



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

House Bill 4173 (as reported without amendment)  
Sponsor: Representative David C. Maturen  
House Committee: Tax Policy  
Senate Committee: Finance

Date Completed: 8-25-15

### **RATIONALE**

The real estate transfer tax is charged to the seller of property in Michigan and calculated as a percentage of the selling price of the property. There are various exemptions to the tax, and one applies to the sale of a principal residence that has not increased in value since its purchase; in this case, the transfer is exempt from the tax as long as the property is not sold for an amount "other than" its true cash value. The State Real Estate Transfer Tax Act does not define true cash value, however, or specify that a transfer is exempt from the tax if property is sold for *less* than the true cash value. In practice, the Department of Treasury does not charge the tax to a seller if the property has not increased in value since its purchase and the property is sold for not more than two times the State equalized valuation (SEV), which is considered a proxy for the true cash value. This interpretation was confirmed by a 2008 Opinion of the Attorney General (No. 7214), which stated, "If the SEV for the property at the time of transfer by the owner is less than or equal to that property's SEV on the date the owner purchased or acquired the property, the seller may claim an exemption...provided that the property is sold for *not more than* its true cash value" (emphasis added). Some believe that the current practice should be codified, in case future Treasury Department officials interpret the law differently.

Also, there was a period of time in recent years when the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) were claiming an exemption from the tax for the sale of foreclosed homes they sold directly, although several county treasurers were attempting to collect the tax. In those cases, Fannie Mae and Freddie Mac evidently had buyers sign agreements to pay the tax on their behalf. In May 2013, the U.S. Court of Appeals for the Sixth Circuit ruled that, under Federal law, the two corporations were exempt from the tax (*County of Oakland, et al. v. Federal Housing Finance Authority, et al.*, Nos. 12-2135 and 12-2136). The Act, however, does not provide a method for a buyer who paid the tax on behalf of a seller to request a refund, and Fannie Mae and Freddie Mac reportedly have been slow to request refunds for the buyers who did so. The Department of Treasury has created a form and process for sellers to request a refund, and online instructions indicate that a property owner who purchased from Fannie Mae or Freddie Mac may use the form. Some believe that the Act itself should allow a seller, or a buyer who paid the tax on behalf of a seller, to request a refund if it is determined that the property was eligible for an exemption at the time of the transfer.

### **CONTENT**

**The bill would amend the Real Estate Transfer Tax Act to do the following:**

- Require the State Treasurer to impose a penalty of 20% of the tax in addition to the tax due for property sold for an amount greater than two times the SEV, instead of a value other than its true cash value, if an exemption to the real estate transfer tax was claimed for a principal residence that had not increased in value since its purchase.**

- **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 determined that the property was eligible for the exemption at the time of the transfer.**

Currently, the Act allows an exemption to the tax if both of the following apply:

- The property qualifies for the principal residence exemption.
- The SEV of the property is less than or equal to the SEV on the date of purchase or on the date of acquisition by the seller or transferor.

If, after the exemption is claimed, the sale or transfer of the property is found by the State Treasurer to be at a value other than the true cash value, then a penalty of 20% of the tax must be assessed in addition to the tax due. The bill would instead impose the penalty if the property sold for an amount greater than two times the SEV.

The bill also would allow a seller, or a buyer who paid the tax on behalf of the seller, to request a refund from the Department of Treasury in a form and manner determined by the Department if he or she determined that the property was eligible for the exemption at the time of the transfer. The Department would have to pay the refund if it determined that the property was eligible for the exemption at the time of the transfer.

The bill specifies that these amendments would be retroactive and would apply to a sale, exchange, assignment, or transfer beginning four years immediately preceding the bill's effective date.

MCL 207.523 & 207.526

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would clarify the qualification for an exemption to the real estate transfer tax. The Act allows the Department of Treasury to charge the tax to a homeowner who sold his or her property (that had not increased in value) for *less* than the true cash value, but requires the Department to exempt the same homeowner if he or she sold the property for exactly the true cash value. Most agree that this would be a strange application of the exemption, and so far the Department has not charged the tax to a homeowner in the situation described above. The bill would make it clear in the Act that the tax could not be charged if the property had not increased in value and were not sold for more than two times the SEV.

This amendment would codify current practice as well as the 2008 Attorney General's opinion. In this opinion, the Attorney General stated that the provision of the Act allowing a refund "has been interpreted by the Michigan Department of Treasury as calling for an assessment of tax and the imposition of the prescribed penalty only if *the sale price is in excess of the true cash value*" (emphasis in original). The opinion also stated, "This interpretation best effectuates the legislative intent in accordance with the governing rules of statutory construction...[A]n intent cannot logically be ascribed to the Legislature to penalize seller-homeowners when the price they secure in selling their homes is less than or equal to the property's diminished true cash value."

### **Supporting Argument**

If the real estate transfer tax is paid on the transfer of property that is later found to be exempt from the tax, an option to request a refund should be available whether the seller paid the tax or it was paid by the buyer on behalf of the seller. The Act does not directly address the refund of taxes already paid, and it should be amended to require the Treasury Department to pay a refund if the person who paid the tax later determines that the property was exempt at the time of the sale. The bill would add this requirement and allow a request for refund to be initiated either by the seller or by the buyer who paid the tax on behalf of the seller.

**Opposing Argument**

The bill could result in the loss of School Aid Fund revenue. While this particular bill might cause only a small decrease to the Fund, when added to other bills passed in recent years, the result is a non-negligible reduction in funds.

**Response:** The bill would codify current practices within the Department of Treasury. Regarding buyers who paid the tax on behalf of Fannie Mae and Freddie Mac, those refunds are set to be paid regardless of whether the bill is passed; it simply would clarify the process in case a similar situation were to arise in the future.

Legislative Analyst: Ryan M. Bergan

**FISCAL IMPACT**

The bill would reduce State School Aid Fund revenue by an unknown amount depending upon the number of properties affected, as well as their specific characteristics. Furthermore, the average number of transfers in which a buyer or seller pays the tax, although the transfer is exempt, is unknown. Because of the retroactive provisions of the bill, revenue would likely be reduced more during the first year the bill was effective than in later years. The tax generated \$233.4 million during FY 2013-14.

Fiscal Analyst: David Zin