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STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

TAXATION: Application of millage reduction fraction to renewed multi-year, voter-approved millages

GENERAL PROPERTY TAX ACT:

HEADLEE AMENDMENT:

CONST 1963, ART 9, § 31:

In the case of municipalities seeking authorization to levy "renewed" millages, the millage reduction fraction specified in section 34d of the General Property Tax Act, MCL 211.34d, is calculated on an uninterrupted basis for each succeeding year as if the voter-approved millage it replaces had never expired. Under MCL 211.34d(11), the calculation of the millage reduction fraction does not commence at 1.0 for the first year of the "renewed" millage but with the fraction utilized for the millage levied in the last year of the millage it replaces.

Opinion No. 7193

March 30, 2006

Honorable Valde Garcia
State Senator
The Capitol
Lansing, MI 48909

Honorable Joe Hune
State Representative
The Capitol
Lansing, MI 48909

Honorable Chris Ward
State Representative
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You have requested an opinion concerning the application of a millage rollback fraction to a voter-approved millage renewal. You ask:

Does Section 34 d(9) of the General Property Tax Act (MCL 211.34 d(9)) require municipalities to effect multiple Headlee tax rollbacks prior to the implementation of a voter-approved millage if the millage is approved two or more years before its first [levy]?

Your request arises out of the following factual context:

Livingston County partially funds their Emergency Medical Service through property tax revenues. In August 2004, Livingston County put a millage renewal question pertaining to the EMS on the ballot in anticipation of the current millage's expiration in 2005 (the renewal to begin being levied in 2006). Must the millage rate, upon its initial levy in 2006, reflect a rollback for both 2005 and 2006 according to the above referenced statute?

The relevant ballot language provided by the County Treasurer's office recites:

**EMERGENCY MEDICAL SERVICES/PARAMEDIC OPERATING
MILLAGE REAUTHORIZATION**

For the purpose of reauthorizing funding for the operation and capital funds for the Livingston County Emergency Medical Services/Paramedic Program to be provided by Livingston County EMS, at the same millage level previously authorized by the voters in 2000, shall the taxes levied to support the Emergency Medical Services/Paramedic Program be increased at a rate of 0.30 of 1 mill, \$0.30 per thousand dollars of taxable value, for a period of five (5) years, 2006 through 2010 inclusive? If approved and levied in full, this millage will raise an estimated \$1,993,286.34 in the first taxable year, based upon the projected 2006 County wide taxable value.

Turning to your question, a rollback of multi-year, voter-approved millages is required each year after the approval in which the percentage increase in the taxable value of the affected property exceeds the percentage increase in the General Price Level from the previous year. Each year's maximum authorized millage is to be reduced by not only the millage reduction fraction for that year, but also by the millage reduction fraction for the previous years as well. This reduction is required even if the voter-approved millages are first levied in a year subsequent to the year in which approved. Const 1963, art 9, § 31; MCL 211.34d(9); OAG, 2003-2004, No 7131, p 27 (April 24, 2003). Your question essentially asks how these principles apply in the case of "renewed" millage.

Const 1963, art 9, § 31 is part of the Headlee Amendment adopted by the electorate in 1978. This section provides for what is commonly known as the "Headlee rollback," stating in pertinent part:

If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the General Price Level from the previous year, the maximum authorized rate applied thereto in each unit of Local Government shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the General Price Level, as could have been collected at the existing authorized rate on the prior assessed value. [Const 1963, art 9, § 31.]

OAG No 7131 examined this section at length and explained how the "millage reduction fraction" established by the Legislature as the basis for calculating the constitutionally required rollback was to be applied:

By this measure the voters mandated that the total of taxes assessed against all taxable property within a taxing unit shall not increase from one tax year to the next at a rate exceeding the rate of increase in the General Price Level for the prior year. In any tax year in which the value of all taxable property has, in comparison with the value of the same property for the previous tax year, increased at a rate in excess of the rate of increase in the General Price Level, the Constitution requires a reduction in the *rate* of taxation so that the revenue realized from such property for the current year does not exceed that which was realized from that same property for the prior year by more than the percentage increase in the General Price Level.

This constitutionally mandated rollback of authorized millage rates has been implemented by the Michigan Legislature in accordance with Const 1963, art 9, § 34, through its passage of amendments to the General Property Tax Act, specifically section 34d, MCL 211.34d. They establish the "millage reduction fraction" (MRF) as the basis for calculating a rollback and describe how the MRF shall be applied.

This fraction is calculated by comparing the value of taxable property that existed in the prior tax year with the value of the same property for the current year. It is designed to arrive at a true comparison by eliminating the increases and decreases in value attributed to additions and losses. Thus, the MRF involves the determination of the ratio between:

(a) the value of the property for the previous year, less losses, multiplied by the sum of 1.0 plus the rate of increase in the General Price Level (the numerator of the fraction); and

(b) the value of the property for the current year, less additions (the denominator of the fraction).

The value lost when property or improvements become exempt from taxation, are removed, razed, or otherwise destroyed in the previous year (losses) is subtracted from the numerator, and the value added by new improvements or other enhancements during the current year (additions) is subtracted from the denominator. Simply stated, losses, which are not present in the current year, are subtracted from the prior year and additions, which were not present in the prior year, are subtracted from the current year. Thus, the values compared are truly "apples to apples." It is the difference in the value of property that is actually present in both years that determines whether a MRF is appropriate, and to what extent.

If the value of such property for the prior year (properly adjusted), multiplied by the sum of 1.0 plus the rate of

increase in the General Price Level, is less than the value of the identical property (again, properly adjusted) for the current year, then the value of such property has appreciated at a rate greater than the rate of increase in the General Price Level. To reduce the excessive increase in revenue that would result if the original millage were applied against that increased value, the effective millage (rate of taxation) is multiplied by the determined MRF, a number less than 1, so that the amount of revenue received is properly reduced. [OAG No 7131 at p 28; footnotes omitted.]

Section 34d of the General Property Tax Act (GPTA), MCL 211.34d, addresses your inquiry and warrants quoting in pertinent part at length:

(6) The number of mills permitted to be levied in a tax year is limited as provided in this section pursuant to section 31 of article IX of the state constitution of 1963. A unit of local government shall not levy a tax rate greater than the rate determined by reducing its maximum rate or rates authorized by law or charter by a millage reduction fraction as provided in this section without voter approval.

(7) A millage reduction fraction shall be determined for each year for each local unit of government . . . For ad valorem property taxes that are levied after December 31, 1994, the numerator of the fraction shall be the product of the difference between the total taxable value for the immediately preceding year minus losses multiplied by the inflation rate and the denominator of the fraction shall be the total taxable value for the current year minus additions. For each year after 1993, a millage reduction fraction shall not exceed 1.

* * *

(9) The millage reduction shall be determined separately for authorized levied millage approved by the voters. The limitation on millage authorized by the voters on or before April 30 of a year shall be calculated beginning with the millage reduction fraction for that year. Millage authorized by the voters after April 30 shall not be subject to a millage reduction until the year following the voter authorization which shall be calculated beginning with the millage reduction fraction for the year following the authorization. The first millage reduction fraction used in calculating the limitation on millage approved by the voters after January 1, 1979 shall not exceed 1.^[1]

(10) A millage reduction fraction shall be applied separately to the aggregate maximum millage rate authorized by a charter and to each maximum millage rate authorized by state law for a specific purpose.

(11) A unit of local government may submit to the voters for their approval the levy in that year of a tax rate in excess of the limit set by this section. The ballot question shall ask the voters to approve the levy of a specific number of mills in excess of the limit. The provisions of this section do not allow the levy of a millage rate in excess of the maximum rate authorized by law or charter. *If the authorization to levy millage expires after 1993 and a local governmental unit is asking voters to renew the authorization to levy the millage, the ballot question shall ask for renewed authorization for the number of expiring mills as reduced by the millage reduction required by this section. If the election occurs before June 1 of a year, the millage reduction is based on the immediately preceding year's millage reduction applicable to that millage. If the election occurs after May 31 of a year, the millage reduction shall be based on that year's millage reduction applicable to that millage had it not expired.*

* * *

(16) Beginning with taxes levied in 1994, the millage reduction required by section 31 of article IX of the state constitution of 1963 shall permanently reduce the maximum rate or rates authorized by law or charter. . . . The reduced maximum authorized rate or rates for 1995 and each year after 1995 shall equal the product of the immediately preceding year's reduced maximum authorized rate or rates multiplied by the current year's millage reduction fraction and shall be adjusted for millage for which authorization has expired and new authorized millage approved by the voters pursuant to subsections (8) to (12). [MCL 211.34d(6), (7), (9) – (11), (16); emphasis added.]

Where the terms of a statute are clear and unambiguous, albeit complicated, they must be applied as written. See *Storey v Meijer, Inc*, 431 Mich 368, 376; 429 NW2d 169 (1988). The italicized text of MCL 211.34d(11) is determinative. For a renewal millage, the millage authorized is subject to a MRF identical to the MRF that would have been applied to the millage which it replaces had it not expired. For the first year of levying the renewed millage, the calculation of the MRF starts not at 1.0 but rather at the MRF of the expiring millage.

The millage about which you inquire was approved in 2004 after May 31.² By its passage, the voters authorized levies in 2006 and subsequent years. No levies of the "renewed" millage are to be made until 2006.

For 2006, it is necessary to determine an MRF for the renewed millage. The MRF will be the same MRF as would have been calculated

for the expiring millage and applied to it had it not expired. In other words, the calculation process does not start over but rather continues uninterrupted.

Like the situation addressed in OAG No 7131, the factual setting you present calls for a reduction in the rate of authorized taxation whenever the revenue monies to be realized from taxing property (after adjustments for losses and gains) at the voter-approved rate would result in realizing more tax revenue for the year of the levy than would be realized by multiplying the authorized rate of taxation by the taxable value of all property (after adjustment) times the rate of increase of the General Price Level for the preceding year.

It is my opinion, therefore, that in the case of municipalities seeking authorization to levy "renewed" millages, the millage reduction fraction specified in section 34d of the General Property Tax Act, MCL 211.34d, is calculated on an uninterrupted basis for each succeeding year as if the voter-approved millage it replaces had never expired. Under MCL 211.34d(11), the calculation of the millage reduction fraction does not commence at 1.0 for the first year of the "renewed" millage but with the fraction utilized for the millage levied in the last year of the millage it replaces.

MIKE COX
Attorney General

¹ This subsection, MCL 211.34d(9), prior to its amendment by 2005 PA 12 (effective April 28, 2005), specified May 31 as the "cut-off" date rather than April 30. The change is not critical here as the election underlying your request was held after May 31 in 2004.

² See n 1.

<http://opinion/datafiles/2000s/op10269.htm>
State of Michigan, Department of Attorney General
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