

Council Comments:

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CITIZENS RESEARCH COUNCIL OF MICHIGAN IS A 501(C)(3) TAX EXEMPT ORGANIZATION

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PROPOSAL A: QUESTIONS REGARDING SCHOOL PROPERTY TAXES

THIS ISSUE IN BRIEF

On March 15, 1994, the voters of Michigan approved a constitutional amendment (Proposal A) which affects property taxation in several respects: (1) it permits nonuniform (classified) property taxation for school operating purposes; (2) it creates a new system of assessing property for all purposes by limiting the annual increases in the taxable value of each parcel to the lesser of five percent or inflation and provides that property be assessed upon transfer in ownership; and (3) imposes upon the Legislature a three-fourths vote requirement to increase the statutory limits on school operating property taxes which were in effect on February 1, 1994.

In addition, adoption of Proposal A made effective various implementing legislation which included new provisions on school operating taxes. These new provisions prohibit school districts from imposing millage allocated under the 15 or 18 mill constitutional limitations, authorize a new state property tax of six mills on all property, and impose new limitations upon the levy of voter-approved millage for school operating purposes. The new legislation also establishes two new classes of property for school operating purposes: homestead and non-homestead.

While adoption of Proposal A and its implementing legislation reflects a significant change in school finance and property taxation, this change also creates a number of issues that will need to be addressed. This **Council Comments** examines these issues as they relate to the Michigan proper taxation system as altered by Proposal A

Why do local school districts continue to schedule millage elections given the fact that Public Act 145 of 1993 exempted all property from general ad valorem taxation for school operating purposes?

Public Act 312 of 1994, one of the Proposal A implementation statutes, reinstates local ad valorem property taxes for specific school operating purposes: (1) to receive state school aid beginning in 1994, a school district must levy for operating purposes on non-homestead property the lesser of 18 mills or the number of mills imposed in 1993; (2) a school district with a per pupil revenue allowance of more than \$6,500 per pupil in 1994-95 is authorized to impose sufficient supplemental millage to maintain existing per pupil revenue levels (the first 18 supplemental mills are to be levied upon homestead property only and upon all property above 18 mills); and (3) local school districts may levy up to three mills during 1994 through 1996 for enhancement purposes. Voter approval is required for these millages; however, existing voter authorization may be utilized for the non-homestead millage and supplemental millage, but a new vote is required for enhancement millage. Millage elections will be needed in an estimated 226 local school districts in 1993 and eventually in all 558 school districts in Michigan as currently

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authorized millages expire.

What effect will Proposal A have upon property taxes levied for school operating purposes which currently average 34 mills throughout the state?

In most school districts, there will be a significant reduction in the millage rate: homestead property will be subject to only the six mill state education tax, while non-homestead property will be subject to the six mill state education tax plus up to 18 mills locally, for a total of 24 mills. This total does not include enhancement millage or supplemental millage which can be levied in the 35 highest per pupil revenue districts.

Does the provision of the Michigan Constitution that limits local property tax rates also apply to the state education tax?

Yes. Section 6 of Article 9 of the Michigan Constitution imposes an aggregate limitation upon ad valorem taxation for operating purposes of 15 mills (or an alternative local option of 18 mills.) With voter approval, these limitations may be increased up to 50 mills for up to 20 years. (These limitations do not apply to charter units or to authorities, if the tax limitations are provided by general law.) Public Act 331 of 1993, another of the statutes which implemented Proposal A, authorizes the Legislature to impose an ad valorem property tax (referred to as the state education tax) at a rate of six mills. Because the limitations of Section 6 of Article 9 apply to total ad valorem taxes and because the state education tax is an ad valorem tax, the state education tax is subject to the 15 and 50 mill limitations.

How is the state education tax to be characterized for property tax limitation purposes?

It was the apparent intent of the Legislature to treat the six mill state education tax as "allocated" millage. As noted above, the Michigan Constitution limits total ad valorem taxes which may be imposed for operating purposes by non-charter units of government to 15 mills. This millage is referred to as allocated millage since it is divided among eligible units of local government on an annual basis by a county tax allocation board. One of the Proposal A implementation statutes requires counties that have tax allocation boards to reduce the 15 mill limitation by the number of mills allocated to school districts in 1993 and prohibits a tax allocation board from allocating millage to local school districts. The six mill state education tax then will be levied by the state in lieu of millage previously allocated to schools. In two counties, school districts were allocated fewer than six mills in 1993, a circumstance which will require some adjustment.

Is the state Legislature authorized to impose a property tax in a county which has established voter-approved fixed allocations?

No, according to the state Attorney General. As an alternative to the 15 mill limitation, voters in a county may adopt, under procedures provided by law, a fixed allocation of no more than 18 mills for the county, school districts and townships. The allocations under this alternative approach remain fixed until altered by voters. Voters in approximately 68 of the state's 83 counties have adopted fixed allocations. In a 1968 letter opinion, the Attorney General concluded that while the Legislature possessed the authority to reduce the number of mills available for allocation within the 15 mill limitation, it could not exercise that authority in a county where voters had established a fixed tax allocation. The Attorney General concluded that separate tax alloca-

tions established by county voters could be subsequently altered only by county voters and not by the Legislature. While state Attorney General opinions do not bind the Legislature, the 1968 letter opinion raises serious doubts about the constitutional authority of the Legislature to impose a state property tax within those counties that have established voter-approved fixed limitations.

Proposal A added to the Michigan Constitution a requirement that any law which increases the statutory limits on school district operating millages in effect as of February 1, 1994 must be adopted by a three-fourths vote of the Legislature. What are these statutory limits?

Proposal A did not define the statutory limits which cannot be increased without a three-fourths vote of the Legislature. However, there is general agreement that the Legislature is prohibited from increasing the following property tax millage rates except by three-fourths vote: the six mill state education tax; the up to 18 mills which school districts must impose upon non-homestead property in order to be eligible for state school aid; the supplemental mills which may be imposed by school districts with a per pupil revenue allowance of more than \$6,500 in 1994-95 to maintain existing per pupil revenue levels; the up to three mill enhancement tax which school districts may levy during 1994 through 1996; and intermediate school district millages. While it has been argued that the laws which limit intermediate school district millage rates should not be subject to the three-fourths vote requirement because Proposal A refers to school district (but not to intermediate school district) operating purposes, consistent application of this reasoning would preclude intermediate school districts from imposing millage within the 15, 18, or 50 mill limitations, or from receiving payments from the state school aid fund since neither Section 6, nor Section 11, of Article 9 of the Michigan Constitution refers to intermediate school districts.

Is the six mill state education tax subject to the millage reduction requirements of Section 31 of Article 9 of the Michigan Constitution?

No. Section 31 of Article 9 of the Michigan Constitution requires a reduction in the maximum authorized rate of a tax if the base of the tax is broadened by redefinition or if the assessed valuation of property as finally equalized increases by more than the rate of inflation. Since the Section 31 millage reduction requirement applies exclusively to "units of local government" and the state education tax is to be imposed by the state, the state education tax is not subject to Section 31 of Article 9 of the Michigan Constitution

Will there be millage reductions under Section 31 of Article 9 of the Michigan Constitution after 1994 given the fact that Proposal A will limit increases in taxable value of individual parcels of property to the lesser of five percent or inflation?

Yes, for two reasons. First, as noted in the preceding answer, millage reductions under Section 31 are required when the assessed valuation of property as finally equalized, in units of local government increases by more than the rate of inflation. What Proposal A caps or limits to the lesser of five percent or inflation is not the Increase in assessed valuation, but rather taxable value. While the Legislature will have some discretion in defining the term "taxable value," it can be presumed that if the drafters of Proposal A had intended its meaning to be synonymous with assessed valuation they would have used the latter term. (Arguably, taxable value is that proportion of assessed valuation against which millage rates will be imposed.) It should also be noted that the term taxable value as used in Section 3 refers to each parcel, while assessed valua-

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tion as used in Section 31 refers to all property within a unit of local government. Because Proposal A did not amend Section 31 of Article 9 of the Michigan Constitution, millage reductions should continue to be required whenever the assessed valuation of property as finally equalized in units of local government increases faster than the inflation rate. Second, under the Proposal A cap, individual parcels of property will be reassessed at the “applicable proportion (presumably 50 percent) of current true cash value” when ownership is transferred as defined by law. Thus, sufficient rates of property turnover due to sales could also trigger Section 31 millage reductions.

How will the Proposal A limitation upon increases in taxable values affect assessment and equalization?

Section 3 of Article 9 of the Michigan Constitution requires that all real and tangible personal property be uniformly assessed at no more than 50 percent of its true cash value. Section 3 of Article 9 also requires that the Legislature provide for a system of equalization of assessments. Since Michigan has about 1500 local assessing units, equalization is necessary to equitably distribute taxes among assessing units and to ensure uniformity among the 83 counties in the state. The Proposal A limit on increases in taxable value was superimposed upon the existing assessment and equalization system. Because taxable values in a given assessing unit will be no longer at 50 percent of true cash value, taxable values among assessing units also will vary from the 50 percent standard, depending upon their relative rates of increase in property value and relative rates of turnover due to property sales. Precisely how the Legislature will address the impact which Proposal A will have upon assessment and equalization has yet to be determined.