1 in the year following the year in which the tax bill is issued.

If the assessor denies an existing claim for exemption, the interest due must be distributed as provided in the bill. If the property has been transferred to a bona fide purchaser before additional taxes were billed to the seller as a result of the denial, the taxes, interest, and penalties will not be a lien on the property and may not be billed to the purchaser. The local tax collecting unit, if it has possession of the tax roll, or the county treasurer if the county has the tax roll, must notify the Department of the amount of tax

due, interest, and penalties through the date of that notification. The Department then must assess the owner who claimed the homestead exemption for the tax, interest, and penalties accruing as a result of the denial, deposit any tax or penalty collected into the State School Aid Fund, and distribute any interest collected as provided in the bill.

If the property for which an assessor has denied a claim for exemption is located in a county in which the county treasurer or equalization director has elected to audit exemptions, the assessor must notify the treasurer or director of the denial.

Appeal of Denial

The bill allows an owner to appeal a denial of a homestead exemption by a local assessor, county treasurer or equalization director, or to appeal a final decision of the Department. The owner may appeal to the Residential and Small Claims Division of the Michigan Tax Tribunal, within 35 days of the decision. The owner is not required to pay the amount of tax in dispute in order to appeal a denial to the Department, or to receive a final determination of the Residential and Small Claims Division of the Tax Tribunal; however, interest of 1.25% per month and penalties will accrue and be computed from the date the taxes were last payable without interest and penalty. If the Residential and Small Claims Division grants the appeal, and the owner has paid the interest due as a result of the denial, the interest received must be refunded.

Agreements with Assessor

If a county elects to audit exemptions under the bill, the county treasurer or equalization director may enter into an agreement with the assessor of a local tax collecting unit regarding the implementation or administration of Section 7cc of the General Property Tax Act (the section providing for homestead exemptions). The agreement may specify that, for a period of time not exceeding 120 days, the county will not deny an exemption identified by the Department in its list of parcels for which an exemption may be erroneously claimed (the list that the Department must give the county each year). In a county that has not elected to audit exemptions, the Department may enter into an agreement with the assessor of a local tax collecting unit, regarding the implementation or administration of Section 7cc(8) (which describes responsibilities of the Department, assessors, and county treasurers when the Department denies a claim for exemption). The agreement may specify that, for a period of time not exceeding 120 days, the Department will not deny an exemption identified on the list it provides to the county.

Distribution of Interest

The bill prescribes the distribution of interest that has accrued and been collected on unpaid taxes, to local tax collecting units, counties, and the Department of Treasury. Each entity will receive a percentage of the interest collected based on the governmental entity that denies a homestead exemption, as shown in Table 1.

Table 1

Exemption Denied By:	Percentage Distributed To: Local	Department	County
Local	70	10	20
Dept.	20	70	10
County	20	10	70

Interest distributed to a county must be deposited into a restricted fund to be used solely for the administration of homestead property tax exemptions. Money in that fund will lapse to the county general fund on the December 31 in the year three years after the first distribution of interest to the county and on each succeeding December 31.

The bill creates the Homestead Property Tax Exemption Audit Fund within the Department. Interest distributed to the Department must be deposited in the Fund. The State Treasurer may receive money or other assets from any source for deposit into the Fund, and must direct the investment of the Fund. The Treasurer must credit to the Fund interest and earnings from Fund investments. Money in the Fund must be considered a work project account and at the close of the fiscal year remain in the Fund and not lapse to the General Fund. Money from the Fund must be spent, upon appropriation, only for the purpose of auditing homestead exemption affidavits.

The bill states that interest distributed under these provisions is in addition to, and may not affect the levy or collection of, the existing county property tax administration fee.

Homestead Exemption Ineligibility

Under the bill, a person is not entitled to a homestead exemption if he or she has done any of the following:

-- Claimed a substantially similar exemption, deduction, or credit on property in another state that is not rescinded.
-- Filed a nonresident Michigan income tax return.
-- Filed an income tax return in a state other than Michigan as a resident.

The second and third provisions do not apply to active duty military personnel stationed in the State with their principal residence in Michigan.

Further, a person is not entitled to a homestead exemption if the person, or his or her spouse, owns property in another state for which the person or spouse claims an exemption, deduction, or credit that is substantially similar to the homestead exemption, unless the person and spouse file separate income tax returns.

Claim of Exemption

Under the Act, a property owner may claim a homestead exemption by filing an affidavit with the local tax collecting unit in which the property is located. The affidavit must require the owner to indicate if he or she has claimed another exemption on property in the State that is not rescinded. Under the bill, the affidavit also must require the owner to indicate if his or her spouse has claimed another exemption on property in the State that is not rescinded, or if the owner or his or her spouse has claimed a substantially similar exemption, deduction, or credit on property in another state that is not rescinded.

The Act requires an owner to file the affidavit by May 1, and requires the status of property as a homestead to be determined on the date the affidavit is filed. Under the bill, these provisions apply for taxes levied before January 1, 2004. For taxes levied after December 31, 2003, the owner must file an affidavit on or before the tax day, and the status of property must be determined on that day. (The bill makes the same change in the filing deadline for the owner of qualified agricultural property that is not classified as agricultural, to claim an exemption from local school operating taxes.)

Under the Act, local assessors must give each homeowner listed on the assessment roll a notice of an increase in the tentative State equalized valuation (SEV) or the tentative taxable value for the year. The assessment notice must state, "If you purchased your homestead after May 1 last year, to claim the homestead exemption, if you have not already done so, you are required to file an affidavit before May 1." Under the bill, this requirement applies through 2003. Beginning in 2004, the assessment notice must state, "If you purchased your homestead after December 31 last year, to claim the homestead exemption for next year, if you have not already done so, you are required to file an affidavit on or before December 31 this year."

Withdrawal of Exemption

Under the Act, if a homestead exemption is erroneously granted, an owner may request the Department to withdraw the exemption. Under the bill, this applies if an exemption is erroneously granted for an affidavit filed before October 1, 2003, and the owner's request must be received by November 1, 2003. As previously provided, if the owner pays the corrected tax bill within 30 days after it is issued, he or she is not liable for any penalty or interest on the additional tax; under the bill, this applies unless the denial was issued before July 1, 2003. Previously, the owner also had to request the withdrawal of an exemption before being contacted by the Department or the local assessor, in order to avoid a penalty or interest; the bill deleted this condition.

Statement to Department of Education

The bill requires the treasurer in each county, before May 1, 2004, and before May 1, 2005, to forward to the Department of Education a statement of the taxable value of each school district and fraction of a school district within the county for the preceding four calender years. The bill states that this requirement is

in addition to the requirement in Section 151 of the State School Aid Act. (Section 151 requires the treasurer in each county, by August 1 each year, to give the Department of Education a statement of the taxable value of each school district and fraction of a district within the county.)

Senate Bill 586

Section 28(1)(f) of the revenue Act prohibits a current or former employee or authorized representative of the Department of Treasury or anyone connected with the Department from divulging any facts or information obtained in connection with the administration of a tax, or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the Department for a tax it administers. A person may disclose this information, however, if the disclosure is required for the proper administration of a tax law administered under the revenue Act or pursuant to a judicial order. The bill also allows disclosure for the proper administration of a tax law administered under the General Property Tax Act.

The bill provides that a person who receives information under Section 28(1)(f), for the proper administration of the General Property Tax Act, may not willfully disclose that information for any purpose other than the administration of that Act. A person who violates this provision is guilty of a felony and subject to the penalty that applies to other unlawful disclosures: a fine of up to $5,000, imprisonment for up to five years, or both, together with the costs of prosecution; and, if the violator is a State employee, dismissal or discharge.

MCL 211.7cc et al. (S.B. 520)
205.28 (S.B. 586)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

While it is illegal for a homeowner, or a married couple filing jointly, to claim more than one homestead exemption from school operating taxes, both local and State officials admit that enforcement of this restriction has been lax. At the State level, the Department of Treasury is responsible for the administration of homestead exemptions, but in recent years it has dedicated few resources to attempting to catch people who claim multiple exemptions. At the local level, assessors point out that while they can identify people who claim more than one exemption within a given county, they have no way of knowing if someone has claimed an exemption in another county. Although counties have access to and keep assessment rolls, counties have not been specifically involved in the administration of homestead property tax exemptions. As a result, both State and local officials say that there may be many homeowners who, intentionally or unknowingly, have claimed multiple exemptions. Reportedly, more than 23,000 parcels of property in the State have been improperly granted homestead exemptions.

To address this situation, Senate Bill 520 allows counties to audit homestead exemptions, requires the Department to perform audits if a county declines to do so, and offers a financial incentive to local tax collecting units, counties, and the Department actively to seek out people who claim multiple exemptions.

Supporting Argument

it is simply not fair for out-of-state residents to claim a homestead exemption on their Michigan vacation property, or for residents of this State to claim multiple exemptions. While it has been illegal to claim more than one homestead exemption since this law was enacted, there was great potential that homeowners could claim more than one exemption and not get caught. This means that those who have followed the law and paid their fair share, have been subsidizing those who have illegally avoided the tax. When the homestead exemption was created, as part of the school finance reform legislation enacted after the adoption of Proposal A in 1994, the idea was that taxpayers would be allowed to claim an exemption from school operating taxes on their "homestead", which means a dwelling owned and occupied as a *principal residence* by an owner of the dwelling. The law was not designed to allow people to claim the exemption on vacation homes, rental property, or multiple dwellings. The bills will help to ensure that homestead exemptions are

administered fairly, so that homeowners who follow the law are not taken advantage of by those who claim excess exemptions, and so that local units are not cheated out of money they are owed.

Supporting Argument

Under the revenue Act, the felony penalty for the disclosure of confidential information does not apply if the disclosure is required for the proper administration of a tax law administered under the Act. Property taxes, however, are not administered under the revenue Act. By allowing a person to disclose certain information if it is required for the administration of the General Property Tax Act, Senate Bill 586 will enable employees of the Department to exchange information with local and county officials regarding homestead exemption claims, without fear of violating the confidentiality provisions of the revenue Act. This exchange of information will help both State and local officials to identify and disallow improperly claimed exemptions.

Legislative Analyst: George Towne

FISCAL IMPACT

Senate Bill 520

The bill will increase State, locally-raised school district, and local unit revenues and reduce School Aid Fund expenditures. Based on information from the Michigan Department of Treasury, the bill could increase locally-raised school district revenues by approximately $51 million in fiscal year (FY) 2003-04, $27 million in FY 2004-05, and $18 million per year after FY 2004-05. County revenues will increase by approximately $2.8 million in FY 2003-04, $1.5 million in FY 2004-05, and $1.0 million per year after FY 2004-05. Revenues received by local assessing units will increase by $6.3 million in FY 2003-04, $3.3 million in FY 2004-05, and $2.2 million per year after FY 2004-05. The State will receive approximately $0.9 million in FY 2003-04, $0.5 million in FY 2004-05, and $0.3 million per year after FY 2004-05. School Aid Fund expenditures will be reduced by $51 million in FY 2003-04, $27 million in FY 2004-05, and $18 million per year after FY 2004-05.

The estimates of revenues that will be received by the State and local units other than school districts assume that interest and penalties will not be waived when an exemption is denied and back taxes are assessed. The estimates also assume that the Department of Treasury will deny approximately 10% of the exemptions, while counties and local assessors each will deny 45%. To the extent that counties or other taxing authorities waive interest, the bill will raise less revenue for the State and local units other than school districts.

Actual receipts under the bill will depend upon the extent of efforts to audit claimed exemptions. Sufficient staff may not be available either at the county level or at the Department of Treasury to produce the estimated revenue. If a county elects to conduct the audit, and as a result, the Department does not conduct any audits for that county, and then does not devote sufficient staff to detecting the estimated number of exemptions that should be denied, then actual revenues will be lower than estimated. Similarly, if the Department is not able to devote adequate staff to fully auditing exemptions, the actual revenues will be lower than estimated. Because the bill requires audits for all counties that do not elect to perform such audits themselves, the bill might conceivably require the Department to divert staff from other tasks to fulfill the requirements of the bill. The amount by which revenues might fall below estimated levels if inadequate or diverted staff at the county or State level occurs is unknown.

School Aid Fund expenditures will decrease because increases in locally generated revenue, such as through the up-to-18 mills levied for school operating purposes, are offset dollar-for-dollar by reduced School Aid Fund payments. Therefore, while locally raised school district revenue from property taxes will increase, the reduction in School Aid Fund expenditures will result in total school district revenues, on net, being unchanged.

Senate Bill 586

The bill will have no fiscal impact on the Department of Treasury.

The bill will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many additional (or fewer) offenders will be convicted of willfully disclosing information subject to the

felony penalty. An offender who is sentenced to prison and receives the longest allowable minimum sentence of 40 months costs the State $83,300, assuming the average cost of incarceration is $25,000.

Fiscal Analyst: Bill Bowerman
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.