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BILL ANALYSIS

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House Bill 5854 (Substitute H-2 as passed by the House)
Sponsor: Representative Fulton Sheen
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 5-10-06

CONTENT

The bill would amend the Tax Tribunal Act to do the following:

- Provide that assessed valuation and exempt status disputes concerning real property classified as commercial, industrial, or developmental could be appealed directly to the Michigan Tax Tribunal without protest before the board of review.**
- Allow assessed valuation and exempt status disputes concerning personal property classified as commercial, industrial, or utility to be appealed directly to the Tax Tribunal without protest to the board of review, if a personal property tax statement were filed before the commencement of the board of review.**
- Amend filing deadlines.**

Tribunal Proceedings; Jurisdiction

The bill provides that Section 35 of the Act (which governs proceedings before the Tax Tribunal) would apply to a proceeding that commenced before January 1, 2007. The bill would create Section 35a, which would apply to Tribunal proceedings that commenced after December 31, 2006.

Under the Act, a proceeding before the Tribunal is original and independent and is considered de novo. The bill would retain this provision for proceedings that commenced after December 31, 2006.

The Act provides that, for an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment must be protested before the board of review, before the Tribunal acquires jurisdiction of the dispute, except as otherwise provided for a year in which the July or December board of review has authority to determine a claim of exemption for qualified agricultural property or for an appeal of a denial of a principal residence exemption by the Department of Treasury, and in certain situations in which the Tribunal has jurisdiction.

Under the bill, except as otherwise provided in Section 35a or by law, for an assessment dispute as to the valuation or exemption of property, the assessment would have to be protested before the board of review before the Tribunal acquired jurisdiction of the dispute.

The bill provides that in the 2007 tax year and each tax year after 2007, both of the following would apply:

- For an assessment dispute as to the valuation or exemption of property classified under the General Property Tax Act as commercial real property, industrial real property, or developmental real property, the assessment could be protested before the board of review or appealed directly to the Tribunal without protest before the board of review.
- For an assessment dispute as to the valuation or exemption of property classified under the General Property Tax Act as commercial personal property, industrial personal property, or utility personal property, the assessment could be protested before the board of review or appealed directly to the Tribunal without protest before the board of review, if a statement of assessable property were filed under the General Property Tax Act before the commencement of the board of review for the tax year involved.

Under the Act, for a dispute regarding a determination of a claim of exemption of qualified agricultural property for a year in which the July or December board of review has authority to determine such a claim, the claim of exemption must be presented to either the July or the December board of review before the Tribunal acquires jurisdiction of the dispute. Under the bill, this would apply to a claim of exemption for either a principal residence or qualified agricultural property in a proceeding that commenced after December 31, 2006.

Under the Act, for a special assessment dispute, the special assessment must be protested at a hearing held for the purpose of confirming the special assessment roll before the Tribunal acquires jurisdiction of the dispute. The bill would retain this for a proceeding that commenced after December 31, 2006.

Invoking Tribunal Jurisdiction

The Act provides that the jurisdiction of the Tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition by June 30 of the tax year involved. Except in the residential property and small claims division of the Tribunal, a written petition is considered filed by June 30 of the tax year if it is sent by certified mail on or before that date. In the residential property and small claims division, a written petition is considered filed by June 30 of the tax year if it is postmarked by first-class mail or delivered in person on or before that date.

In all other matters, the jurisdiction of the Tribunal is invoked by a party in interest, as petitioner, filing a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review, or within 35 days if appeal is pursuant to Section 22(1) of Public Act 122 of 1941 (which provides that a taxpayer aggrieved by an assessment, decision, or order of the Department of Treasury may appeal the contested portion of the assessment, decision, or order to the Tribunal within 35 days, or to the Court of Claims within 90 days after the assessment, decision, or order). Under the bill, for a proceeding before the Tribunal that commenced before January 1, 2007, both petitions would have to be filed within 35 days after the final decision, ruling, determination, or order.

Under the bill, for proceedings that commenced after December 31, 2006, the jurisdiction of the Tribunal in an assessment dispute as to property classified under the General Property Tax Act as commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property would be invoked by a party in interest, as petitioner, filing a written petition by May 31 of the tax year involved. The jurisdiction of the Tribunal in an assessment dispute as to property classified as agricultural real property, residential real property, timber-cutover real property, or agricultural personal property would be invoked by a party in interest, as petitioner, filing a written petition by July 31 of the tax year involved. In all other matters, the jurisdiction of the Tribunal would be invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination.

Filing, Service & Amendment of Petition

Under the Act, an appeal of a contested tax bill must be made within 60 days after mailing by the assessment district treasurer. The appeal is limited solely to correcting arithmetic errors or mistakes and is not the basis of appeal as to disputes of valuation of the property, the property's exempt status, or the property's equalized value resulting from equalization of its assessment by the county board of commissioners or the State Tax Commission. Under the bill, this provision would continue to apply to a proceeding that commenced after December 31, 2006.

The Act provides that service of the petition on the respondent must be by certified mail. For an assessment dispute, service of the petition must be mailed to the assessor of that governmental unit if the respondent is the local governmental unit. Except for petitions filed under the residential property and small claims division, a copy of the petition also must be sent to the secretary of the school board in the local school district in which the property is located and to the clerk of any county that may be affected. The bill would retain these provisions for a proceeding that commenced after December 31, 2006.

Under the Act, except in the residential property and small claims division, a written petition is considered filed if it is sent by certified mail or delivered in person on or before expiration of the period in which an appeal may be made as provided by law. In the residential and small claims division, a written petition is considered filed if it is postmarked by first-class mail or delivered in person on or before the expiration of the period in which an original appeal may be made as provided by law.

The bill provides that a petition would be considered filed on or before the expiration of the time period provided in Section 35a or by law if one or more of the following occurred:

- The petition was postmarked by the U.S. Postal Service on or before the expiration of that time period.
- The petition was delivered in person on or before the expiration of that time period.
- The petition was given to a designated delivery service for delivery on or before the expiration of that time period and the petition was delivered by that designated delivery service or, if the petition were not delivered by the designated delivery service, the petitioner established that the petition was given to that designated delivery service for delivery on or before the expiration of that time period.

("Designated delivery service" would mean a delivery service provided by a trade or business that was designated by the Tribunal for the purpose of these provisions. The Tribunal would have to issue a Tribunal notice by December 31 in each calendar year designating at least one delivery service for the following calendar year. The Tribunal could designate a delivery service only if the Tribunal determined that the delivery service met all of the following requirements:

- Was available to the general public.
- Was at least as timely and reliable on a regular basis as the U.S. Postal Service.
- Recorded electronically to a database kept in the regular course of business or marked on the petition the date on which the petition was given to the delivery service for delivery.
- Met any other requirement prescribed by the Tribunal.)

Under the Act, a petition or answer may be amended at any time by leave of the Tribunal and in compliance with its rules. If a tax was paid while the determination of the right to the tax is pending before the Tribunal, the taxpayer may amend his or her petition to seek a refund of that tax. A person or legal entity may appear before the Tribunal in his or her behalf, or may be represented by an attorney or any other person. The bill would retain these provisions for proceedings that commenced after December 31, 2006.

Filing Deadline: Unlawful Assessment

The Act requires the Tribunal to determine property's taxable value pursuant to the General Property Tax Act. The Tribunal must determine property's State equalized valuation (SEV) by multiplying its finding of true cash value by a percentage equal to the ratio of the average level of assessment in relation to true cash value in the assessment district, and equalizing that product by application of the equalization factor that is uniformly applicable in the assessment district for the year in question. The property's SEV must not exceed 50% of the true cash value of the property on the assessment date.

The petitioner has the burden of proof in establishing the true cash value of the property. The assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.

If a taxpayer paid additional taxes as a result of unlawful assessments on the same property after filing the petition, or if in subsequent years an unlawful assessment is made against the same property, the taxpayer, by the filing deadline prescribed in Section 35 for a proceeding before the Tribunal, except as otherwise provided, may amend the petition to join all of the claims for determination of the property's taxable value, SEV, or exempt status and for a refund of payments based on the unlawful assessments.

Under the bill, for a proceeding before the Tribunal that commenced after December 31, 2006, the filing deadline contained in Section 35a would apply.

MCL 205.735 et al.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill could create some efficiencies for State and local government, but is not expected to change costs significantly.

Fiscal Analyst: Elizabeth Pratt
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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.