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BILL ANALYSIS

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Senate Bill 25 (Substitute S-3 as passed by the Senate) *(enacted version)*
Sponsor: Senator Dave Hildenbrand
Committee: Finance

Date Completed: 5-8-13

RATIONALE

Under the General Property Tax Act, an owner of a principal residence may file an affidavit to claim an exemption from the tax levied by a local school district for school operating purposes. If the exemption does not appear on the tax roll, the owner may file an appeal with the local board of review in the year that the exemption was claimed or the following three years. If the tax roll error pertains to an exemption omission older than three years, the Act does not provide an appeals process for the owner.

The Act also permits the Department of Treasury to review the validity of exemptions for the current and last three calendar years. If the Department finds that property is not the principal residence of the owner claiming the exemption, the Department must send a notice of denial to the local tax collecting unit and the owner. Depending on whether the local tax collecting unit or the county possesses the tax roll, the local treasurer or the county treasurer must issue a corrected tax bill for any additional taxes owed as a result of the denial, including interest.

It has been suggested that the Act should allow review of exemptions beyond the three-year limit when, as a result of an error on the part of the local tax collecting unit, no exemption appears on the tax roll.

CONTENT

The bill would amend the General Property Tax Act to provide property owners with a process to request an exemption from the Department of Treasury for any year that a principal residence exemption was erroneously not included on the tax roll, and would allow the Department to deny exemptions for the current and three preceding years that were erroneously included in the tax roll.

Tax Exemption Request Requirements

The bill would allow owners to file a request for exemption with the Department of Treasury for any tax year a principal exemption was not on the tax roll, under the conditions described below.

First, within the three years before the tax roll did not include the exemption, an owner would have to have owned and occupied a principal residence within the time period prescribed in the Act for filing an affidavit claiming the exemption. Based on these deadlines, the owner would have to have owned and occupied the principal residence as follows:

-- On or before May 1 of the tax year at issue with respect to property taxes levied before January 1, 2012.
-- On or before June 1 immediately before the summer tax levy at issue with respect to summer property taxes levied after December 31, 2011.
-- On or before November 1 immediately before the winter tax levy at issue with respect to winter property taxes levied after December 31, 2011.

Second, the absence of an exemption would have to be a result of a qualified error on part of the local tax collecting unit.

(The Act defines "principal residence" as the one place where an owner has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that will continue as a principal residence until another principal residence is established.

The Act's definition of "qualified error" includes an error regarding the correct taxable status of the real property being assessed; a clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessment of taxes; a mutual mistake of fact; and other types of errors.)

Tax Exemption Request Process

The request allowed by the bill would have to: 1) be in a form that the Department prescribed, and 2) include all documentation that the Department considered necessary to consider the request, and to correct any affected official records.

If the Department denied an exemption request, the owner would be responsible for all related costs, as determined by the Department.

If the Department granted an exemption request, and the exemption resulted in an overpayment of the tax in the years at issue, the Department would have to give notice of that exemption to the county treasurer, the local tax collecting unit treasurer, and other affected officials. A rebate, including any interest paid by the owner, would have to be paid to the owner within 30 days of receipt of the notice. The treasurer in possession of the appropriate tax roll could deduct the rebate from the appropriate tax collecting unit's subsequent distribution of taxes, and would have to bill the appropriate tax collecting unit for its share of the taxes rebated. The tax collecting unit responsible for the qualified error would have to reimburse affected local officials for any costs of complying with this process. A rebate would be without interest.

Retroactive Denial of Exemptions

The bill would allow the Department to deny a principal residence exemption that was improperly included on the tax roll within the last three years because of a local tax collecting unit's qualified error. The owner would have to be issued a corrected or supplemental tax bill in accordance with the existing process for denials of exemptions by the Department, with the exception that interest would not accrue until 60 days after the new tax bill was issued. The local tax collecting unit responsible for the error would have to reimburse each county treasurer and other affected local officials for any costs of complying with the denial.

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ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

If a local tax collecting unit fails to include a principal residence exemption when a homeowner properly files an exemption affidavit, the owner should have the opportunity to fix the error outside of the three-year window provided for in the Act. This bill speaks to the idea that in cases of government error, the error should be corrected in favor of the taxpayer.

Reportedly, a resident who purchased a home and properly submitted an exemption affidavit in 2000 discovered about eight years later that an exemption was not included on the tax roll. The local tax collecting unit evidently admitted that it had erred and failed to include the exemption for the tax year 2000 and forward. The resident appealed but was unable to receive a refund for 2000 through 2004 due to the three-year appeal limitation in the Act. The amount overpaid for those years was reportedly almost $5,000. Unless the Act is amended to allow for exemption errors beyond the current three-year limit, the resident and potentially others in a similar situation will suffer for the local tax collecting unit's error.

Response: Many scenarios can lead to assessment mistakes, so the State limited the time frame for correcting them to the three years within the Act. Every homeowner receives tax bills or statements each year indicating 1) whether a principal residence exemption applies, and 2) that the homeowner should review his or her records for accuracy. The system is designed to provide notice to a homeowner multiple times throughout the year to prevent errors, and allow taxpayers to respond within a reasonable time frame.

Opposing Argument

Under the bill, homeowners could potentially pursue principal residence exemptions decades after the local tax collecting unit made an error. Without some limitation, old tax rolls would always be subject to some level of uncertainty.

Opposing Argument

Paying property taxes can result in benefits to the homeowner. For example, itemizations on Federal tax returns can include property taxes. Also, homeowners might have received another principal residence exemption, or an equivalent exemption, in other areas, or other states, during the years in question. The unlimited time frame under the bill could make it difficult or impossible to verify whether an exemption was proper. Allowing homeowners to request principal residence exemption determinations for any year could result in homeowners' "double dipping" and receiving two or more benefits when they are entitled to only one.

Response: With regard to income taxes, the impact of any collateral tax benefits to paying property taxes is limited to the Federal level.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill would increase local unit expenditure by an unknown and likely minimal amount. Under current law, the owners of property that would be affected by the bill must pay local school operating mills levied on nonhomestead property (property that is not a principal residence). Under the bill, if they successfully appealed, affected taxpayers would have this money refunded and the cost would ultimately affect the local unit in which they resided. Furthermore, local units that committed qualified errors affected by the bill also would be required to reimburse county treasurers and other local units affected by the error.

In cases where property owners would be granted a refund as a result of receiving a principal residence exemption, local school districts would be compensated for any revenue loss through increased School Aid Fund expenditures, which are required in order to maintain per-pupil funding guarantees. As a result, the bill would increase School Aid Fund expenditures by an unknown and likely minimal amount.

The bill also would have an additional indeterminate effect on State revenue and/or expenditures. While the bill does not specify the parties responsible for legal costs in the event an appeal was successful, the bill does indicate that if an appeal were denied, the taxpayer would be responsible for costs of the appeal. Any impact on State revenue or expenditure from legal costs is expected to be negligible.

Fiscal Analyst: David Zin

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