Peter A. Cooper *Legislative Service Commission*

H.B. 536

124th General Assembly
(As Introduced)

Reps. Kilbane, Buehrer, McGregor, Hartnett, Patton, Flannery, Sullivan, Jerse, Otterman, Husted, Oakar, Carano, Latta, Faber, D. Miller, Rhine, Young, Schaffer, Perry, Krupinski, Allen, Roman

BILL SUMMARY

- Authorizes boards of county commissioners to offer qualifying homeowners the option of deferring payment of any increases in residential property taxes.

- To qualify for deferral, a homeowner must be elderly or disabled.

- The deferred taxes become payable once the homeowner moves, dies, or chooses to pay the taxes, or once the taxes amount to 80% of the homeowner's equity.

- In the case of a homeowner's death, if the surviving spouse does not qualify for deferral in their own right, taxes already deferred may continue to be deferred.

- Local taxing districts are held harmless by receiving proceeds from bonds issued by the county secured by payments of deferred taxes as those taxes fall due.

- Interest accrues on deferred taxes at the rate required to cover the county's borrowing costs.

CONTENT AND OPERATION

Deferring payment of residential property taxes--generally

The bill authorizes boards of county commissioners to adopt a resolution allowing elderly or disabled homeowners to defer paying increases in property taxes on their homes. The resolution also must provide for county securities to be issued to provide funds to reimburse taxing authorities for the deferred taxes. As deferred taxes are paid, they are used to cover debt charges on the securities.

Eligibility

(R.C. 323.16(A), (B), (C), and (G))

Eligibility criteria for the deferral option are the same as eligibility criteria for the existing homestead exemption, except that there is no income limitation on eligibility for the deferral option. A person must own and live in the home for which taxes are deferred, must be domiciled in Ohio, and must be either (1) sixty-five years of age or older, (2) permanently and totally disabled, as certified by a physician or governmental agency, or (3) the widow or widower of a person who was deferring taxes at the time of death, as long as the widow or widower was between 59 and 64 years of age at the time of the deceased spouse's death.

As with the homestead exemption, ownership includes not only holding the title to the home, but also life tenancy, tenancy with right of survivorship, tenancy in common, possession under a land contract (i.e., an installment payment agreement where the title does not transfer to the purchaser until the payments are complete), and being the creator of a revocable living trust that holds the title to the home. The home must not have been acquired from a related person (except a spouse) for the purpose of qualifying for deferral. The home may be a single-family home, a unit in a multiple unit building (e.g., a condominium or duplex), or a manufactured or mobile home qualifying to be taxed in the same manner as real property (i.e., it is permanently fixed to a foundation and satisfies certain other criteria). Only taxes charged on the home and on land surrounding the home, up to one acre, may be deferred.

To defer taxes, eligible homeowners must apply to the county auditor as described below under "***Application***."

Deferrable amount

(R.C. 323.16(D), (E), and (F); 323.161(A) and (E))

The maximum amount that may be deferred is the increase in taxes from the preceding year to the current year ("deferrable taxes"). The cause for the increase in tax (e.g., higher tax rate, reassessment, or new home addition) does not affect whether it is deferrable. Homeowners may defer less than the maximum amount by paying some of the increase. Homeowners may not defer unpaid or delinquent taxes from prior years or taxes accruing before the deferral begins to apply. The deferral begins to apply to taxes payable for the year following the year in which the board of commissioners adopts the resolution (or a later year of the board's choosing). For example, if the resolution is adopted in 2003, a qualifying homeowner may defer any increase in tax year 2004 taxes, which usually are payable early in 2005.

If a homeowner pays property taxes through another person (such as a bank or mortgage company), that other person is prohibited from billing the homeowner for deferrable taxes.

Example

In 2003, a board of county commissioners adopts a resolution permitting deferral beginning with tax year 2004 taxes. A qualifying homeowner's property tax bills for tax years 2003, 2004, and 2005 are $985, $1,075, and $1,215, respectively. The homeowner does not owe any unpaid or delinquent taxes.

When tax year 2004 taxes fall due, the homeowner may defer up to $90 ($1,075 - $985). Likewise, when tax year 2005 taxes fall due, the homeowner may defer up to $140 ($1,215 - $1,075).

Application

(R.C. 323.161(B), (C), (D), (E), and (G) and 323.99)

To qualify for deferral, eligible homeowners must apply to the county auditor in substantially the same manner as for the homestead exemption. Application forms would be substantially similar to the application forms for the homestead exemption, but would have to include a statement indicating that interest will accrue on taxes that are deferred, and that taxes that are deferred, together with interest and other charges, could become a lien against the homestead and thereby reduce the owner's equity in the homestead upon termination of the deferral. (Provisions governing the accrual of interest and other charges, as well as the termination of deferrals, are explained below.) Applicants would have to sign a statement acknowledging that they have read and understood the terms of the deferral; the signature and acknowledgment would have to be witnessed by another person, who also would have to sign the application.

An application may not be denied solely because there are unpaid taxes charged against the home.

The bill prescribes an appeal process for homeowners whose application is denied. The county auditor must notify the applicant of the reason for the denial, of the applicant's right of appeal, and of the manner of appealing. The appeal is made in the form of a complaint to the county board of revision (the body overseeing real property assessments, composed of the county auditor, county treasurer, and president of the board of county commissioners). The complaint must be filed before the first-half installment of property taxes is due (normally in January).

The deferral of taxes, once applied for and received, continues until it is terminated (see below, under "***Termination of deferral***"). Homeowners do not have to reapply every year to continue deferring taxes as long as they have not been rendered ineligible by a change in their circumstances.

Applicants who are found to have made false statements on an application or to have failed to notify the county auditor of changes in eligibility status would be guilty of a misdemeanor of the fourth degree. (This penalty is identical to the penalty for analogous violations under the homestead exemption law.) Moreover, if a homeowner defers taxes for any year when they are not qualified for the deferral, the homeowner is subject to a 10% penalty and an interest charge for the improperly deferred taxes as if the taxes were paid late.

Interest on deferred taxes

(R.C. 323.163 and 323.166(A)(2))

Interest would accrue on taxes while they are being deferred. The interest would begin to accrue from January 1 of the year following the year the homeowner elects to defer taxes, and continue to accrue until the last day of the month ending before the month in which the deferred sum must be paid. For example, if a homeowner elects to defer payment beginning with tax year 2003 taxes, and the deferred amount is paid in August 2010, interest accrues on any deferred amount from January 1, 2004 to July 31, 2010.

The rate of interest would be determined by the county auditor before the end of each year. The rate would have to equal, at the least, the rate of interest on the securities outstanding during the following year (see "***Securities***," below). If more than one issuance of securities will be outstanding, the rate is based on the weighted average of the various issuances, weighted according to the principal amount of each issuance.

Termination of deferral

(R.C. 323.165(A) and (B) and 323.167)

A homeowner's deferral of taxes would be terminated at the end of the year in which any of the following events occurs:

(1) The homeowner dies and is not survived by a spouse who qualifies for deferral;

(2) The homeowner ceases to own and occupy the residence as a qualifying homestead (e.g., the owner moves or transfers title);

(3) The cumulative amount of taxes that the homeowner has deferred (including accrued interest) exceeds 80% of the residence's appraised market value as shown on the current tax list.

(4) The homeowner terminates the deferral by filing a written notice with the county auditor.

Recoupment charge

(R.C. 323.166)

When a deferral is terminated because of (1) or (2) above, the taxes that were deferred, along with interest that accrued while payment of those taxes was deferred, would be collected through the levy of a recoupment charge. The recoupment charge would be added to the next tax list prepared by the auditor, and would become payable when taxes on that list are due. If the deferred taxes are not paid when due, the same penalties and late interest charges would apply as apply to current unpaid taxes. The recoupment charge would constitute a lien against the residence until the charge was paid.

If the deferral is terminated because of (3) or (4) above, the recoupment charge would not have to be paid until the homeowner dies or ceases to own the residence as a qualifying homestead. However, the homeowner would have to resume paying taxes on a current basis until the homeowner once again qualifies and applies for deferral.

Hold harmless for taxing districts; securities

(R.C. 133.07(D), 133.62, 323.161(A), and 323.164)

The resolution permitting tax deferral also must provide for securities to be issued by the county to raise money to replace revenue that will not be collected because of the deferred payment of taxes.

The securities would not be general obligation bonds.[1] Instead, the securities are to be secured solely by payments of deferred taxes as the deferred taxes fall due. Ultimately, the securities are secured by the lien that attaches to homes for which taxes have been deferred (see "***Recoupment charge***," above). As

[1] General obligation bonds are secured by a promise of the issuing authority to levy property taxes, if necessary, to avoid defaulting on the bonds.

deferred taxes, including interest, are paid, they are to be deposited into a county fund to be known as the Homestead Tax Deferral Bond Retirement Fund. Money in this fund is to be used to repay the debt charges on the securities. All interest and investment earnings on money in the fund is to be credited to the fund.

Income arising from holding the securities is exempted from Ohio state and local income taxes. The securities are not to be considered indebtedness of the county for the purpose of determining whether a county has reached statutory limits on its voted or unvoted indebtedness. The securities are to be issued in accordance with, and subject to the limitations of, the uniform law governing local government securities (R.C. Chapter 133.). They have a maximum maturity of 25 years. Notes may be issued in anticipation of the issuance of the securities.

The proceeds from the securities are to be deposited into a fund, to be known as the Homestead Tax Deferral Fund, and used to reimburse taxing districts in the county for taxes payable to the districts but deferred by homeowners. The reimbursement payments are to be made at each semiannual tax settlement. All interest and investment earnings accruing to money held in the fund are to be credited to the fund.

Continuation of deferral for qualifying surviving spouses

(R.C. 323.165(B))

If a qualifying homeowner dies and the title to the homestead passes to a surviving spouse who otherwise qualifies for deferral, the surviving spouse may continue to defer paying taxes until one of the terminating events enumerated above occurs with respect to the surviving spouse. Payment of the taxes previously deferred by the deceased spouse also could be deferred until a terminating event occurs with respect to the surviving spouse. If the surviving spouse does not qualify for the deferral, the taxes that were previously deferred could continue to be deferred at the option of the surviving spouse, but taxes accruing after passage of title would have to be paid until the surviving spouse qualifies for deferral on his or her own behalf.

If the surviving spouse's claim to a homestead's title is contingent (e.g., while the decedent's estate is settled), taxes that were deferred by the decedent, as well as taxes accruing after the decedent's death, may continue to be deferred until the surviving spouse's claim is determined. (The executor or administrator of the estate could apply for a continuation of the deferral until the survivor's claim is determined.) If title to the residence does not pass to the surviving spouse, the deferral terminates at the end of the year in which the decedent died, and the taxes deferred since the year following the year the decedent died would have to be collected. The county auditor would have to correct the tax lists accordingly. But taxes deferred by the decedent would not be payable until the surviving spouse dies, ceases to own and occupy the residence, or terminates the deferral.

Notice of terminating event to county auditor

(R.C. 323.165(C))

If the title to a residence upon which taxes have been deferred passes to another person, either by the owner's conveyance, by operation of law, or by a previously executed legal instrument, the owner (or the responsible executor, administrator, guardian, or trustee) intending to convey the title or having knowledge of its passage would have to notify the county auditor. Likewise, if it is determined that a once contingent interest in the residence has not passed to the surviving spouse, the responsible executor or administrator would have to notify the county auditor.

Upon being notified of the passage of the title (or otherwise becoming aware of its passage), the county auditor would have to demand that the person conveying the residence pay the auditor the amount of the deferred taxes, plus any accrued interest. (The same demand could be made of the responsible executor, administrator, guardian, trustee, or of any person who is known to be scheduled to disburse money in connection with the closing of a sale of the residence.) If that person does not pay the amount demanded, that amount would stand as a lien against the residence in the hands of the new owner until the amount is paid, and the person upon whom the demand was made would be personally liable for that amount. (If the person conveying the residence has made the affirmations noted below under "***Affirmations when residence is conveyed***," the county auditor would not have to make the demand for payment.)

Prepayment of deferred taxes at homeowner's option

(R.C. 323.167)

A homeowner who has elected to defer payment of tax increases would have the option of paying all or a portion of taxes that have been deferred. The interest that has accrued to the deferred taxes, along with the other charges, could be collected with the prepayment, added to the homeowner's next tax bill, or added to any deferred taxes that remain outstanding, at the homeowner's discretion. The county treasurer would have to give a receipt to the person reflecting the prepayment.

Affirmations when residence is conveyed

(R.C. 319.202)

The bill requires certain affirmations to be made when any residence is sold or otherwise transferred. If these affirmations are not made, the county auditor is prohibited from endorsing the transfer, and the county recorder is not required to accept the deed of transfer for recording. The affirmations are intended to require sellers and purchasers to explicitly acknowledge to the county auditor and to one another whether taxes have been deferred on the residence and, if so, whether the seller has paid the deferred taxes or the recoupment charge before selling the residence. Similar affirmations are required under current law to indicate whether sellers and purchasers have acknowledged and accounted for favorable tax treatment under the homestead exemption or the current agricultural use valuation.

The affirmation must be in the form of a statement affirming either of the following:

(1) That the purchaser has asked the seller (or the seller's representative) whether, to the best of the seller's knowledge, taxes have been deferred on the residence and whether the deferred taxes have been recouped, and the seller (or representative) indicated either that taxes were not deferred or that taxes were deferred but have been paid;

(2) That, to the best of the seller's knowledge, taxes have been deferred but have not been paid, that the residence is therefore subject to the recoupment charge, and that the seller and purchaser have accounted for the outstanding recoupment charge to their mutual satisfaction.

Administration

Generally, county auditors would have to administer the tax deferral law by providing application forms, accepting completed applications and determining eligibility, computing the amount of taxes that may be deferred, determining recoupment charges, and creating and maintaining a "deferred tax list."

HISTORY

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Introduced	03-12-02	p. 1513

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