

REAL ESTATE TRANSFER TAX EXEMPTION FOR PRINCIPAL RESIDENCES WITH REDUCED VALUE

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House Bill 4173 as enacted

Public Act 217 of 2015

Sponsor: Rep. David C. Maturen

House Committee: Tax Policy

Senate Committee: Finance

Complete to 10-3-16

BRIEF SUMMARY: House Bill 4173 amended the Real Estate Transfer Tax Act by altering the eligibility requirements for one of the 23 exemptions from the tax. The bill essentially allows 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 at a price that a willing buyer and a willing seller would arrive through an arms-length negotiation. The bill was said to codify the Department of Treasury's practice for administering this exemption.

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.

Prior to the passage of Public Act 217 of 2015, one exemption to the real estate transfer tax required that all of the following criteria apply:

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

Prior to PA 217, if after the exemption was granted, the state treasurer determined that the property had been sold for a value other than the true cash value then the entirety of real estate transfer tax was due, with an additional penalty of 20% of the total tax due.

The law, as then written, had the potential to punish those whose homes had lost value if they did not sell their home for exactly the "true cash" value of the home, yet claimed an exemption to the real estate transfer tax. Under the prior language, anyone selling for less

than that amount would either have had to pay the tax— which was counter to the intent of the law—or face a 20% penalty. The Department of Treasury did not hold to this exact interpretation, and instead allowed those selling homes that had lost value to claim the exemption as long as the sale price was 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 amended the Real Estate Transfer Tax Act to do the following:

- Allow an exemption from the transfer tax for a principal residence if its SEV is equal to or less than the SEV on the date of purchase, and the transaction was for a price at which a willing buyer and a willing seller would arrive through an arms-length negotiation.
- Delete the requirement that a penalty be assessed if, after the exemption was claimed, the State Treasurer determined that the sale was at a value other than the true cash value.
- Allow a seller, or a buyer who paid the tax on behalf of the seller, to request a refund of the tax paid if he or she believes that the property was eligible for an exemption at the time of the transfer.

The bill took effect on December 15, 2015. However, the bill said that the subdivision that allows for a refund claims is retroactive and applies to a sale, exchange, assignment, or transfer on or after June 24, 2011.

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

- The property qualifies for a Principal Residence Exemption;
- 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
- The property is not sold at a value other than the true cash value

Also previously, if after the exemption was granted, the state treasurer determined that the property was sold for a value other than the true cash value then the entirety of real estate transfer tax would have been due, with an additional penalty of 20% of the total tax due.

ARGUMENTS:

For:

The statute as previously written did not reflect the intent of the law. The aim is to provide those who have lost value in their homes to get a tax break. Although the bill reflects current practice at the Department of Treasury, the bill assures that the intent of the law is preserved in statue, in case Treasury officials see the matter differently in the future. The language allowing a refund for past transactions is consistent with a recent Michigan Supreme Court decision.

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 have taken a comprehensive look at the many proposals to reduce SAF revenue and balanced them one against another.

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