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DEFER SENIOR TAXES

House Bill 4090 (Substitute H-1)
First Analysis (5-5-98)

Sponsor: Rep. Ilona Varga
Committee: Tax Policy

THE APPARENT PROBLEM:

One of the criticisms of the property tax system is that elderly homeowners who fail to pay their property taxes, whether due to a lack of funds or due to confusion or carelessness, can lose their homes even though they might have far more equity in the property than they owe in taxes. If property owners fail to pay property taxes, their property can go to a tax sale, and they can lose their homes, or be forced to pay premiums to private investors who pay off the taxes (See ***BACKGROUND INFORMATION***). Critics say that many seniors did not benefit directly from Proposal A (the 1994 property tax reduction/school finance proposal) because the reduction in property taxes translated into a dollar for dollar reduction in property tax credits (which many seniors receive through the so-called circuit breaker). At the same time, seniors have felt the impact of the two cent sales tax increase. Legislation has been introduced that would allow for the deferral of property taxes for seniors whose home equity exceeds the taxes due.

THE CONTENT OF THE BILL:

The bill would amend the General Property Tax Act to permit the deferral of property taxes for low-income senior citizen homeowners. The delinquent taxes on the homesteads of those who qualify would be withheld from the annual tax lien sale upon request. If taxes had already been sold to a private buyer or had been bid off to the state, the property would not be subject to the usual subsequent proceedings. Counties would be reimbursed by the state. Before a homestead could be withheld from the sale, the state treasurer would have to deliver to the county treasurer an amount equal to the taxes, interest, and penalty that would otherwise be collectable at the sale from which the property was excluded. (Note: Local units would already have been compensated for the lost taxes by the county out of a county revolving fund for delinquent taxes.) Deferred taxes on a homestead would be limited to 80 percent of the owner's equity. Overall, deferred taxes in a county could not exceed two percent of the delinquent taxes in all taxing units in the county in that year.

The bill would apply to a senior citizen with a household income in the immediately preceding calendar year under 187.5 percent of the federal poverty level for two persons or for the number of persons in the household, whichever is greater. [Staff to the House Tax Policy Committee says this equals $19,900.] It would also apply to an adult in need of protective services. To qualify, a person would have to have applied for and assigned to the state all homestead property tax credits claimable during the period taxes are deferred. The term "senior citizen" would refer to a person 65 years of age or older and would include the unremarried surviving spouse of a person 65 years of age or older at the time of death. The bill would define a "homestead" as a dwelling or unit in a multiple-unit dwelling subject to property taxes that is owned and occupied as a principal residence by the owner of the dwelling unit, including all unoccupied contiguous property not classified as commercial, industrial, residential, or timber cutover.

The application for the withholding of property from sale would be made upon an affidavit to the county treasurer, who would forward the affidavit to the state treasurer for a determination of eligibility. The affidavit would have to identify any mortgagee of the property. If the state treasurer notified the county treasurer that a person was qualified and delivered the required payment no later than the Tuesday before the sale, the county treasurer would withhold the property from the sale. The state treasurer would have to notify any mortgagee that a property owner qualified for the tax deferral.

In the event taxes had already been sold or bid off, an owner would have to apply to the treasury department to halt any subsequent proceedings. If the applicant qualified, the department would notify the county treasurer and any holder of a tax sale certificate or tax deed of its finding. (Tax purchasers would be "conclusively presumed" to know without notice that any purchase is made subject to the provisions of this bill. However, if taxes were deferred, a purchaser could redeem the tax sale certificate or tax deed from the state treasurer for the purchase price.) If property of a qualified owner had been conveyed to the state, the state treasurer would issue a certificate canceling the deed and record the certificate with the county register of deeds. In such cases, taxes and special assessments that otherwise would have been canceled would not be canceled or omitted from the tax roll.

Taxes would be deferred without penalty and would bear interest of three-quarters of one percent per month (that is, nine percent annually). Only taxes that had been advertised for sale could be deferred; the deferral of subsequent taxes would require additional applications. A deferment would end when a person no longer qualified; one year after a qualified owner's death; or when any part of a homestead was conveyed or transferred or the owner entered a contract to sell the homestead. The bill also says the death of a spouse would not terminate a deferment of taxes on a homestead owned by a husband and wife unless the surviving spouse remarried. The treasury department would be required to verify annually that a person remained qualified and still lived in the property, and would be required to secure assignments to the state of homestead property tax credit, income tax refunds, and the proceeds from property and casualty insurance on the property sufficient to pay the amount of the lien. The state would have to pay for insurance if the property owner did not and add that amount to the lien. Taxes so deferred would be a lien against the property and take precedence over other liens to the same extent as if the taxes were not deferred.

[Note: The bill as currently written would not apply to taxes returned delinquent before March 1, 1992, or after February 28, 1996. For taxes returned delinquent before March 1, 1993, however, an application for deferment could not be made unless the redemption period had expired or the taxes had been paid (by someone other than the owner) through the issuance of a certificate of sale or a tax deed. This bill is much the same as House Bill 4001 of 1993; the same dates are found in that bill and would appear to be in need of updating five years later.]

The bill also would require that tax sale advertising include the street address of parcels when available.

MCL 211.70b

BACKGROUND INFORMATION:

Property taxes not paid by March 1 of the year after they are levied are declared delinquent, and most are turned over to county treasurers for collection. (County revolving funds can be established to disburse money to cover revenue lost by local governments due to tax delinquencies.) If taxes remain delinquent after three years, they are put up for "sale" in May, at which time tax lien investors can pay the taxes, along with fees and interest, and gain the right to collect a premium from property owners who want to reclaim or "redeem" their property. (For example, taxes due in 1995 and returned as delinquent in March of 1995 would be put up for "sale" in May of 1998.)

The sale is conducted by the county treasurer, and the property available is advertised in a newspaper circulating in the county. According to tax specialists, the sale is competitive and tax liens are sold to those who will pay the accumulated taxes and take the least undivided interest in the premises. Taxes not bought by investors are "bid off" to the state, and the property can be redeemed during the following year for all outstanding taxes and 15 percent interest. Before the state can acquire or sell the property, according to tax officials, property owners must be given an additional six months to pay all delinquent taxes and special assessments and then, the treasury department must give all those with an interest in the property notice and an opportunity for a hearing (called a "Dow" hearing, after the court case that led to the procedure). After the hearing, redemption of the property is permitted for another 30 days. At that point, the Department of Natural Resources can attempt to sell the property.

If investors do buy taxes, they must allow owners to redeem the property during the next year for the price of the taxes and 15 percent annual interest from the date of the sale to the date of redemption. If the property is not redeemed during that period, the tax lien investor is issued a "tax deed" and can send a demand for payment of taxes plus a 50 percent penalty from all those with a recorded interest in the property. (Notice must be served within five years after the issuance of the tax deed.) A copy of the notice must also be sent to the county social services department if residential property is involved, and the local department may (but is not required to) investigate the situation. If the taxes and penalty are not paid within the six months after notice is served, tax experts say, the tax lien buyer can become the owner of the property and can evict anyone occupying the property. (Tax buyers have testified that they are not as a rule interested in acquiring property but buy taxes as an investment and thus are interested in having property owners redeem the property. Their value to the process, they say, is in paying much needed property taxes to governments earlier than would otherwise be the case.)

FISCAL IMPLICATIONS:

The House Fiscal Agency points out that the state would compensate local governments for any revenue loss and would receive the payments when the tax deferral ended. As a result, "there would be no direct revenue losses from the bill but [it] would impose cash-flow borrowing costs of an indeterminate amount." (HFA fiscal noted dated 4-28-98)

ARGUMENTS:

For:

Senior citizens should not lose their homes because they do not pay their property taxes, particularly when they have more equity in their property than they owe in taxes. They should not have to face the confusing tax sale process that delinquent taxes are subject to, a process that can lead to homeowners being forced to "redeem" their property to private investors who have paid the taxes at the county tax sale or even losing their homes to private tax investors. This bill aims at protecting low and moderate income seniors by allowing them to defer taxes, in an amount up to 80 percent of the equity in their homes, and prevent property from going into the delinquency and tax foreclosure process. Interest will accumulate on deferred taxes, so this is not a "free ride." Any tax credits due from the state would be applied to the bill. Local units will be reimbursed by the state. The state would be reimbursed upon the sale of the property or the death of the homeowner. A cap on the total of taxes that can be deferred in a county is intended to protect the sale of notes for the delinquent tax revolving funds of the counties. This is a practical, humane approach to this problem.

Response:

While it is terrible for elderly persons to lose their homes because they cannot pay their taxes, the suffering is just as great for younger people in the same circumstances, such as struggling young families and downsized middle-age people who have suffered reductions in income.

Against:

A number of concerns have been raised about the approach taken in this bill.

-- Some people doubt that this problem is very extensive and think there may be better solutions to whatever problem does exist. Sometimes seniors get into trouble with their property taxes because they do not send in a claim for the homestead property tax credit for which they are eligible or do not avail themselves of the opportunity to go to the local board of review to claim a poverty or hardship exemption. Perhaps a better approach would be to educate low-income seniors about the availability of these other mechanisms.

-- The bill requires that homeowners apply to the county treasurer for the deferral. But this could leave out the most vulnerable homeowners, those least likely to be aware that this program was available or least likely to have the wherewithal to file an application.

-- The bill imposes an income test for tax deferments, not an asset test. Some homeowners might qualify despite having substantial assets while those with incomes slightly above the threshold but with few assets would not qualify. Is this wise? Further, the deferral would still apply if the home was owned by a senior but also occupied by well-off relatives, such as a sibling or grown child.

-- Given that there is a cap on the total amount of taxes that can be deferred in a county, how would it be determined who gets a deferment if there are more applicants than deferments available?

Response:

Since this is a tax deferral program and since taxes will eventually be paid with interest, there would appear little incentive for abuses of the program.

POSITIONS:

The Michigan Association of County Treasurers has no official position at this time. (5-1-98)

The Department of Treasury has indicated its opposition to the bill. (4-29-98)

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