ALICE Model Property Tax Limitation and Deferral Act[1]

Rationale: The act is designed to provide predictability in tax bills and limit the immediate property tax burden on households that may lack the income to pay their property taxes based on high property value assessments compared to their moderate incomes. The law is especially critical for elderly homeowners who have owned their homes for many years and unemployed or underemployed homeowners who are struggling to pay all their bills, including property tax bills.

Summary: This [act] limits the property taxes payable each year by households earning less than [$250,000] per year to a percentage of their income and provides for a program in which eligible individuals may elect to defer amounts owed above that limit by filing an annual application with local tax authorities. The deferred amount, plus interest, becomes a [tax] lien in favor of the government until the total amount is repaid. Property tax deferral is available for property taxes and special assessments on a primary residence. Taxes owed are paid upon sale of the property or the death of the homeowner. The state government pays the deferred amount to local governments each year and in turn receives the proceeds of repaid deferred taxes, which are deposited into the Real Estate Deferred Tax Revolving Fund, created by the [act].

SECTION 1. SHORT TITLE. This [act] shall be known and may be cited as the "Property Tax Limitation and Deferral Act".

SECTION 2. DEFINITIONS. In this [act]:

(1) "Collector" means the [county collector] or, if the real estate taxes to be deferred are special assessments, an official designated by a unit of local government to collect special assessments.

(2) “Deferrable property tax amount” means the amount by which the taxpayer's real estate taxes exceed the taxpayer's minimum real property tax.

(3) "Department" means the [State Department of Revenue].

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[1] This model was drafted by ALICE staff. ALICE would like to thank all those who provided feedback on this draft.

(4) "Equity interest" means the current assessed valuation of the qualified property times the fraction necessary to convert the current assessed valuation to full market value, less any outstanding debts or liens on the property; or if the qualified property does not have a current assessed valuation, the appraised value as determined by a qualified real estate appraiser, less any outstanding debts or liens on the property.

(5) "Homestead" means the land and buildings thereon, including a condominium or a dwelling unit in a multi-dwelling building that is owned and operated as a cooperative, located in this state and occupied by the taxpayer as a residence or which are temporarily unoccupied by the taxpayer because the taxpayer is temporarily residing, for not more than one year, in a nursing or sheltered care home.

(6) "Household income" means the aggregate adjusted gross income of all members of the household for the taxable year as reported for federal income tax purposes, or which would be reported as adjusted gross income if a federal income tax return were required to be filed.

[Policy Option: *Household Income*.[2]]

(7) "Minimum Real Property Tax" is

(a) [three percent] of household income if household income is less than [$30,000];

(b) [three percent] of the first [$30,000] in household income and [five percent] of household income over [$30,000] if household income is at least [$30,000] but less than [$100,000];

(c) [three percent] of the first [$30,000] in household income, [five percent] of household income over [$30,000] but less than [$100,000], and [seven percent] of household income of [$100,000] or more.

[2] Policymakers may want to adjust household income limits by excluding various income sources such as veterans disability payments, workers compensation or other sources.

(d) These thresholds of household gross income shall be indexed for inflation according to Section 10 for tax years beginning in [year after enactment] and thereafter.

[Policy Option: *Minimum Real Property Tax*.[3]]

(8) "Qualified property" means a homestead that the taxpayer or the taxpayer and the spouse of the taxpayer own in fee simple or are purchasing in fee simple under a recorded instrument of sale; is not income-producing property; is not subject to a lien for unpaid real estate taxes when an application under this [act] is filed; and is not held in trust.

(9) "Real estate taxes" means the taxes on real property for which the taxpayer would be liable under the [Property Tax Code], including special service area taxes, and special assessments on real property for which the taxpayer would be liable to a unit of local government.

(10) "Tax deferred property" means the real property upon which real estate taxes are deferred under this [act].

(11) "Taxpayer" means an individual whose household income is no greater than [$250,000].

SECTION 3. REAL ESTATE DEFERRED TAX REVOLVING FUND. There is created a [Real Estate Deferred Tax Revolving Fund]. There is transferred from the general fund a sum sufficient to make the payments required to be made from the fund. The department shall pay local governments for lost revenue due to deferred property taxes. All deferred payments received by local governments shall be forwarded to the department and deposited in the fund.

[Policy Option: *Financing Real Estate Deferred Tax Revolving Fund*.[4]]

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[3] Since state government will recover most deferred property tax payments upon sale of homes, the minimum real property tax percentage could be lowered if there are sufficient funds available in the short term to cover lost revenue in the interim.

SECTION 4. APPLICATION FOR DEFERRAL.

(a) A taxpayer may, on or before [March 1] of each year, apply to the collector of the county in which the qualified property is located, or to the official designated by a unit of local government to collect special assessments on the qualified property, for a deferral of the deferrable property tax amount for the preceding year.

[Policy Option: *Waiving Future Payment for Portion of Deferrable Property Tax Amount.*[5]]

(b) The application shall be on a form prescribed by the department and furnished by the collector:

(1) certifying that the taxpayer meets the requirements of this [act] based on the taxpayer's federal income tax filing covering the previous year;

(2) describing the real property and verifying that the property is qualified property;

(3) certifying that the taxpayer has owned and occupied as a residence the real property or other qualified property for at least the last 3 years except for any periods during which the taxpayer temporarily resided in a nursing or sheltered care home; and

(4) specifying whether the deferral is for all or a part of the deferrable property tax amount, and, if for a part, the amount of deferral applied for.

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[4] States can also finance the Fund by bonding the amounts of deferred tax owed by property owners. Depending on the interest rate on those state bonds and long-term property value increases, the Fund could be revenue neutral or even lead to a small net increase in state revenue

[5] To increase the economic equity of the deferral program, part of the Deferrable Property Tax Amount could be waived altogether, such as waiving the property tax amount owed above three percent of the first $30,000 in household income or additionally waiving amounts above five percent of income between $30,000 and $70,000. This would give the law more of the character of a broad-based "circuit breaker" law and state lawmakers can then deploy a combination of property tax deferral and "circuit breaker" credits based on both fiscal and equity goals.

(c) If the qualified property does not have an assessed valuation, the taxpayer shall also file with the collector a written appraisal of the property prepared by a qualified real estate appraiser together with a certificate signed by the appraiser setting forth the value of the land and the value of the buildings thereon occupied by the taxpayer as determined by a personal examination.

(d) The collector shall grant the tax deferral if the owner or owners of the real property have entered into a tax deferral and recovery agreement with the collector on behalf of the county or other unit of local government, which agreement expressly states:

(1) That the total amount of taxes deferred under this [act], plus interest, for the year for which a tax deferral is granted as well as for those years for which taxes are not delinquent and for which such deferral has been granted may not exceed [80%] of the taxpayer's equity interest in the property for which taxes are to be deferred and that, if the total deferred taxes plus interest exceeds [80%] of the taxpayer's equity interest in the property, the taxpayer shall thereafter pay the annual interest due on the deferred taxes plus interest so that total deferred taxes plus interest will not exceed [80%] of the taxpayer's equity interest in the property.

(2) That any real estate taxes deferred under this [act] and any interest accrued therein at the rate of [5%] per year are a [tax] lien on the real estate and buildings thereon until paid. A contract for sale of the real property is not effective and a sale or transfer of the real property may not be closed or recorded until the taxes which would otherwise have been due on the property, plus accrued interest, have been paid, unless the collector certifies in writing that an agreement for prompt payment of the amount due has been entered into with the collector.

[Policy Option: *Interest Rate*.[6]]

(3) That, upon the death of the taxpayer granted the deferral, the heirs-at-law, assignees or legatees shall have first priority to the real property upon which real estate taxes have been deferred by paying in full the total real estate taxes which would otherwise have been due, plus interest. However, if such heir-at-law, assignee or legatee is a surviving spouse, the tax deferred status of the property shall be continued during the life of that surviving spouse if the spouse enters into a tax deferral and recovery agreement before the time when deferred taxes become due under this [act]. Any additional taxes deferred, plus interest, on the real property under a tax deferral and recovery agreement signed by a surviving spouse shall be added to the taxes and interest which would otherwise have been due, and the payment of which has been postponed during the life of the surviving spouse, in determining the [80%] equity maximum requirement provided by this [act].

(4) That if the real estate taxes due, plus interest, are not paid by the heir-at-law, assignee or legatee or if payment is not postponed during the life of a surviving spouse, the deferred taxes and interest shall be recovered from the estate of the taxpayer within one year after the date of death. In addition, deferred real estate taxes and any interest accrued thereon are due within [90 days] after any tax deferred property ceases to be qualified property. If payment is not made when required by this section, foreclosure proceedings may be instituted under the [Property Tax Code].

(5) That any other owner has given written prior approval for the agreement, which written approval shall be made a part of the agreement.

[6] Instead of a fixed peg of 5%, the interest rate could be linked to some other variable measure such as the federal funds rate, although that could complicate both bookkeeping and long-term planning with multiple interest rates on different years of deferrals.

(6) That a guardian of a person under legal disability appointed for a taxpayer who otherwise qualifies for deferring real estate taxes under this [act] may act for the taxpayer in complying with this [act].

(7) That a taxpayer has provided to the satisfaction of the collector sufficient evidence that the qualified property on which the taxes are to be deferred is insured against fire or casualty loss for at least the total amount of real estate taxes that have been deferred.

(8) If the real estate taxes to be deferred are special assessments, the unit of local government making the assessments shall forward a copy of the agreement entered into pursuant to this section and the bills for such assessments to the collector of the county in which the qualified property is located.

SECTION 5. RECORDING LIEN. For each tax deferral and recovery agreement entered into between the collector and the owner or owners of qualified property, the collector shall forthwith record with the [recorder of the county] in which the qualified property is located a statement of their action, which shall constitute a tax lien upon the real estate thereon covered by the agreement for the real estate taxes that have been deferred under this [act], plus accrued interest as provided for by Section 4. If the qualified property is a dwelling unit in a multi-dwelling building that is owned and operated as a cooperative, the lien shall be upon only that portion of the real estate and building that constitutes a homestead occupied by the taxpayer. The statement shall name the owner or owners and shall include a description of the real estate adequate for identification. The filing fee for such statement shall be paid by the county or other unit of local government and shall be added to and become a part of the deferred taxes due.

[Policy Option: *Multi-dwelling Buildings*.[7]]

[7] How to apply a [tax] lien for cooperative buildings will depend on the specific cooperative ownership laws operating in each state.

SECTION 6. **TAX BILLS TO DEPARTMENT.** The collector shall note on his books each claim for deferral of real estate taxes which meets the requirements of Section 4 and, when taxes are extended, shall send to the department the tax bills, including special assessment bills forwarded to the collector under Section 4, on all tax deferred property in that the collector's county. The department shall then pay by [June 1] or within [30 days] of the receipt of these tax bills, whichever is later, to the collector, for distribution to the taxing bodies in the county, the total amount of taxes so deferred. The department shall make these payments from the Real Estate Deferred Tax Revolving Fund.

SECTION 7. **PAYMENTS TO COLLECTOR.** All or any part of taxes deferred under this [act] and the accrued interest thereon, which are not due under a valid deferral and recovery agreement, may be paid to the collector at any time by the taxpayer or the spouse of the taxpayer, or, if no objection is made by the taxpayer within [10 days] after the collector mails the taxpayer a written notice of the tender of such a payment, by a child, heir or next of kin of the taxpayer or other person claiming a legal or equitable interest in the property. In the absence of a valid agreement to the contrary and except as otherwise provided by law, such a payment by a person other than the taxpayer or his spouse confers no interest in the property nor claim against the estate. Payments made under this section shall be applied first against accrued interest and any remainder against the deferred taxes and do not affect the deferred tax status of the property.

SECTION 8. REMITTING PAYMENTS TO LOCAL GOVERNMENTS.

(a) When any deferred taxes, including interest, are collected, the moneys shall be credited to a special account in the treasury of the unit of local government and the collector shall notify the treasurer of the unit of local government of the properties for which the taxes were collected by setting forth a description of the property and the amount of taxes and interest collected for each property. The treasurer shall remit by the [10^{th}] day of each month the amount of deferred taxes and accrued interest paid during the preceding month, minus [$50] or the total amount of deferred taxes and accrued interest collected, whichever is less, to the department. The remittance shall be accompanied by a statement giving a description for each property for which the taxes were collected and setting out the amount of the real estate taxes and interest collected for each property.

(b) If the tax deferred property is sold by foreclosure under the [Property Tax Code], the proceeds of the sale which may be applied under that law to the payment of real estate taxes and interest shall be remitted by the county treasurer to the department along with a description of the property and the amount of taxes and interest collected thereon.

(c) When any deferred taxes and accrued interest are received by the department, it shall enter the amounts received against the accounts which have been set up for the tax deferred properties and shall within [5 days] remit such moneys to the State Treasurer for deposit in the Real Estate Deferred Tax Revolving Fund.

SECTION 9. **MORTGAGE CONTRACT PROVISIONS.** This [act] does not empower a taxpayer to violate any provision of a mortgage or other instrument relating to land that requires a person to pay real estate taxes.

SECTION 10. INDEXING MINIMUM REAL PROPERTY TAX

(a). In this paragraph, "consumer price index" means the average of the consumer price index over each 12-month period, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor.

(b) No later than [December 1] of each year, the department shall annually adjust the changes in dollar amounts for the coming year for the “minimum real property tax” definition in Section 2 and incorporate the changes into all appropriate forms and instructions.

(c) These amounts shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of October of the current year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of October of [the year of enactment], as determined by the U.S. Department of Labor. The adjustment may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year. Each amount that is revised under this paragraph shall be rounded to the nearest multiple of [$10] if the revised amount is not a multiple of [$10] or, if the revised amount is a multiple of [$5], such an amount shall be increased to the next higher multiple of [$10].

SECTION 11. INITIAL APPLICABILITY. This [act] first applies to real estate taxes assessed in the year after its enactment.