

CLAIMING PRINCIPAL RESIDENCE EXEMPTIONS IN TWO STATES: CLARIFY

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House Bill 4335 as enrolled
Public Act 121 of 2017
Sponsor: Rep. Dave Pagel

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

House Bill 4336 as enrolled
Public Act 122 of 2017
Sponsor: Rep. Kimberly LaSata

Committee: Tax Policy
Complete to 5-17-17

BRIEF SUMMARY:

The General Property Tax Act currently prohibits an individual from being entitled to a Michigan Principal Residence Exemption (PRE) under certain circumstances, including if the individual has claimed a substantially similar exemption, deduction, or credit on property in another state that is not rescinded.

House Bill 4335 would amend the General Property Tax Act (MCL 211.7cc) to specify that if a person were found to have claimed a Michigan Principal Residence Exemption (PRE) while claiming a similar exemption, deduction, or credit in another state ("foreign exemption"), the following would apply:

- 1) the person could be denied the Michigan PRE (for the current year and up to three years in the past);
- 2) the person would not be able to rescind the foreign exemption to qualify for the Michigan PRE for any of the years denied; and
- 3) the person would be subject to a \$500 penalty.

House Bill 4336 would amend the General Property Tax Act (MCL 211.120) to add the offense "**claim a substantially similar exemption, deduction, or credit on property in another state, as prohibited by section 7cc(3)**" to a list of actions prohibited by a person claiming a Michigan PRE. If a person violated this provision with the intent to wrongfully obtain or attempt to obtain a Michigan PRE, the person would be guilty of a misdemeanor punishable by imprisonment of not more than one year, and by a fine of not more than \$5,000 or public service of not more than 1,500 hours, or both. [Note: the misdemeanor offense and related penalties are in current statute; this bill simply adds the above action to an existing list of prohibited actions.]

The bills are tie-barred to one another, meaning that neither can take effect unless both are enacted.

Enacting Section

Enacting Session 2 of HB 4335 reads: "This amendatory act is curative and intended to correct any misinterpretation of legislative intent in the final opinion and judgment of the Michigan Tax Tribunal, MTT Docket No. 16-001208, issued January 10, 2017." [The bills are meant to clarify a section of the General Property Tax Act, as suggested by an opinion and judgement of the Michigan Tax Tribunal. See Background.]

A Principal Residence Exemption exempts a residence from the 18-mill local school operating property tax levy. To qualify for a PRE, a person must be a Michigan resident who owns and occupies the property as a principal residence.¹

DETAILED SUMMARY:

Current statute allows an individual to claim a Michigan PRE by filing an affidavit on a form described by the Department of Treasury. HB 4335 would add a requirement to the affidavit that it state that "the owner has not claimed a substantially similar exemption, deduction, or credit on property in another state."

As noted above, current statute prohibits an individual from being entitled to a Michigan PRE under certain circumstances, including if the individual has claimed a substantially similar exemption, deduction, or credit on property in another state that is not rescinded.

HB 4335 would make the following changes to the above provision:

- Specifies that the individual is prohibited from being entitled to the Michigan PRE if the individual claims a similar exemption, deduction, or credit "regardless of amount"
- Strikes the modifier "that is not rescinded."
- Upon request from the Department of Treasury, assessor of the local tax collection unit, the county Treasurer or a designee, or the county equalization director or a designee, a person who claims a Michigan PRE shall (within 30 days) file an affidavit on a Treasury form that a similar exemption has not been claimed in another state. (A claim for a similar exemption in another state occurs at the time of the filing or granting of that similar exemption in another state.)
- If the local assessor, Department of Treasury, or the county denies an existing Michigan PRE claim, the owner of the property subject to that denial cannot rescind the foreign exemption in order to qualify for the Michigan PRE for any of the years denied. [Current statute provides for a denial for the current year and for the three immediately preceding calendar years.]
- If a person claims a Michigan PRE and a similar foreign exemption, that person is subject to a penalty of \$500. [The penalty would be distributed to the local unit, Department of Treasury, and county according to existing statute.]

The bill would also require a local unit to retain a voluntary rescission form, and require that the unit send a copy to the Department of Treasury upon request.

¹ http://www.michigan.gov/taxes/0,4676,7-238-43535_43539---.00.html

BACKGROUND:

The bills are meant to address a situation arising out of a case before the Michigan Tax Tribunal (MTT Docket No. 16-001208)². In that case, a petitioner filed a petition against Berrien County appealing the County Treasurer's decision to deny his Michigan PRE after having been found in violation of the MCL 211.7cc(3)(a) for holding a similar exemption in another state (Illinois). The petitioner sought to have his Michigan PRE reinstated and made retroactive after securing a current and retroactive rescission of the foreign exemption [the petitioner provided evidence that the additional taxes required by the retroactive foreign rescission were paid in full.]

The Tax Tribunal ruled in the petitioner's [taxpayer's] favor, stating that the plain language in the act does not describe *when* the foreign exemption needs to be rescinded in order to claim the Michigan exemption; the individual could claim the Michigan PRE as soon as the foreign exemption was rescinded, and could claim the Michigan PRE for previous years in which the foreign exemption was retroactively rescinded.

The respondent [Berrien County] argued that with this interpretation of the statute, an individual could actually hold a Michigan PRE and similar foreign exemption at any time with no financial deterrent, and simply retroactively rescind the foreign exemption at the time of a denial. The respondent argued this created an "unworkable statute," and advocated for a reading of the statute that required a rescission of foreign exemption *prior* to a denial for holding two similar exemptions.

The judgement states, "...it is presumed that the Legislature acted intentionally and purposefully in failing to specify when a rescission of a substantially similar exemption must be filed, and Respondent impermissibly reads into an unambiguous statute, a provision that is not included in its plain language. Further, despite Respondent's assertions to the contrary, allowing retroactive rescission does not provide taxpayers with a windfall, as upon the filing of that rescission, they are retroactively responsible for non-homestead or equivalent taxes on the rescinded property..."³

FISCAL IMPACT:

To the extent that the bills reduce the number of principal residence exemptions by preventing non-residents from inappropriately claiming the exemption on residential property in Michigan, revenue collections from the 18-mill non-homestead levy will increase based on the number of rescinded exemptions and the taxable values of the properties. The exact impact can't be accurately estimated because the affected properties and their corresponding taxable values are not known in advance. However, the cumulative impact is not expected to be significantly large. Purely as an example, if the legislation eliminates the principal residence exemptions for 1,000 properties that each have a taxable value of \$100,000, the resulting revenue increase would be \$1.8 million. Because all

² <http://taxdocketlookup.lara.state.mi.us/Details.aspx?PK=117270>

³ <http://taxdocketlookup.lara.state.mi.us/Details.aspx?PK=117270>, "Final Opinion and Judgement"

revenue from the 18-mill non-homestead levy is allocated to local K-12 education, there would be no direct impact on state or local government revenues.

If the bill results in more misdemeanor convictions, it would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Misdemeanor fines go to public libraries.

Further, a person who claims a Michigan PRE and a similar foreign exemption is subject to a \$500 penalty distributed according to existing statute to the local tax collecting unit, Department of Treasury, and county. The distribution of penalty revenue depends on which entity denies the exemption, and is earmarked at the county and Treasury level for specific activities to administer and audit Michigan PREs, respectively.

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■ 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.