Legislative Analysis

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SRETT: EXEMPT TRANSFER TO FORECLOSED-UPON BORROWER WHO REPURCHASE PROPERTY FROM LENDER

House Bill 4440
Sponsor: Rep. Lisa Posthumus Lyons
Committee: Tax Policy

Complete to 5-21-13

A SUMMARY OF HOUSE BILL 4440 AS INTRODUCED 3-12-13

Generally speaking, the bill would appear to provide an exemption from the state's real estate transfer tax for persons who purchase their own foreclosed-upon property back from the lender. This is explained in more detail below.

The State Real Estate Transfer Tax Act (1993 PA 330) imposes a tax of $3.75 for each $500 (or fraction thereof) of the value of the property being transferred. (Put another way, this is roughly three-quarters of one percent of the property's market value.) The tax is payable by the seller or grantor of property, and is generally imposed upon (1) contracts for the sale or exchange of property or the assignment or transfer or property or any interest in property; and (2) deeds or instruments of conveyance of property or any interest in property.[1]

The act includes a lengthy list of written instruments and transfers that are exempt from the tax including, among other things, a written instrument transferring an interest in property pursuant to the foreclosure of a mortgage, including a written instrument given in lieu of foreclosure.

The act provides, however, that the subsequent transfer of the foreclosed property by the entity that foreclosed on the mortgage (lender) is subject to the tax. House Bill 4440 would continue to subject subsequent transfers to the tax, but would exempt a written instrument transferring an interest in the property to the former mortgagor (borrower) by the person that received the property pursuant to a foreclosure of that mortgage (lender), including a written instrument given in lieu of foreclosure.

The bill would define the "former mortgagor" to mean the immediately preceding mortgagor (borrower) whose interest was foreclosed or whose interest was given up by executing a written instrument in lieu of foreclosure

The exemption provided by the bill on a transfer to the former mortgagor would only apply to written instruments executed within 90 days after the date of the last day of the

[1] 2008 PA 473 amended the act to impose the tax on transfers of the controlling interest of an entity that has 90% or more of its value in real estate.

redemption period, or within 90 days after the written instrument in lieu of foreclosure is executed.

FISCAL IMPACT:

To the extent the exemption is claimed and the real estate transfer tax is not applied, net real estate transfer tax revenue will decline by an unknown amount. Because the real estate transfer tax is earmarked to the School Aid Fund, SAF revenue would fall by an equal amount.

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