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Summary of the Analysis and Conclusions

The legislature in passing Senate Bill, and Senate Joint Resolution 1 has attempted to convert all local option homestead exemptions into mandatory exemptions for at least five years. The fact is, however, that the legislature can extend this now mandatory exemption indefinitely, locking a taxing district into an unfunded mandate for whatever time the legislature chooses.

S.B.1., however does not become effective until S.J.R.1. passes in November. Presently there is no prohibition on a school district from reducing or eliminating its local option exemption for year 2015-16. This should be done by July 1, 2015 but it is possible that could be done any time before November.

If it is not done, the district will be required to maintain its now so called local option exemption for at least five more years and possibly forever.

MEMORANDUM

"Article VIII, section 1-b of the Texas Constitution permits in some instances, and requires in others, taxing units to grant residence-homestead exemptions from ad valorem property taxes." Op. Tex. Att'y Gen. No. JC-0415 (2001). Subsection (e) of this constitutional provision states that the "governing body of a political subdivision, other than a county education district, may exempt from ad valorem taxation a percentage of the market value of the residence homestead of a married or unmarried adult, including one living alone." TEX.

CONST. art. VIII, § 1-b(e). "The percentage may not exceed twenty percent." *Id*. The constitution further provides that the "legislature by general law may prescribe procedures for the administration of residence homestead exemptions." *Id*. "[S]ection 11.13 of the Tax Code . . . generally implements article VIII, section 1-b." Op. Tex. Att'y Gen. No. JC-0415.

Pursuant to the Tax Code, "an individual is entitled to an exemption from taxation by a taxing unit of a percentage of the appraised value of his residence homestead if the exemption is adopted by the governing body of the taxing unit before July 1 in the manner provided by law for official action by the body." TEX. TAX CODE § 11.13(n). As shown by the permissive language of the Constitution, the § 1-b(e) "exemption is optional." *Martinez v. Dallas Cent. Appraisal Dist.*, 339 S.W.3d 184, 194 (Tex. App.—Dallas 2011, no pet.); *accord* Op. Tex. Att'y Gen. No. GA-0363 (2005) ("Subsection (e) grants a political subdivision the discretion to exempt from ad valorem taxation a percentage of market value of the residence homestead of an adult.").

Moreover, there is nothing currently in the Constitution that prevents a taxing unit that has adopted the optional percentage homestead exemption from later repealing or reducing the exemption. The Constitution does make permanent certain homestead exemptions once adopted. *See, e.g.*, TEX. CONST. art. VIII, § 1-b(h) ("The governing body of a county, a city or town, or a junior college district may not repeal or rescind a tax limitation [for disabled or over-65 taxpayers] established under this subsection."). However, there is currently no similar constitutional language applicable to the optional percentage homestead exemption. As such, under the Constitution as it now exists, a taxing unit has the option of repealing a previously-adopted percentage homestead exemption.

The legislature has proposed a constitutional amendment to article VIII, § 1-b(e) providing that the "legislature by general law may prohibit the governing body of a political subdivision that adopts an exemption under this subsection from reducing the amount of or repealing the exemption." S.J.R. 1, § 1, 84th Leg., R.S. (2015). In a companion bill, the legislature

has provided that the "governing body of a school district, municipality, or county that adopted an exemption under Subsection (n) for the 2014 tax year may not reduce the amount of or repeal the exemption. This subsection expires December 31, 2019." S.B. 1, § 1, 84th Leg., R.S. (2015) (to be codified as TEX. TAX. CODE § 11.13(n-1)). Although the restriction on repealing an exemption expires at the end of 2019, if the Constitution is amended there would be nothing preventing the legislature from making any district's optional percentage homestead exemption permanent by simply extending or eliminating the current expiration date. *Cf. Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 761 (Tex. 2005) (noting that although the "hold harmless" provision of the school finance system "was initially intended to last only three years . . . it has become permanent").

As the new legislation recognizes, however, the legislature does not have the authority to restrict a taxing unit from repealing its optional percentage homestead exemption unless and until the proposed constitutional amendment is approved by the voters. Senate Bill 1 provides that section 1 of the "Act takes effect on the date on which the constitutional amendment proposed by S.J.R. 1 . . . takes effect; and . . . if that amendment is not approved by the voters, [it] has no effect." S.B. 1, § 27, 84th Leg., R.S. (2015). A "legislative act may be made effective on a date different from that on which it becomes a law [and] may be made effective upon the happening of a future contingent event." *City of San Antonio v. Brady*, 159 Tex. 42, 44-45, 315 S.W.2d 597, 598 (1958). Accordingly, until the voters have adopted the constitutional amendment proposed in S.J.R. 1, section 1 of S.B. 1 is not the law and is of no effect.

Accordingly, if a taxing entity that had previously adopted an optional percentage homestead exemption were to take formal action to repeal the exemption prior to July 1, 2015, then no home owner would be entitled to the exemption for the 2015 tax year. *See* TEX. TAX CODE § 11.13(n) (providing that a taxpayer is entitled to the optional percentage homestead exemption only if "if the exemption is adopted by the governing body of the taxing unit before

July 1 in the manner provided by law for official action by the body"). Additionally, once the exemption is formally repealed, in order for the exemption to become operative again, the taxing unit would have to subsequently readopt the exemption "in the manner provided by law for official action by the body." *Id*.

If a taxing unit repealed its optional percentage homestead exemption in this manner and then the new section 11.13(n-1) were to become effective sometime in November 2015, there does not appear to be anything in this new section that would operate to revive the previously-repealed exemption by annulling the repeal. Neither the proposed constitutional amendment nor S.B. 1 purport to govern repeals of exemptions that occurred prior to their effective date. Words in a constitutional amendment "are given their natural, obvious and ordinary meanings as they are understood by citizens who adopted the amendment." *State v. Clements*, 319 S.W.2d 450, 452 (Tex. Civ. App.—Texarkana 1958, writ ref'd). Similarly, statutes are construed "according to their plain meaning and in the context of the statute's surrounding provisions." *In re Office of the Attorney Gen. of Texas*, 456 S.W.3d 153, 155 (Tex. 2015)

The language in the proposed constitutional amendment and the statute speak only of prohibiting certain actions by taxing units and do not by their terms cover actions taken before the effective date of the new laws. When the legislature has intended to affect actions of governmental entities taken before the effective date of new legislation, it has generally said so. *See, e.g.*, *Deacon v. City of Euless*, 405 S.W.2d 59, 61 (Tex. 1966) (holding statute that became effective in August 1963 applied retroactively to void city's annexation ordinance that was completed prior to effective date of act because legislation specifically applied to all "'annexation proceedings by cities which are pending on or instituted after March 15, 1963'" making all such pending actions not in conformance with the new legislation "'null and void'").

The present statutory language simply takes a subset of taxing entities, those that had an optional percentage homestead exemption in the 2014 tax year, and limits their ability to

repeal an existing exemption. Under the language in S.B. 1 if a taxing entity did not adopt an optional percentage homestead exemption until the 2015 tax year, then such taxing entity would be free to repeal its exemption at any time thereafter. This would be true even if the taxing unit had adopted and then repealed the optional exemption prior to the 2014 tax year. The proposed new subsection (n-1) contains no language nullifying any prior action that a taxing entity make take, but rather upon its effective date it would prohibit certain taxing units from taking actions to repeal or reduce any optional percentage homestead exemptions then in place. However, if a taxing unit covered by S.B. 1 had already repealed its optional homestead exemption for tax year 2015 prior to the effective date of S.B. 1, then the taxing entity would not run afoul of the statutory language, because once the statute became operative the taxing unit would be taking no action to repeal or reduce its optional homestead exemption.

Moreover, courts would likely not give the new subsection (n-1) any retroactive effect, because courts "generally presume that statutes are prospective unless they are expressly made retroactive." *City of Austin v. Whittington*, 384 S.W.3d 766, 790 (Tex. 2012); *accord* Tex. Gov't Code § 311.022 ("A statute is presumed to be prospective in its operation unless expressly made retrospective."). Because new subsection (n-1) is not merely "procedural or remedial" and is not made expressly retroactive, it will have prospective application only. *See State v. Fid. & Deposit Co. of Maryland*, 223 S.W.3d 309, 312 & n.4 (Tex. 2007) (holding that where statutory change to definition of "highway" was not procedural or remedial and the statutory amendment was not expressly made retroactive, the new definition would be given prospective effect only).

Courts would also be unlikely to hold that the new statutory language had the implied effect of reviving a repealed optional percentage homestead exemption, because exemptions from taxation are disfavored in the law. "'Statutory exemptions from taxation are subject to strict construction since they are the antithesis of equality and uniformity and because they

place a greater burden on other taxpaying businesses and individuals. An exemption cannot be raised by implication, but must affirmatively appear, and all doubts are resolved in favor of taxing authority and against the claimant.'" *AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist.*, 410 S.W.3d 831, 838 (Tex. 2012) (quoting *Bullock v. Nat'l Bancshares Corp.,* 584 S.W.2d 268, 271–272 (Tex. 1979)).