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BILL ANALYSIS



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Senate Bill 1038 (Substitute S-1)
Senate Bill 1039 (Substitute S-1)
Senate Bill 1040 (Substitute S-1)
Sponsor: Senator Bruce Caswell
Committee: Finance

Date Completed: 9-24-14

CONTENT

Senate Bill 1038 (S-1) would amend the General Property Tax Act to do the following:

- Allow a person to appeal certain decisions, including the denial of a principal residence exemption (PRE), to the Tax Tribunal within 60, rather than 35, days after the decision.
- Allow a person to appeal to the Tax Tribunal, rather than the board of review, if a PRE or a qualified agricultural property exemption did not appear on the tax roll.
- Allow a person to appeal an assessor's decision regarding a qualified agricultural property exemption to the Tax Tribunal, rather than the board of review.
- Allow appeals, as a rule, to include the current year and the three preceding years.
- Revise the time frame for a poverty exemption or disabled veteran exemption dispute to be filed with the board of review; and require the board, if it approved the exemption, to remove the property from the tax roll.
- Permit classification disputes concerning commercial, industrial, or developmental real property to be protested before the board of review or appealed directly to the State Tax Commission (STC).
- Allow a property owner or assessor to appeal an STC decision concerning real property classification to the Tax Tribunal.
- Allow a property owner or assessor to appeal the Tribunal's decision to the Court of Appeals.
- Require qualified errors to be submitted to the STC, rather than the board of review, for approval; allow the STC's decision to be appealed to the Tax Tribunal.
- Allow qualified errors concerning certain personal property tax exemptions to be corrected only for the current year, and allow all other qualified errors to be corrected for the current year and three preceding year.
- Require the STC to place a corrected assessment value on the assessment roll if property were incorrectly reported or omitted for the current tax year and up to three (rather than two) preceding tax years.
- Permit the STC, rather than the board of review, to adjust the taxable value of property in the case of a qualified error.
- Allow a local tax collecting unit, in addition to a person assessed, to appeal an STC order to the Tax Tribunal.

- Provide that a township or city assessor would not be eligible to serve on a board of review.
- Require a notice from an assessor regarding tentative State equalized valuation or taxable value to include his or her phone number and a statement that the property owner could meet with the assessor.

Senate Bill 1039 (S-1) would amend the Tax Tribunal Act to do the following:

- Provide for removal of Tax Tribunal members.
- Require members to undergo annual training in proper courtroom procedure.
- Require disputes regarding the poverty exemption or the disabled veteran exemption to be presented first to the board of review.
- Require disputes regarding qualified errors to be presented to the STC.
- Require disputes regarding qualified agricultural property to be appealed to the Tax Tribunal.
- Allow a taxpayer to protest before the board of review or appeal to the STC in a dispute regarding the classification of commercial, industrial, or developmental real property.
- Require other classification disputes to be protested before the board of review and the STC as provided in the General Property Tax Act.
- Revise requirements to invoke the jurisdiction of the Tribunal.
- Require a petition to be filed with the Tribunal within 60 days, rather than 35 days, after a final decision, ruling, or determination, as a rule.
- Make an exception to the requirement that the Tribunal issue a subpoena upon request, if the request were unreasonable or oppressive.
- Increase the maximum amount of disputes concerning nonresidential property and taxes other than property taxes that may be appealed to the Residential Property and Small Claims Division of the Tribunal.

Senate Bill 1040 (S-1) would amend the revenue Act to:

- Allow a taxpayer to appeal a decision of the Department of Treasury to the Tax Tribunal within 60, rather than 35, days after the decision.
- Delete a requirement that a taxpayer pay the disputed portion of a tax when appealing a Department decision to the Court of Claims.
- Appropriate \$200,000 to the Court of Claims for fiscal year 2014-15 for operations due to the anticipated caseload increase from these changes.

Senate Bills 1038 (S-1) and 1039 (S-1) are tie-barred. Senate Bill 1040 (S-1) is tie-barred to both of those bills.

Senate Bill 1038 (S-1)

Principal Residence Exemption

The General Property Tax Act allows the owner of a principal residence to claim an exemption from the tax levied by a local school district for school operating purposes, to the extent provided under the Revised School Code. To claim the PRE, the owner must file an affidavit with the local tax collecting unit. If the local assessor believes that the property is not the principal residence of the owner, the assessor may deny the claim and must notify the owner of the denial.

If the claim is denied, the owner may appeal to the Residential Property and Small Claims Division of the Tax Tribunal (referred to below as the Small Claims Division) within 35 after the notice. Under the bill, the owner could appeal within 60 days after the date the notice was mailed.

If the assessor believes that the property is not the owner's principal residence and has not denied the claim, the assessor may make a recommendation to the Department of Treasury, which must determine if the property is the owner's principal residence. If it determines that the property is not the owner's principal residence, the Department must notify the local unit and the owner of that determination, and advise the owner of the right to appeal to the Department. Under the bill, the Department would have to advise the owner that the denial could be appealed to the Small Claims Division within 60 days after the notice of denial was mailed.

If a county chooses to audit the PREs claimed and the county treasurer or county equalization director, or the person's designee, believes that the property for which an exemption is claimed is not the owner's principal residence, the treasurer, equalization director, or designee may deny an existing claim by notifying the owner, the local assessor, and the Department of the denial, and advising the owner that the denial may be appealed to the Small Claims Division within 35 days. The bill would increase that to 60 days.

The Act requires a person who prepares closing statements for the sale of property to provide PRE affidavit and rescission forms to the buyer or seller and, if requested, to file the forms with the local tax collecting unit. If a closing statement preparer fails to do so, the buyer may appeal to the Department of Treasury within 30 days after notice to the buyer that an exemption was not recorded. The bill would allow a buyer to appeal to the Small Claims Division within 60 days after that notice was mailed.

Under the Act, an owner who owned and occupied a principal residence on June 1 or November 1 for which the PRE was not on the tax roll may file an appeal with the July or December board of review in the year for which the exemption was claimed or the next three years. The bill would allow an owner to appeal to the Small Claims Division.

Qualified Agricultural Property

Qualified agricultural property is exempt from the tax levied by a local school district for school operating taxes to the extent provided under the Revised School Code. (Qualified agricultural property is unoccupied property and related buildings classified as agricultural, or other unoccupied property and related buildings on the property devoted primarily to agricultural use, as defined in a section of the Natural Resources and Environmental Protection Act.) If the property is classified as agricultural, the owner is not required to file an affidavit claiming the exemption unless requested by the assessor. If the property is not classified as agricultural, the owner must file an affidavit claiming the exemption with the local tax collecting unit.

An owner of property that is qualified agricultural property on May 1 for which an exemption was not on the tax roll, or for which the exemption was denied, may file an appeal with the July or December board of review in the year the exemption was claimed or the following year. The bill would allow the owner to file an appeal with the Small Claims Division. An appeal would have to be filed within 60 days after the date the tax bill was mailed or within 60 days after the denial. The appeal could include the current assessment year and the three immediately preceding years.

If the local assessor believes that property for which an exemption was granted is not qualified agricultural property, the assessor may deny or modify an existing exemption. The taxpayer may appeal the assessor's determination to the board of review, and the board's decision may be appealed to the Small Claims Division. Under the bill, the taxpayer could appeal the assessor's determination to the Small Claims Division within 60 days after the denial or modification.

Disabled Veteran & Poverty Exemptions

Real property that is used and owned as a homestead by a disabled veteran who was honorably discharged from the United States armed forces is exempt from the collection of taxes under the Act. If the veteran dies, the exemption remains available to his or her unremarried surviving spouse. To claim the exemption, the property owner must file an affidavit with the supervisor or other assessing officer during the period beginning with the tax day for each year and ending at the time of final adjournment of the local board of review.

Also, if a person who, in the judgment of the supervisor and board of review, is "unable to contribute toward the public charges", the person's principal residence is eligible for a partial or full exemption from taxation under the Act. The person must file a claim with the supervisor or board of review and meet various criteria. The application must be filed after January 1 but before the day before the last day of the board of review.

Regarding each exemption, the bill would refer to the December board of review.

The bill would allow a person claiming either exemption to appeal the decision of the March board of review to the Tax Tribunal by July 31 of that year. The person could appeal the decision of the July or December board of review to the Tribunal within 60 days after the date of the decision. An appeal of the denial of the exemption could be made for the current year and the three preceding years. An appeal regarding the disabled veteran exemption could not be taken for a year before 2014.

The bill would require the board of review, if it approved a disabled veteran or poverty exemption, to remove the homestead or principal residence from the tax roll and file an affidavit with the proper officials involved in the assessment and collection of taxes. All affected official records would have to be corrected.

In addition, the person claiming the exemption would have to be notified of the board's action and the right to appeal to the Tax Tribunal.

Real Property Classification

Section 34c of the Act describes the classifications of assessable real property and assessable personal property, and requires assessors, by the first Monday in March each year, to classify every item of assessable property according to the definitions contained in the section.

An owner of any assessable property who disputes the classification must notify the assessor and may protest the assigned classification to the March board of review. The owner may appeal the decision of the board of review by filing a petition with the State Tax Commission by June 30 of that year. The STC must arbitrate the petition. The STC's determination is final and binding for the year of the petition and cannot be appealed. The bill would delete these provisions.

The bill also would delete a provision allowing the Department of Treasury to appeal the classification of assessable property to the Small Claims Division by December 31 in the tax year for which the classification is appealed.

The bill would allow an owner of assessable property or an assessor to protest the assigned classification of that property for the current year and the three preceding years by filing a petition with the March board of review or with the July or December board of review. For a dispute as to the classification of property classified as commercial real property, industrial real property, or developmental real property, the classification could be protested by the

taxpayer to the board of review or could be appealed directly to the State Tax Commission without protest before the board of review.

An owner or assessor could appeal the March board of review's decision by filing a petition with the State Tax Commission by July 31 in that tax year. An owner or assessor could appeal the July or December board of review decision by filing a petition with the STC within 60 days after the date of the decision. An owner or assessor could appeal the decision of the STC by filing a petition with the Tax Tribunal within 60 days after the STC decision. An owner or assessor could appeal the decision of the Tribunal for the current year and the three preceding years by filing a petition with the Michigan Court of Appeals within 21 days after the Tribunal decision.

(The State Tax Commission consists of three members appointed by the Governor with the advice and consent of the Senate, and is housed in the Department of Treasury. The STC is responsible for the general supervision of the administration of the State's property tax laws.

In a May 2011 decision, the Michigan Supreme Court found that denying judicial review of State Tax Commission decisions was unconstitutional, and severed the sentence in question from the Act (*Midland Cogeneration Venture Limited Partnership v Naftaly*, 489 Mich 83). The Court also held that because the Legislature had not provided other means for judicial review of STC classification decisions, the circuit courts have jurisdiction over such appeals.)

Qualified Errors

The Act prescribes a process for the correction of qualified errors, such as clerical errors as to the correct assessment figures and errors of measurement or mistakes made by taxpayers in preparing a statement of assessable property.

If there has been a qualified error, it must be verified by the local assessing officer and approved by the board of review. If approved, the board must file an affidavit with the proper officials, and all affected official records must be corrected. As a rule, a correction may be made only for the current year and the prior year. A correction that approves a PRE, a personal property exemption, or an increase in taxable value upon transfer of ownership may include the current year and the three preceding years. The bill would delete these provisions.

Under the bill, if there had been a qualified error, it would have to be verified by the local assessing officer and submitted to the State Tax Commission for approval. If approved, the STC would have to file an affidavit within 30 days with the proper officials, and all official records would have to be corrected. A correction could be made for the current year and the three preceding years.

Qualified errors also include errors made in the denial of a claim of exemption for industrial or commercial personal property under Section 9m, 9n, or 9o of the General Property Tax Act. (Sections 9m and 9n allow exemptions for property that meets the definition of "eligible manufacturing personal property". Section 9o allows an exemption for industrial or commercial personal property that has a combined true cash value of less than \$80,000 in a local tax collecting unit.) The bill would allow these qualified errors to be appealed to the STC, rather than the board of review. A correction for a claim of exemption under Section 9m or 9n could be made only for the current tax year.

In addition, the bill would allow the STC, rather than the board of review, to adjust the taxable value of property in the case of a qualified error.

As currently provided, the taxpayer or the assessing officer could initiate action to correct a qualified error.

The bill would allow a taxpayer or assessing officer to appeal the decision of the STC to the Tax Tribunal within 60 days of the decision.

Boards of Review

The Act provides for city and township boards of review. For a township board of review, the members are appointed by the township board, and the size and composition are set forth in the Act. For a city, its charter may prescribe the size, composition, and manner of appointment of the board of review, or a city ordinance may establish the board. The responsibilities of township and city boards of review are the same.

Under the bill, the assessor for a township or the assessor for a city would not be eligible to serve on the board of review, fill any vacancy, or serve as an alternate member. A city or township assessor would have to provide testimony and information to the board of review, if requested by the board or if the assessor determined that it was necessary to provide further factual information in response to an appeal.

Boards of review are required to meet on particular days in March, July, and December. In March, a board must schedule a final meeting after it makes a change in the assessed value or tentative taxable value of property, adds property to the assessment roll, or exempts industrial or commercial personal property. The bill also would require a board to schedule a final meeting after it exempted the homestead of a disabled veteran or a disabled veteran's unremarried surviving spouse or exempted a person's principal residence, in whole or in part, due to poverty.

In July and December, a board of review must meet to approve qualified errors and to hear appeals regarding the poverty exemption, the PRE, the qualified agricultural property exemption, a federally qualified health center exemption, and a personal property tax exemption for commercial or industrial property. Under the bill, a board of review would have to meet in July and December to hear appeals concerning the federally qualified health center exemption and property classification, and to consider applications for a disabled veteran or poverty exemption.

Senate Bill 1039 (S-1)

Tax Tribunal Members

The Tax Tribunal is an agency within the Department of Licensing and Regulatory Affairs that hears appeals regarding Michigan taxes. The Tribunal consists of seven members appointed by the Governor with the advice and consent of the Senate. Members are appointed for four-year terms.

Under the bill, a member would be subject to removal for cause, after notice and hearing, during his or her term by the Governor who appointed the member. A member appointed by a Governor not currently in office would be subject to removal during his or her term as provided in Article V, Section 10 of the State Constitution. (That section authorizes the Governor to remove an elected or appointed State official for gross neglect of duty or for corrupt conduct, misfeasance, or malfeasance in office.)

The bill also would require Tribunal members to undergo annual training in proper courtroom procedure.

Tribunal Subpoenas

Currently, upon the written request of a party to a proceeding, the Tribunal must issue subpoenas requiring the attendance and testimony of witnesses and the production of

evidence. Under the bill, this would be required unless the request were unreasonable or oppressive.

The Tax Tribunal Act also requires the Tribunal, upon written request, to revoke a subpoena if evidence required to be produced does not relate to a matter in issue or if the subpoena does not describe the evidence with sufficient particularity or is invalid for any other legally sufficient reason. Under the bill, the Tribunal, upon written request, would have to revoke a subpoena if the testimony to be provided and the evidence to be produced did not relate to a matter in issue or for any other legally sufficient reason.

Tribunal Jurisdiction

Except as otherwise provided, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested to the board of review before the Tribunal acquires jurisdiction. In an assessment dispute concerning property classified as commercial, industrial, or developmental real property, or commercial, industrial, or utility personal property, a party invokes the Tribunal's jurisdiction by filing a petition by May 31 of the tax year involved. The bill would change this deadline to July 31 (as currently provided for an assessment dispute regarding agricultural real or personal property, residential real property, or timber cut-over real property).

In a dispute involving the classification of real property, except property classified as commercial, industrial, or developmental real property, the bill would require the classification to be protested before the board of review and the STC as provided in Section 34c of the General Property Tax Act before the Tribunal acquired jurisdiction. For a dispute as to the classification of property classified as commercial, industrial, or developmental real property, the classification could be protested by the taxpayer before the board of review or appealed directly to the STC without protest before the board of review, before the Tribunal acquired jurisdiction of the dispute.

In a classification dispute, an owner or assessor could invoke the jurisdiction of the Tribunal by filing a written petition within the time frame prescribed in Section 34c of the General Property Tax Act. The appeal could include the year in which the petition was filed and the three immediately preceding years. The petition would have to be served on the respondent by certified mail. Service of the petition would have to be mailed to the local assessor if the respondent were the local tax collecting unit. A copy of the petition also would have to be sent to the secretary of the board of the local school district where the property was located, to the clerk of any county that could be affected, and to the State Treasurer.

For a dispute regarding a poverty exemption or disabled veteran exemption, the claim of exemption would have to be presented to the March, July, or December board of review before the Tribunal acquired jurisdiction. The party claiming the exemption would invoke the Tribunal's jurisdiction by filing a petition by July 31 if the claim were denied by the March board of review or within 60 days after the July or December board of review denied the claim.

For a dispute involving a qualified error, the claim would have to be presented to the STC before the Tribunal acquired jurisdiction. The taxpayer or assessing officer would invoke the Tribunal's jurisdiction by filing a petition within 60 days after the decision of the STC.

For a dispute involving the exemption of qualified agricultural property, the claim would have to be appealed directly to the Tribunal without protest before the board of review. The person claiming the exemption would have to file a petition within 60 days of the denial or modification of the exemption.

Currently, in all matters other than an assessment or classification dispute, a party has 35 days after a final decision, ruling, or determination to invoke the Tribunal's jurisdiction. The bill would extend that time frame to 60 days, except as otherwise provided.

Small Claims Division

The Residential Property and Small Claims Division of the Tax Tribunal has jurisdiction over proceedings involving the following:

- Residential property.
- Nonresidential property if the amount of the property's taxable or State equalized valuation (SEV) in dispute is not more than \$100,000.
- Any other tax over which the entire Tribunal has jurisdiction if the amount in dispute is \$20,000 or less, adjusted annually by the inflation rate.

(According to the Tax Tribunal's website, the maximum inflation-adjusted amount for other tax disputes is \$22,619 in 2014.)

The bill would increase the maximum SEV or taxable value of nonresidential property to \$150,000, and would increase the maximum amount of any other disputed tax to \$75,000. Both amounts would have to be adjusted annually by the inflation rate.

Tribunal Fees

The Act requires the Tax Tribunal, by rule, to prescribe filing fees and other fees to be paid in connection with a Tribunal proceeding. The Small Claims Division, however, may not charge fees or costs on appeals of principal residence property.

Under the bill, the Small Claims Division could not charge fees or costs for appeals relating to the valuation of principal residence property or relating to a claim for exemption by reason of poverty. (Under current Tribunal rules, no filing fee is charged for a Small Claims Division proceeding contesting the denial of the poverty exemption.)

Senate Bill 1040 (S-1)

The revenue Act allows a taxpayer aggrieved by an assessment, decision, or order of the Department of Treasury to appeal the contested portion of the assessment, decision, or order to the Tax Tribunal within 35 days, or to the Court of Claims within 90 days, after the assessment, decision, or order, and requires the taxpayer to pay the uncontested portion.

The bill would increase the time for appealing to the Tax Tribunal to 60 days after the assessment, decision, or order.

The bill also would delete a requirement that, in an appeal to the Court of Appeals, the appellant first pay the tax, including any applicable penalties and interest, under protest and claim a refund as part of the appeal.

The bill would appropriate \$200,000 from the General Fund to the Court of Claims for the 2014-15 fiscal year for operations due to the anticipated increased caseload from the changes in the bill.

MCL 211.7b et al. (S.B. 1038)
205.721 et al. (S.B. 1039)
205.22 (S.B. 1040)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills potentially would reduce State and local property tax revenue and increase State school aid payments. The bills also could increase costs to the Department of Treasury by approximately \$170,000; would have a minor, negative fiscal impact on the Department of Licensing and Regulatory Affairs; and would make a \$200,000 appropriation to the Court of Claims.

To the extent that the bills increased the number and scope of property tax appeals, the bills would tend to reduce State and local property tax revenue, and increase the cost of State school aid payments to local school districts. The size of these effects is unknown and would depend on the number and magnitude of additional appeals for property valuation, classification, or exemptions, the characteristics of the property under appeal, and whether those appeals were successful. The potential for reduced revenue applies to the State School Aid Fund collections of the State Education Tax, Utility Property Tax collections to the General Fund, and local taxing authorities including local governments, local school districts, intermediate school districts, and community colleges. Local debt millage would be adjusted as necessary to retire general obligation bonds. A reduction in local school operating millage revenue would be replaced by the School Aid Fund through the foundation allowance formula. This would increase State costs to the School Aid Fund. In addition, the correction of qualified errors for the current year and the prior three years would have an unknown impact on property tax revenue.

According to the Department of Treasury, Senate Bill 1038 (S-1) could increase the number of appeals to the State Tax Commission by up to 20,000 annually. This could require the Department to hire up to 2.0 additional full-time equated employees (FTEs) to support this increase in appeals. Based on fiscal year 2013-14 estimates, one additional FTE costs an estimated \$85,000 annually (\$45,000 GF/GP) for salary, wages, and benefits based on statewide average salaries and benefits. Thus, the additional costs to the Department could increase by an estimated \$170,000 Gross (\$90,100 GF/GP) annually.

The bills would have an indeterminate fiscal impact on the Michigan Tax Tribunal within the Department of Licensing and Regulatory Affairs, and neutral fiscal impact on the Court of Claims. Senate Bill 1040 (S-1) would remove the requirement that an appellant first pay taxes and penalties before a case is heard by the Court of Claims. The removal of this requirement could create an incentive for appellants in non-property cases to file an appeal in the Court of Claims rather than with the Tax Tribunal. According to LARA, the number of cases in which this sort of incentive could exist is very small relative to the entire number of cases heard by the Tribunal, so it is unlikely to significantly affect the operations of the Tribunal. However, Senate Bill 1040 (S-1) would appropriate \$200,000 to the Court of Claims for fiscal year 2014-15 to cover anticipated costs associated with creating an incentive for these cases to be appealed in the Court. To the extent that this appropriation amount is an accurate assessment of the actual cost associated with these appeals, this particular part of the bill package would have a positive fiscal impact on the Tax Tribunal, as it would presumably no longer incur these costs, and a neutral fiscal impact on the Court of Claims. Since the appropriation would be for one fiscal year only, future costs related to these claims would have to be addressed in the annual budget for the Judiciary.

Senate Bill 1039 (S-1) would increase the taxable value limit for nonresidential property cases heard by the Small Claims Division of the Tribunal from \$100,000 to \$150,000, and increase the limit on the amount in dispute for non-property tax cases heard by the Small Claims Division from \$20,000 to \$75,000. The Small Claims Division is primarily staffed by contracted hearing referees, while cases heard by the full Tribunal are staffed by administrative law judges (ALJs) employed directly by the Tribunal. Increasing the number

of cases that may be heard by the Small Claims Division could increase the need to hire additional hearing referees. Since claims heard by the Small Claims Division are held in the county where the dispute is filed or in an adjoining county, the use of Lansing-based ALJs for these cases would be logistically impractical in many cases, due to travel costs and scheduling issues. Cases heard by the entire Tribunal are held in Lansing. Additionally, base filing fees for cases heard by the Small Claims Division are lower than those heard by the entire Tribunal (\$125 and \$250, respectively), so the change could result in some loss of revenue, as well. In total, however, the increased costs and lost revenue caused by these increased limits would not significantly affect the operations of the Tribunal.

In total, the bills' fiscal impact on LARA is indeterminate, as it is unclear whether the additional costs from increasing the number of appeals that would be heard by the Small Claims Division would exceed the savings associated with the incentive that would be created for certain non-property appeals to be heard by the Court of Claims.

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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.