Bill Analysis

Megan Cummiskey *Legislative Service Commission*

H.B. 59

127th General Assembly
(As Introduced)

Reps. Combs, Peterson, Hughes, Lundy, Harwood

BILL SUMMARY

- Provides qualifying homeowners, 65 years of age or older, the option of deferring payment of increases in residential property taxes.
- The deferred taxes become payable once the homeowner moves, dies, or chooses to pay the taxes.
- In the case of a homeowner's death, if the surviving spouse does not qualify for deferral in his or her own right, taxes already deferred may continue to be deferred.
- Provides for recoupment and repayment of the deferred taxes and permits the imposition of penalties and interest in certain cases.
- Requires an additional affirmation with respect to the conveyance value statement that must be filed with the county auditor when title is transferred to property that addresses the deferral status and the recoupment/repayment status of any deferred taxes.

CONTENT AND OPERATION

Deferring payment of residential property taxes--generally

The bill allows elderly homeowners to defer paying increases in property taxes on their homes.

Eligibility

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

Eligibility criteria for the deferral option are the same as eligibility criteria for the existing homestead exemption, except that a person will not be eligible for

the deferral option based solely on being permanently and totally disabled. A person must own and live in the home for which taxes are deferred, must be domiciled in Ohio, and must be either (1) 65 years of age or older or (2) 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), being a mortgagor (a person who has title to the property but has pledged it as security for a debt, such as a loan to buy the property), 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. The deferral option is not available for units in a housing cooperative occupied (but not owned) as a home by a person domiciled in Ohio, even though the homestead exemption applies to such abodes. The bill also grants the Tax Commissioner authority to adopt rules to classify real property and manufactured and mobile homes as homesteads.

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) and 323.161(A) and (D))

The maximum amount that may be deferred is the increase in taxes from the tax year preceding the first tax year taxes were deferred under the bill pursuant to an application that has been in continuous effect until the current tax 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 all or a portion of deferrable taxes payable on the homestead for the year in which the application is approved and for each ensuing year until terminated.

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

A qualifying homeowner is approved for a deferral for tax year 2009. The homeowner's property tax bills for tax years 2008, 2009, and 2010 are $985, $1,075, and $1,215, respectively. The homeowner does not owe any unpaid or delinquent taxes.

When tax year 2009 taxes fall due, the homeowner may defer up to $90 ($1,075 - $985). Likewise, when tax year 2010 taxes fall due, the homeowner may defer up to $140 ($1,215 - $1,075).

Application

(R.C. 323.161(A), (C), and (F) and 323.99)

To qualify for deferral, eligible homeowners must file an application with the county auditor of the county in which the owner's homestead is located on a form or in a manner prescribed by the auditor. The application must be filed no later than the first Monday in June of the first tax year for which payment of the taxes is to be deferred. The application must not require more information than is necessary to establish the applicant's eligibility for the deferral. The application must include (1) an affirmation by the applicant that the homestead was not acquired from an individual, other the applicant's spouse, related by consanguinity or affinity for the purpose of qualifying for the deferral of taxes, (2) a statement that willfully falsifying information on the application in order to obtain a deferral of taxes, or failing to notify the county auditor of a change in ownership or occupancy of the homestead that has the effect of disqualifying the applicant for the deferral, may result in the recoupment of the deferred taxes and revocation of the right to defer taxes for a three-year period, and (3) an acknowledgement that the applicant has read and understands the statement described in (2) and space in which the applicant must sign the acknowledgement and in which another person must affirm by signature that the person witnessed the applicant's signature. Unless the acknowledgement is signed and witnessed, the auditor cannot approve the application.

The bill also criminalizes certain activities regarding the application and deferral. The bill prohibits persons from knowingly making a false statement for the purpose of obtaining the deferral. Owners are also prohibited from knowingly failing to notify the county auditor of changes in ownership or occupancy status

that disqualify the home for deferral. Anyone violating either of the prohibitions is guilty of committing a fourth-degree misdemeanor.

Approval or disapproval

Approval

(R.C. 323.161(B) and (C))

On or before the day the county auditor has completed the duties of calculating and levying real property taxes for the current year, the auditor must issue a certificate of deferral in triplicate for the homestead of each qualifying owner who has filed an application as prescribed above, except homesteads that are manufactured or mobile homes subject to the manufactured home tax. In the case of manufactured or mobile homes subject to the manufactured home tax, the county auditor must issue the certificate of deferral on or before the day the tax bill for the first half of the tax year is issued.

The certificate must state the amount of deferrable taxes and any other information the Tax Commissioner prescribes. Upon issuing the certificate, the county auditor must retain one copy and forward one copy and the original to the county treasurer. The auditor also must record the amount of deferrable taxes on the general tax list and duplicate of real and public utility property or on the manufactured home tax list, either as a margin entry or in an appropriate column of the list. The treasurer must retain the original and must forward the copy to the qualifying owner by ordinary mail or along with the tax bill.

The county auditor may not disapprove an application solely because unpaid or delinquent taxes stand charged against the applicant's homestead.

Disapproval

(R.C. 323.161(C))

If a county auditor does not approve an application, the auditor, not later than the first Monday of October, must notify the applicant in writing of the reason for the denial, of the applicant's right to appeal the action, and of the manner in which such an appeal may be taken. The applicant may appeal by filing a complaint with the county board of revision not later than the date of closing collection of the first half of real and public utility property taxes or manufactured home taxes. In spite of what existing law governing complaints over real and public utility property tax determinations requires, the complainant must pay the full amount of taxes due as otherwise required by law until the board of revision renders its decision. For purposes of the appeal, "real property" must be construed

to include a manufactured or mobile home that constitutes a homestead under the bill.

Effect of approval

(R.C. 323.161(D))

For each applicant for whom the county auditor has approved an application, the auditor must enter the amount of deferrable taxes upon the deferred tax list (see "***Deferred tax list***" below) and enter a notation on the tax list and duplicate or manufactured home tax list indicating the deferrable taxes that may be deferred for the homestead. The approval of an application entitles the applicant to defer the payment of all or any portion of the deferrable taxes on the homestead for the year in which the application is approved and for each ensuing year until the occurrence of one of the events resulting in termination of the deferral (see "***Termination of deferral***" below). The deferrable taxes that are entered on the deferred tax list are payable according to the provisions of the bill. And except as otherwise provided in the bill in case of termination of the deferral, they do not constitute unpaid or delinquent taxes under the bill or current law.

Deferred tax list

(R.C. 323.162)

The bill requires the county auditor to compile and maintain a deferred tax list. The auditor is required to enter on the list any information the Tax Commissioner may require to be maintained in the list to ensure the proper administration of the deferral program. The bill also specifies the following items that the auditor must place on the list opposite each entry: (1) the amount of deferrable taxes for the current tax year, and (2) the cumulative amount of deferred taxes for the three tax years immediately preceding the current year, excluding any deferred amounts repaid pursuant to a terminated deferral or voluntary repayment under the bill.

Termination of deferral

(R.C. 323.163(A))

On the occurrence of any of the following events, the deferral is terminated: (1) the owner of the homestead dies and is not survived by a spouse who qualifies for deferral, (2) the owner ceases to own and occupy the property as a homestead (owner moves or transfers title), or (3) the owner terminates the deferral by filing written notice with the county auditor.

Recoupment charge

(R.C. 323.164 and 323.165)

When a deferral is terminated because of (1) or (2) described above, the county auditor is required to levy a recoupment charge against the homestead equal to the sum of the cumulative amount of deferred taxes for the three tax years immediately preceding the year in which the event occurred. The auditor must place the recoupment charge as a separate item on the next tax list and duplicate the auditor prepares, and it must be collected by the county treasurer in the same manner and at the same time as other real property taxes on the list and duplicate are collected. If the charge is not paid when due, it will constitute unpaid taxes and the same penalties and interest charges would apply as apply to current unpaid taxes. The treasurer must distribute the charge and any penalties and interest collected among the taxing units and their funds as if levied and collected as current taxes. The recoupment charge constitutes a lien of the state against the homestead as of January 1, of the tax year in which the charge is levied and must continue until discharged as provided by law. The auditor must file the lien for recording as other tax liens are recorded.

When a deferral is terminated because of (3) above, the owner may pay all or a portion of the deferred taxes or may elect to continue to defer payment of the taxes that had been deferred prior to termination until the owner dies or ceases to own the residence as a qualifying homestead.

Payment of deferred taxes before recoupment charge is due

(R.C. 323.165)

The bill provides that, at any time prior to the day the recoupment charge is required to be paid, an owner upon whose homestead taxes have been deferred may pay to the county treasurer all or a portion of the deferred taxes for the three tax years immediately preceding the tax year in which payment is made. The treasurer must give the owner a receipt indicating the amount of deferred taxes paid. The treasurer must distribute all money collected to the taxing units and their funds as if levied and collected as current taxes.

Continuation of deferral for qualifying surviving spouses

(R.C. 323.163(B))

If a qualifying homeowner dies and title to the homestead passes to the surviving spouse who would otherwise qualify for the deferral, the deferral of taxes charged against the homestead will continue until one of the events enumerated above occurs with respect to the surviving spouse (see "***Termination***

of deferral"). If the surviving spouse's claim to the title to the homestead is contingent, but the surviving spouse otherwise qualifies for deferral, the executor or administrator of the deceased spouse's estate may file an application with the county auditor to have the deferral continued on behalf of the surviving spouse until the spouse gains title. In either event, the surviving spouse becomes the qualifying owner of the homestead for purposes of the bill upon the title passing to the surviving spouse. If the surviving spouse does not subsequently gain title, the deferral on behalf of the surviving spouse shall be discontinued in the tax year following that in which the decedent's death occurred. The auditor must correct the taxes charged for each year during which the surviving spouse's claim to the title was contingent, and must make corrections to the tax list and duplicate and in the deferred tax list as though the entries were erroneous.

If the title to the homestead does not pass to the surviving spouse upon the death of the decedent spouse, or the surviving spouse does not qualify for the deferral of taxes under the bill, the surviving spouse may elect to continue to defer those taxes deferred by election of the deceased spouse until the surviving spouse dies, ceases to own and occupy the property as a homestead, or terminates the deferral. But, no deferral resulting from the original application can be provided to the surviving spouse for any tax year following the last tax year for which the deceased spouse last elected deferral.

Notice of non-qualifying status due to change in ownership/occupancy

(R.C. 323.161(E))

Giving notice to county auditor

If, in any year after an application for deferral had been filed and approved, the homestead does not qualify for deferral of taxes because of a change in occupancy or ownership, the bill requires the owner to notify the county auditor. The bill permits the auditor to devise a form or manner by which the auditor elicits from an owner, on an annual or less frequent basis, whether the owner continues to qualify for the deferral. But, the failure of an auditor to do so does not relieve an owner of the duty to notify the auditor.

Effect of failure to give notice

On discovering that taxes have been deferred for a year for which the owner was not entitled to deferral and that the owner has not notified the auditor, the auditor must charge a penalty of 10% of the amount of such illegally or erroneously deferred taxes and must compute and add an interest charge. Interest must be charged on the deferred tax amount in accordance with the law governing failure to pay real estate taxes and manufactured home taxes when due as if the tax

amount deferred on each day an installment of such tax could be paid without penalty remained unpaid on that day. The auditor must add the taxes, penalty, and interest to the tax list and duplicate for the current tax year if the duplicate has not yet been delivered to the county treasurer at the time of such discovery, or on the ensuing year's tax list and duplicate if the current duplicate has been delivered. On collection, such taxes, penalties, and interest must be distributed among the taxing units and their funds as if levied and collected as current taxes.

Appeal

The county auditor must notify the owner, by ordinary mail, of the charges, the owner's right to appeal, and the manner of appeal. The owner may appeal by filing a complaint with the county board of revision. The complaint must be filed not later than the last day prescribed for the payment of taxes without penalty under the real property and manufactured home tax laws following the receipt of the notice and occurring not less than 90 days after the earliest U.S. Postal Service postmark on the notice envelope. For the purposes of the appeal, references in existing law governing complaints over real and public utility property tax determinations to "real property" must be construed to include a manufactured or mobile home that constitutes a homestead under the bill.

Notice to county auditor of intent to convey, conveyance by operation of law, or failure of title pass to surviving spouse

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

If one of the following situations applies, the owner, executor, administrator, guardian, or trustee, as the case may be, must notify the county auditor:

(1) The owner of a homestead who has elected to defer payment of taxes as provided under the bill, or an executor, administrator, guardian, or trustee with responsibility for the homestead intends to convey it to another person;

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

(3) It is determined that the surviving spouse does not become owner of the homestead.

If the county auditor receives the notice described above or otherwise determines that the homestead is to be conveyed to another person without complying with the real property or manufactured or mobile home value statement requirement imposed on all conveyances (see "***Conveyance value statement***," below), the auditor must demand of the grantor or the responsible executor,

administrator, guardian, or trustee, and any person who is known to be scheduled to disburse moneys in connection with the closing of a sale of the homestead, that a sufficient amount be paid to the auditor to recoup an amount equal to the recoupment charge that otherwise would be levied against the homestead as described in the bill (see "***Recoupment charge***," above). If the amount is not paid to the county treasurer as required under the bill, the charge must be levied against the homestead and is a lien against it in the hands of the purchaser and any successor owners, regardless of notice or knowledge, until the amount is paid. Any person on whom demand was made who does not make the demanded payment out of money received from a sale of the property is personally liable for the demanded amount, and the treasurer must certify the amount to the prosecuting attorney who has a cause of action for its recovery in the court of common pleas.

Conveyance value statement

(R.C. 319.202)

Under current law, before the county auditor may endorse any real property conveyance or manufactured or mobile home conveyance for transfer or register the county situs of any manufactured or mobile home conveyance, the grantee or the grantee's representative must submit in triplicate a statement, prescribed by the Tax Commissioner, and other information the county auditor may require, declaring the value of the real property or manufactured or mobile home conveyed. Each statement, under current law, must contain affirmations regarding the status of any homestead exemption or agricultural use valuation on the conveyed property and how it will affect the taxes and any recoupment charge (which charge is applicable regarding the agricultural use valuation) that may be owed.

The bill adds an additional statement that must be included in the conveyance value statement that addresses the tax deferral permitted by the bill. Each statement submitted must either: (1) contain an affirmation by the grantee that the grantor has been asked by the grantee or the grantee's representative whether, to the best of the grantor's knowledge, payment of taxes charged against the real property conveyed for the current or any preceding year has been deferred under the bill and whether, to the best of the grantor's knowledge, the taxes have been recouped/repaid as provided in the bill at the time of the conveyance, and that the grantor indicated that payment of taxes was not so deferred, or was deferred but the taxes had been recouped/repaid, or (2) be accompanied by a sworn or affirmed instrument stating (a) that, to the best of the grantor's knowledge, payment of taxes charged against the real property conveyed for the current or any preceding year has been deferred under the bill, those taxes had not been recouped/repaid, and the property is subject to a recoupment charge, (b) that the grantor and the grantee have considered and accounted for the total estimated

amount of the recoupment, if any, to the satisfaction of the grantee and grantor. The county auditor must endorse the instrument, forward it to the grantee or the grantee's representative, and provide a copy of the endorsed instrument to the grantor or the grantor's representative.

HISTORY

ACTION	DATE
Introduced	02-28-07

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