Bill Analysis

Andre Imbrogno *Legislative Service Commission*

S.B. 198

126th General Assembly
(As Introduced)

Sens. Schuler, Miller, Cates

BILL SUMMARY

- Permits elderly and disabled homeowners who are eligible for the homestead exemption to defer payment of property taxes.
- Provides a state subsidy to local governments to compensate them for deferred taxes, and reimburses the state out of eventual payments of deferred taxes.

CONTENT AND OPERATION

Generally, the bill allows persons qualifying for the homestead exemption to defer paying property taxes on their residences until they die, no longer live in the residence, fail to qualify for the homestead exemption, or choose to stop deferring taxes. Interest accrues on deferred taxes until the taxes are paid. Local taxing authorities receive a subsidy from the state to compensate them for the revenue loss, and the state is reimbursed as deferred taxes are eventually repaid.

Eligibility; application

(R.C. 323.153, 323.16, and 323.161(A); Section 3)

Any person who qualifies for the existing homestead exemption for aged and disabled homeowners is eligible to defer paying the person's entire tax bill: the person's annual income cannot exceed $25,400 (as calculated for homestead exemption purposes), and the person has to be either permanently and totally disabled (as certified by a physician), 65 years of age or older, or 60 years of age or older and the surviving spouse of a decedent who received the homestead exemption at the time of death. The deferral option also is available for manufactured homes and mobile homes that are taxed as real property. Taxes that are deferred are payable only as described below, and are not considered to be unpaid or delinquent or subject to collection. Taxes that are not deferred remain payable and subject to collection.

Eligible homeowners apply for the deferral by submitting an application form to the county auditor. An application cannot be disapproved solely because unpaid or delinquent taxes on the applicant's homestead are outstanding.

The deferral of taxes, once applied for and received, is not automatically continued each year: eligible homeowners have to reapply for the deferral each year. For this purpose, county auditors mail an application in January each year to each person who qualifies for the homestead exemption or who has previously deferred taxes.

Application forms are substantially similar to the application forms for the homestead exemption, but 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 have to sign a statement acknowledging that they have read and understood the terms of the deferral; the signature and acknowledgment have to be witnessed by another person, who also has to sign the application.

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 are guilty of a misdemeanor of the fourth degree (identical to the penalty for analogous violations under the homestead exemption law).

Termination of deferral

(R.C. 323.163(A))

The deferral of taxes terminates at the end of the year in which any of the following events occurs:

(1) The homeowner dies.

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

(3) The homeowner's income exceeds $25,400 (the maximum qualifying income for the homestead exemption as it may change from time to time).

(4) 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.

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

Recoupment charge

(R.C. 323.163, 323.164, and 5703.471)

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

If the deferral is terminated because of event (3), (4), or (5) above (see "***Termination of deferral***," above), the deferral continues and the recoupment charge does not have to be paid until the homeowner dies or stops owning the residence as a qualifying homestead. However, the homeowner has to resume paying taxes on a current basis until the homeowner once again qualifies for deferral.

The recoupment charge consists of three components in addition to the taxes that have been deferred: interest accruing to those taxes during the deferral period, a "recovery charge" to recover uncollectible deferrals, and a charge to cover administrative expenses. Each of these is explained below.

Interest on deferred taxes

(R.C. 113.25, 323.162, 323.164(A)(2), and 5703.471(A))

Interest accrues on taxes that have been deferred. The interest accrues from January 1 of the year following the year deferral is elected through the last day of the month preceding the month in which the recoupment charge must be paid. The interest accrues at a rate, to be determined by November 30 each year by the Treasurer of State, equal to the average rate of return on the state's total average investment portfolio during the 12-month period ending on the preceding September 30. The Treasurer of State certifies the rate to the Director of Budget and Management and to the Tax Commissioner; the Tax Commissioner makes the rate available to county auditors upon request. County auditors use the rates to compute the interest that has accrued to taxes that have been deferred.

Recovery charge

(R.C. 323.164(A)(4) and 5703.471(B))

A recovery charge is included in each recoupment charge in order to recover uncollectible recoupment charges. The Tax Commissioner computes the recovery charge annually on or before January 31 by estimating the percentage of all recoupment charges that have become uncollectible during the previous calendar year. The percentage is used to compute the recovery charge for recoupment charges levied during the following February through January. The recovery charge equals the percentage multiplied by the sum of the deferred taxes, the interest, and the administrative charge.

County treasurers are required to provide the Tax Commissioner with information the Commissioner needs to estimate the recoupment charges that have become uncollectible.

Administrative charge

(R.C. 323.156(B)(2) and 323.164(A)(3))

A charge equal to 2% of the amount of taxes a homeowner has deferred is included in the homeowner's recoupment charge to cover expenses incurred by county auditors and county treasurers in administering tax deferrals. An amount equal to 2% of all taxes deferred is paid from the state General Revenue Fund to each county's general fund to cover the county auditor's and county treasurer's expenses for administering deferred taxes. The state General Revenue Fund eventually is reimbursed for this payment through the 2% administrative charge paid by homeowners upon termination of their tax deferral.

Continuation of deferral for qualifying surviving spouses

(R.C. 323.163(B))

If a qualifying homeowner dies and title to the homestead passes to a surviving spouse who otherwise qualifies for tax deferral, the surviving spouse could continue to defer paying taxes until one of the events enumerated above occurs with respect to the surviving spouse. If the surviving spouse's claim to the homestead's title is contingent, and the surviving spouse otherwise qualifies for deferral, the executor or administrator of the deceased spouse's estate may apply to the county auditor to have the deferral continued on behalf of the surviving spouse, until the contingency is met and title passes to the surviving spouse. If, however, the contingency is not met, and title does not pass to the surviving spouse, the tax deferral is discontinued in the tax year following the year in which the deceased spouse died. The county auditor then corrects the taxes charged for each year during which the surviving spouse's claim was contingent, and makes corrections in the tax list and duplicate and in the deferred tax list (see below), as if the original tax deferral entries had been erroneous.

If a qualifying homeowner dies and title to the homestead does not pass to the surviving spouse, or if the surviving spouse does not qualify for tax deferral, the surviving spouse may elect to continue to defer taxes and interest thereon that had been deferred by the deceased spouse, until the surviving spouse dies, ceases to own and occupy the homestead, or terminates the deferral. The surviving spouse is not entitled, however, in such a case, to defer taxes on the homestead on the surviving spouse's own behalf.

Notice of terminating event to county auditor

(R.C. 323.163(C) and (D))

An owner, executor, administrator, guardian, or trustee is required to notify the county auditor upon having or acquiring direct knowledge of any of the following events:

(1) Formation of an intent to convey the homestead to another person.

(2) Title to the homestead passes to another person by operation of law or by operation of a previously executed instrument.

(3) It is determined that a surviving spouse is not becoming owner of the homestead.

Prepayment of deferred taxes at homeowner's option

(R.C. 323.165)

A homeowner who has elected to defer payment of taxes has the option of paying all or a portion of the taxes that have been deferred. The interest that has accrued to the deferred taxes, along with the other charges described above, are collected with the payment, 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 gives a receipt to the person paying the deferred taxes.

State subsidy to local taxing districts

(R.C. 135.90, 323.156(B), and 323.165)

The state compensates taxing districts for the reductions in revenue resulting from homeowners deferring payment of taxes. Semiannually, the county treasurer certifies to the Tax Commissioner the amount of taxes that have been deferred, and the Tax Commissioner arranges for payment of that amount to the county treasurer, who apportions the payment among the several taxing districts.

The compensation provided to taxing districts would be paid from a Tax Deferral Fund created by the bill. The Tax Deferral Fund would consist of recoupment charges that have been paid and payments made by homeowners who have elected to pay before termination. If at any time the amount in the Tax Deferral Fund is not enough to cover the reimbursements to taxing districts, the Treasurer of State covers the deficiency by paying the deficiency from state funds available for investment. The Treasurer of State's coverage would be represented by a note, prepared and offered by the Director of Budget and Management, that promises to pay the Treasurer of State for the coverage. The note bears interest at the average rate of return on the state's investment portfolio for as long as it is outstanding. The note's maturity is determined by the Director on the basis of the Director's estimate of the future flow of recoupment charges into the Tax Deferral Fund; however, the Director may call the note at any time before the stated maturity.

Although the bill requires the Treasurer of State to cover any deficiency in the Tax Deferral Fund, the Treasurer of State could not deposit more than 3% of the state's total investment portfolio in the Tax Deferral Fund.

The notes do not represent security interests in the homesteads of homeowners who have deferred taxes. In other words, if the state should default on the notes, the homeowners' homesteads would not be subject to any recovery proceedings.

Affirmations when residence is conveyed

(R.C. 319.202(C) and 323.163(D))

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 explicitly to 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 is to be in the form of a statement affirming either of the following:

(1) That the purchaser (or purchaser's representative) has asked the seller whether, to the best of the seller's knowledge, taxes have been deferred on the residence and whether, to the best of the seller's knowledge, the deferred taxes have been recouped, and the seller 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 considered and accounted for the outstanding recoupment charge to their mutual satisfaction.

If the county auditor is notified, or otherwise determines, that the homestead has been conveyed in a manner that does not include the affirmations described above, the auditor is required to demand of the grantor, of the "responsible" executor, administrator, guardian, or trustee, or of any person who is known to be responsible for disbursing money in connection with the closing of a sale of the homestead, an amount equal to the recoupment charge (explained above) that would be levied against the homestead. If the amount of the demand is not paid, it becomes a lien against the homestead, for which the purchaser and any successor owners are liable, regardless of notice or knowledge. Moreover, a person upon whom the demand has been made, and who does not pay the amount of the demand out of the purchase money for the homestead, is personally liable for the amount. The auditor is required to certify this fact to the county prosecutor, and the prosecutor is required to bring a civil action against the person to recover the amount of the demand.

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, and determining recoupment charges.

Deferred tax list

(R.C. 323.162)

The county auditor compiles and maintains a deferred tax list of homesteads the taxes on which have been deferred. Opposite each homestead entered on the list, the auditor enters:

(1) The amount of taxes deferred for the current year.

(2) The cumulative amount of taxes that have been deferred for the current and for each prior year.

(3) The interest that will have accrued on the taxes deferred for the current year.

(4) The cumulative interest that has accrued on the deferred taxes.

In addition to this information, the deferred tax list must contain any other information the Tax Commissioner requires to ensure proper administration of deferred taxes.

Rule-making

(R.C. 323.157)

The Tax Commissioner is required to adopt administrative rules governing the tax deferral program.

Effective date

As currently drafted, the bill would apply to tax years 2005 and thereafter (i.e., taxes payable in early 2006 and thereafter could be deferred). The bill provides that on or before September 30, 2005, county auditors have to mail tax deferral applications to each person currently receiving the homestead exemption to allow them the opportunity to apply for the tax deferral for tax year 2005. The bill will require amending to address the passage of those dates.

HISTORY

ACTION	DATE
Introduced	10-13-05

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