

REAL ESTATE TRANSFER TAX EXEMPTION FOR PRINCIPAL RESIDENCES WITH REDUCED VALUE

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House Bill 4173 as passed by the House
Sponsor: Rep. David C. Maturen
Committee: Tax Policy
Complete to 7-21-15

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4173 amends the Real Estate Transfer Tax Act by altering the eligibility requirements for one of the 23 exemptions from the tax. The bill will essentially allow a homeowner whose principal residence has not increased in value since it was purchased to receive an exemption from the real estate transfer tax if the residence is sold for an amount less than or equal to its true cash value. The bill codifies current practice at the Department of Treasury.

FISCAL IMPACT: House Bill 4173 codifies current practice at the Department of Treasury, therefore there will be no reduction in revenue resulting from this change in the Real Estate Transfer Tax Act.

THE APPARENT PROBLEM:

The Real Estate Transfer Tax Act imposes, for non-exempt transfers of real property, a tax of \$3.75 for every \$500 of the final sale price (0.75%, or three-quarters of one percent). The revenue collected by this tax is deposited in the School Aid Fund (SAF). According to the most recent numbers, total revenue from the real estate transfer tax was \$233.4 million in fiscal year 2013-14. There are many exemptions listed in the act.

One exemption to the real estate transfer tax requires that all of the following criteria apply:

- 1) The property qualifies for a Principal Residence Exemption;
- 2) The state equalized value (SEV) of the property is less than or equal to the SEV when the current owner originally purchased the property; and
- 3) The property is not sold at a value other than the true cash value

Currently, if after the exemption is granted, the state treasurer determines that the property was sold for a value other than the true cash value then the entirety of real estate transfer tax will be due, with an additional penalty of 20% of the total tax due.

The law, as written, could punish those whose homes have lost value if they do not sell their home for exactly the "true cash" value of the home, but claim an exemption to the real estate transfer tax. This would mean anyone selling for less than that amount would either have to pay the tax, which is counter to the intent of the law, or face a 20% penalty. The Department of Treasury does not hold to this exact interpretation, instead allowing those selling homes that have lost value to claim the exemption as long as the sale price is less than twice the state equalized value, which is an appropriate proxy for the true cash value.

THE CONTENT OF THE BILL:

House Bill 4173 would amend the Real Estate Transfer Tax Act by altering the eligibility requirements for one of the 23 exemptions from the state real estate transfer tax. The bill will essentially allow a homeowner whose principal residence has not increased in value since its purchase to receive an exemption from the real estate transfer tax if the residence was sold for an amount less than or equal to its true cash value.

The primary change made to the act by House Bill 4173 is in Section 6, under subsection (u). Currently, this section allows for an exemption to the state real estate transfer tax if all of the following apply:

- 4) The property qualifies for a Principal Residence Exemption;
- 5) The state equalized value (SEV) of the property is less than or equal to the SEV when the current owner originally purchased the property; and
- 6) The property is not sold at a value other than the true cash value

Currently, if after the exemption is granted, the state treasurer determines that the property was sold for a value other than the true cash value then the entirety of real estate transfer tax will be due, with an additional penalty of 20% of the total tax due.

House Bill 4173 would alter the conditions under which the penalty could be imposed, effectively altering the eligibility requirements. The bill would stipulate that the penalty shall be imposed if the property is sold for "an amount greater than two times the state equalized value." The state equalized value is typically defined as half of the true cash value. As described earlier, the bill will essentially allow a homeowners whose principal residence has not increased in value since its purchase, and who sells that home for an amount less than or equal to its true cash value, to receive an exemption from the real estate transfer tax.

Additional changes to subsection (u), in conjunction with changes made by this bill to Section 3 of the act, stipulate that the bill is intended to be retroactive. If a seller (or the buyer on behalf of the seller) paid the real estate transfer tax during the four years preceding the effective date of this legislation, and that transaction is now exempt, then the person who paid the tax is entitled to a refund of the total amount paid. This includes both those who paid the penalty and those who now qualify for this exemption.

ARGUMENTS:

For:

The statute as written does not reflect the intent of the law. The aim is to provide those who have lost value in their homes to get a tax. Although the bill reflects current practice at the Department of Treasury, the bill should be passed to assure that the intent of the law is preserved in statue, in case Treasury officials see the matter differently in the future.

Against:

This bill could result in the loss of some State Education Tax revenues. Additional stresses on this revenue stream are not advisable. Critics of the bill note that while the bill itself may have merit and may not have significant fiscal implications, it is just one of many legislative proposals that would reduce revenue to the state's School Aid Fund. Rather than enact all of these seemingly "minor" bills piece by piece, resulting in overall significant losses, the Legislature should take a comprehensive look at the many proposals to reduce SAF revenue and balance them one against another.

POSITIONS:

Michigan Department of Treasury supports the bill. (3-25-15)

Michigan Realtors testified in support of House Bill 4173. (3-25-15)

Michigan Association of School Boards submitted written testimony in opposition to House Bill 4173. (4-15-15)

Legislative/ Fiscal Analyst: Adam Desrosiers

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.