

CLAIMING PRINCIPAL RESIDENCE EXEMPTIONS IN TWO STATES: CLARIFY

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House Bill 4335 as introduced
Sponsor: Rep. Dave Pagel

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

House Bill 4336 as introduced
Sponsor: Rep. Kimberly LaSata

Committee: Tax Policy
Complete to 4-26-17

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individual has claimed a substantially similar exemption, deduction, or credit on property in another state that is not rescinded.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 has claimed a Principal Residence Exemption (PRE) while claiming a similar exemption, deduction, or credit in another state, the PRE would be rescinded effective the tax year in which the tax benefit in the other state is first received. Further, the bill would clarify the process and timeline for reclaiming a rescinded Michigan PRE.

The bill also adds a provision to this section of the act stating that, notwithstanding any provision in the act to the contrary, a claim for Michigan PRE may be denied for the current year and the immediately preceding seven calendar years if the denial is made on the grounds that the property owner claimed a similar exemption on property in another state. For purposes of this denial, the rescission of a similar exemption in another state applies only prospectively, even if the property owner was retroactively responsible for nonhomestead or equivalent taxes on rescinded property in another state.

House Bill 4336 would amend the General Property Tax Act (MCL 211.120) to make it a misdemeanor for a person who has claimed a Principal Residence Exemption in Michigan to claim a substantially similar exemption, deduction, or credit on property in another state. The misdemeanor is punishable by imprisonment of not more than one year and punishable by a fine of not more than \$5,000 or public service of not more than 1,500 hours, or both.

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:

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" on property in another state that is not rescinded.
- Provides that if a person has claimed a Michigan PRE while claiming a similar exemption in another state, all the following apply:
 - (1) The claim for Michigan PRE is rescinded effective the tax year in which the person first receives the tax benefit of the similar exemption on property in another state.
 - (2) In order to reclaim the Michigan PRE after it was rescinded under (1), the person must do all of the following in a subsequent tax year during which the person does not receive the tax benefit of the similar exemption on property in another state:
 - (a) File an affidavit with the local tax collection unit stating that all claims of a similar exemption on property in another state have been rescinded and provide any relevant documentation reasonably requested by the local tax collecting unit.
 - (b) File an affidavit with the local tax collecting unit claiming the Michigan PRE on property in this state pursuant to the act's existing requirements for claiming the Michigan PRE.
 - (3) If a claim is made to *reclaim* the Michigan PRE in accordance with (2) above, all of the following apply:
 - (a) If the affidavit to the local tax collecting unit that claims the Michigan PRE in the standard manner is filed on or before June 1, the claim for PRE applies to the immediately succeeding summer tax levy and all subsequent tax levies.
 - (b) If the affidavit is filed on or before November 1, the claim for PRE applies to the immediately succeeding winter tax levy and all subsequent tax levies.

Finally, as noted earlier, the bill adds a provision to this section of the act stating that,

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

notwithstanding any provision in the act to the contrary, a claim for Michigan PRE may be denied for the current year and the immediately preceding seven calendar years if the denial is made on the grounds that the property owner claimed a similar exemption on property in another state. For purposes of this denial, the rescission of a similar exemption in another state applies only prospectively, even if the property owner was retroactively responsible for nonhomestead or equivalent taxes on rescinded property in another state.

As noted earlier, House Bill 4336 adds the claiming of a "substantially similar exemption, deduction, or credit on property in another state" to a list of actions barred by an individual claiming a Michigan PRE. A person who violated this provision with the intent to wrongfully obtain or attempt to obtain a Michigan PRE would be guilty of a misdemeanor punishable by imprisonment of not more than one year and punishable by a fine of not more than \$5,000 or public service of not more than 1,500 hours, or both.

BACKGROUND:

The bills are meant to address a situation that appeared 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

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"

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 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.

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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.