



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

BILL ANALYSIS



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

House Bill 4335 (Substitute H-1 as passed by the House)
House Bill 4336 (Substitute H-1 as passed by the House)
Sponsor: Representative Dave Pagel (H.B. 4335)
Representative Kimberly LaSata (H.B. 4336)
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 9-18-17

CONTENT

House Bill 4335 (H-1) would amend the General Property Tax Act to do the following:

- Require an affidavit submitted for a principal residence exemption (PRE) to state that the owner had not claimed a substantially similar exemption, deduction, or credit on property in another state.
- Upon request by certain entities, require a person who claimed a PRE, within 30 days, to file an affidavit stating that he or she had not claimed a substantially similar exemption, deduction, or credit in another state.
- Specify that a claim for a substantially similar exemption, deduction, or credit on property in another state would occur at the time of the filing or granting of the similar exemption, deduction, or credit in that state.
- Prohibit a person from rescinding a substantially similar exemption, deduction, or credit claimed in another state in order to qualify for the Michigan PRE for any years denied, if the assessor of a local tax collecting unit, the Department of Treasury, or a county denied an existing claim for a PRE.
- Prescribe a penalty of \$500 for a person who claimed a PRE under the Act and a substantially similar exemption, deduction, or credit in another state.
- Require a local tax collecting unit to retain a rescission form and forward a copy of it to the Department upon request.

House Bill 4336 (H-1) would amend the Act to extend a misdemeanor penalty to a person who claimed a substantially similar exemption, deduction, or credit on property in another state with the intent to obtain a PRE under the Act.

The bills are tie-barred. House Bill 4335 (H-1) states, "This amendatory act is curative and intended to correct any misinterpretation of the Michigan Tax Tribunal, MTT Docket No. 16-001208, issued January 10, 2017."

House Bill 4335 (H-1)**Principal Residence Exemption**

The General Property Tax Act exempts an individual's principal residence from the tax levied by a school district for school operating purposes (typically 18 mills), to the extent provided in the Revised School Code. To claim the PRE, the homeowner must file an affidavit with the

local tax collecting unit. When the property is no longer used as a principal residence, the owner is required to rescind the claim of exemption, although an owner may retain the exemption under certain circumstances.

The affidavit must state that the property is owned and occupied as a principal residence by that owner of the property on the date that the affidavit is signed. One copy of the affidavit must be retained by the owner, one copy must be retained by the local tax collecting unit, until any appeal or audit period under the Act has expired, and one copy must be forwarded to the Department.

The bill would require the affidavit to state that the owner had not claimed a substantially similar exemption, deduction, or credit on property in another state. The local tax collecting unit would have retain a copy of the affidavit and, upon request, forward a copy to the Department.

Currently, a person is not entitled to a PRE if he or she has claimed a substantially similar exemption, deduction, or credit on property in another state that is not rescinded. Under the bill, a person would not be entitled to a PRE if he or she had claimed a substantially similar exemption, deduction, or credit, regardless of amount, on property in another state. Upon request by the Department, the assessor of the local tax collecting unit, the county treasurer or his or her designee, or the county equalization director or his or her designee, a person who claimed a PRE would have to file, within 30 days, an affidavit on a form prescribed by the Department stating that the person had not claimed a substantially similar exemption, deduction, or credit on property in another state. A claim for a substantially similar exemption, deduction, or credit in another state would occur at the time a substantially similar exemption, deduction, or credit was filed or granted in another state.

If the assessor of the local tax collecting unit, the Department, or the county denied an existing claim for exemption, an owner of the property subject to that denial could not rescind a substantially similar exemption, deduction, or credit claimed in another state in order to qualify for the Michigan PRE for any of the years denied. If a person claimed the PRE and a substantially similar exemption, deduction, or credit in another state, he or she would be subject to a penalty of \$500. The penalty would have to be distributed in the same manner as interest is distributed under the Act when a PRE has been improperly claimed and a corrected tax bill is issued.

PRE Duration

Under the Act, upon receiving an affidavit filed for a PRE and unless the claim is denied, an assessor must exempt the property from the tax levied by a school district for school operating purposes until December 31 of the year in which the property is transferred or, except as otherwise provided, is no longer a principal residence. The bill also would require the assessor to exempt the property until the owner was no longer entitled to an exemption for reasons listed in the Act.

Rescission Form

Under the Act, except as otherwise provided, within 90 days after exempted property is no longer used as a principal residence by the owner claiming an exemption, the owner must rescind the claim of exemption by filing with the local tax collecting unit a rescission form prescribed by the Department. The bill would require the local tax collecting unit to retain the rescission form and forward a copy of it to the Department upon request.

House Bill 4336 (H-1)

The General Property Tax Act prohibits a person claiming a principal residence exemption from making a false or fraudulent affidavit claiming an exemption or a false statement on an affidavit claiming an exemption; aiding, abetting, or assisting another in an attempt to wrongfully obtain an exemption; or failing to rescind an exemption after the property subject to it is no longer a principal residence.

A person who violates the prohibition with the intent to wrongfully obtain or attempt to obtain a PRE is guilty of a misdemeanor punishable by imprisonment for up to one year and a maximum fine of \$5,000 or public service for up to 1,500 hours, or both.

The bill also would prohibit a person claiming a PRE from claiming a substantially similar exemption, deduction, or credit on property in another state. A violation would be subject to the current penalty.

MCL 211.7cc (H.B. 4335)
211.120 (H.B. 4336)

BACKGROUND

On January 10, 2017, the Michigan Tax Tribunal issued a final decision in a case involving the denial of the principal residence exemption on property in Michigan owned by a person who also claimed a PRE on a residence in another state (Docket No. 16-001208). The parties were Berrien County (referred to as the respondent) and the owner of the property (referred to as the petitioner). The petitioner owned two businesses, one in Michigan and another in Illinois, and traveled between both, generally spending several days at each location. The petitioner began occupying the Michigan property as his principal residence in 2009. In 2014, the petitioner purchased a residence in Illinois and applied for and received an Illinois PRE similar to the PRE issued in Michigan.

Section 7cc of the General Property Tax Act states that "a person is not entitled to an exemption under this section if...[t]hat person has claimed a substantially similar exemption, deduction, or credit on property in another state that is not rescinded." Therefore, on April 27, 2016, the respondent denied the PRE for the Michigan property for tax years 2014, 2015, and 2016.

The petitioner appealed the denial to the Michigan Tax Tribunal. Before the hearing, the petitioner revoked the Illinois exemption and paid the increased taxes owed as a result of the rescission of the exemption. The petitioner supplied enough evidence to convince the Tribunal that the property in Michigan was his principal residence. The respondent countered that the 2016 rescission did not change the fact that during tax years 2014 and 2015 the petitioner had the Illinois exemption and did not rescind it before the April 27, 2016, denial. According to its Proposed Opinion and Judgment, the Tribunal found that there is no requirement in the Act as to when the rescission must be accomplished, and granted the petitioner the full Michigan PRE for the tax years in question.

The respondent filed an exception to the Tribunal's Proposed Opinion and Judgment (POJ), repeating its argument that the petitioner was not entitled to a PRE for the tax years at issue because the Illinois PRE was not rescinded before the April 27, 2016 denial. The Tribunal disagreed and adopted its Proposed Opinion and Judgment as its final decision. In its Final Opinion and Judgment, the Tribunal stated, "The POJ highlights the fact that there is no specification in the statute as to when the rescission must be accomplished... It simply states

that a homeowner is not entitled to an exemption if a foreign exemption has not been rescinded."

Based on rules of statutory interpretation, the Tribunal stated, "Consequently, 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."

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

House Bill 4335 (H-1)

The bill would tend to increase local school district operating revenue and reduce the State cost of the foundation allowance by a minimal amount. If penalties were assessed pursuant to the bill, State and local revenue would increase. The bill would eliminate the possibility that a homeowner could claim a Michigan principal residence exemption by retroactively rescinding a similar exemption or other property tax benefit on property in another state. To the extent that the bill prohibited eligibility for Michigan's principal residence exemption for a property owner with a residence in another state (who had not properly rescinded the out-of-State exemption), local school district operating millage revenue would increase, and, in most cases, the State cost of the foundation allowance would decline. If a penalty were assessed pursuant to the authority in the bill, the revenue from the penalty would be distributed according to a statutory formula that allocates revenue among the Department of Treasury, the local tax collecting unit, and the county where the property is located in varying proportions depending on which local unit of government denied the exemption.

House Bill 4336 (H-1)

The bill would have no fiscal impact on the State and could have a small negative fiscal impact on local government. Any increase in misdemeanor arrests and convictions could increase resource demands on law enforcement, court systems, and community supervision. Any associated increase in fine revenue would increase funding to public libraries.

Fiscal Analyst: Ryan Bergan
Elizabeth Pratt

SAS\S1718\s4335sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.