Legislative Analysis

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CHANGE CRITERIA FOR CERTAIN REAL ESTATE TRANSFER TAX EXEMPTION

House Bill 4643 as enacted
Public Act 172 of 2018
Sponsor: Rep. David C. Maturen
House Committee: Tax Policy
Senate Committee: Finance
Complete to 6-18-18

BRIEF SUMMARY: House Bill 4643 would amend the State Real Estate Transfer Tax Act to alter the eligibility requirements for one of the exemptions from the tax.

FISCAL IMPACT: To the extent that the bill increases the seller's State Equalized Value (which would make it easier to qualify for an exemption against the real estate transfer tax), transfer tax revenue would decrease by an unknown amount. Without knowing the specific SEVs and the number of transactions that would be affected, it is not possible to estimate the fiscal impact. In FY 2016-17, the real estate transfer tax generated $317.2 million, all of which was earmarked to the School Aid Fund.

THE APPARENT PROBLEM:

The State Real Estate Transfer Tax Act imposes a tax on the transfer of property and contains multiple exemptions from the tax. One such exemption, generally speaking, is for a seller who has lost value in his or her home. Eligibility for the exemption is calculated by comparing the SEV of the property at the time of original purchase by the seller to the SEV at the time of the current sale. If the current value is less than or equal to the original value, the transaction is exempt from the tax.

This calculation may be problematic in a specific instance: if an individual has purchased land, subsequently built a home, and is now selling the home. The SEV at the time of purchase (land) will almost certainly be lower than the SEV at the time of current sale (land and home.) As such, a person in this instance will have little chance to qualify for the exemption, even if the home has lost value since its construction. Legislation has been introduced to allow the original SEV to be determined at the time a certificate of occupancy for the residence is issued.

THE CONTENT OF THE BILL:

Currently under the act, an exemption to the tax applies if <u>all</u> the following criteria are met:

- The property qualifies for a Principal Residence Exemption.
- The SEV of the property is less than or equal to the SEV on the date of purchase or the date of acquisition by the seller.
- The transaction is at a price at which a willing buyer and seller would arrive through an arms-length negotiation.

The bill would revise the second criterion above. The bill would delete the reference to the SEV on the date of purchase. Under the bill, in order to meet the exemption criteria, the current SEV of the property would have to be less than or equal to the SEV on the first tax day after the issuance of a certificate of occupancy for the residence or the date of acquisition of the property by the seller, which comes later.

This provision would be retroactive for sales, exchanges, and transfers beginning 4 years prior to the effective date of the bill and subject to statute of limitations under the revenue act. Additionally, a taxpayer that claimed a refund prior to the effective date of the bill and whose refund was denied and not appealed under the revenue act could claim a refund.

MCL 207.526

BACKGROUND INFORMATION:

The State Real Estate Transfer Tax Act imposes a tax of $3.75 for each $500 (0.75%) or fraction thereof of the value of the property being transferred. The tax is payable by the seller or grantor of property, and is generally imposed upon (1) contracts for the sale or exchange of property, or the assignment or transfer of property or any interest in property; and (2) deeds or instruments of conveyance of property or any interest in property. The revenue collected by the tax is deposited in the School Aid Fund.

ARGUMENTS:

For:

The bill is a commonsense solution and simply puts those who build their homes and those who buy their homes on the same footing for the tax exemption. The bill will further clarify in statute the general spirit of the exemption—that someone who loses value in his or her home, an already difficult situation, should not be assessed a tax from the state when they sell. Finally, the bill is retroactive for four years, so any individuals who faced this situation can apply to the Department of Treasury to receive a refund for the tax paid.

Against:

A coalition of education associations noted that all revenue from the Real Estate Transfer Tax is deposited into the School Aid Fund. By essentially expanding the number of properties that could qualify for a tax exemption, any reduction in tax revenue would directly affect revenues in the SAF. The bill continues a damaging trend of enacting policies that erode the revenue streams that directly support Michigan schools.

Legislative Analyst: Patrick Morris
Fiscal Analyst: Jim Stansell

■ 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.