

LEGAL ALERT

May 12, 2006

MICHIGAN COURT OF APPEALS ADDRESSES HOMESTEAD EXEMPTION RESCISSION REQUIREMENT

Ensure that you properly rescind your principal residence (homestead) exemption when your property ceases to qualify as your principal residence.

By Scott D. Harvey, Attorney

Michigan law provides that a resident may claim a principal residence (homestead) exemption from property taxes on property that is owned and occupied as the owner's principal residence. To claim such an exemption, an owner must file an affidavit on or before May 1 with the assessor of the local taxing unit where the real property is located.

However, in the event the real property is no longer used by the owner as his or her principal residence (whether due to change of ownership or otherwise), the homeowner must rescind the claim of exemption by filing a Rescission with the assessor of the local taxing unit where the real property is located on a form prescribed by the Michigan Department of Treasury. The failure of the homeowner to file the Rescission form can result in a penalty of up to \$200 and the repayment of back real property taxes caused by continuing to claim an improper property tax exemption.

A recent Michigan Court of Appeals case, *Modzelewski v. Wayne County Treasurer*, illustrates how strictly this rescission requirement is interpreted. In this case, the homeowner ceased to use her real property in Wayne County as her principal residence in 2000. Rather than rescind her claim of exemption by filing the Rescission form prescribed by the Michigan Department of Treasury, the homeowner instead mailed a letter to the local treasurer that announced her move and asked if there was any documentation required to effectuate the change in tax classification. Due to the fact that the homeowner did not file the proper

form to rescind her principal residence exemption, the Michigan Tax Tribunal ordered the homeowner to pay back property taxes for the years 2000 through 2003 for improperly claiming an exemption.

The Michigan Court of Appeals affirmed the Tax Tribunal's decision. It pointed to the "unambiguous language" of the statute that requires an owner to file a Rescission *on a specific form prescribed by the Department of Treasury*. Accordingly, because the homeowner's letter did *not* comply with this requirement, she never rescinded the exemption on her real property, causing her to improperly claim an exemption until the problem was discovered in 2003.

As the *Motzelewski* case illustrates, in the event you are required to rescind your principal residence exemption on your real property, make certain that you file a proper Rescission of the exemption on the form prescribed by the Michigan Department of Treasury and timely file this form with the assessor's office where the real property is located. *Do not* simply rely on a letter to accomplish the Rescission, or you could face a \$200 penalty and the repayment of back taxes, plus interest.

The proper form to submit is **Michigan Department of Treasury Form 2602, Request to Rescind Homeowner's Principal Residence Exemption**, which can be found online at www.michigan.gov/treasury; the form may also be obtained from your local assessor's office.

Should you have any questions or need any assistance with regard to principal residence exemptions or real property taxes in general, please contact a member of the Business and Individual Planning Department at Smith Haughey.

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