STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

April 11, 2017

Opinion No. 17-27

Tennessee's Property Tax Relief Program

Question

Would the division of Tennessee's property tax relief program into two separate programs – one for elderly low-income persons and disabled persons and another for disabled veterans and their surviving spouses – violate article II, section 28 of the Tennessee Constitution?

Opinion

No. An administrative division of Tennessee's tax relief program into two separate components, in and of itself, would not violate article II, section 28 of the Tennessee Constitution.

ANALYSIS

Article II, section 28 of the Tennessee Constitution authorizes the General Assembly to provide tax relief to "elderly low-income taxpayers" and to those "home owners totally and permanently disabled, irrespective of age." While article II, section 28 restricts the General Assembly in several respects as to the types of tax relief that it may offer elderly low-income taxpayers and disabled taxpayers, this constitutional provision does not prevent an administrative division of Tennessee's tax relief program into two separate programs – one for elderly low-income persons and disabled persons and another for disabled veterans and their surviving spouses. As long as the substantive requirements of the types and methods of tax relief authorized by article II, section 28 are observed, the proposed administrative division would be constitutionally permissible.

Since its inception, article II, section 28 of the Tennessee Constitution has authorized the General Assembly to provide tax relief to "elderly low-income taxpayers" and to those "home owners totally and permanently disabled, irrespective of age" through "payments by the State." While article II, section 28 was amended in 2006 to allow local governments to provide tax relief to the elderly on a limited basis, the original tax relief clauses of article II, section 28 have remained substantively the same. These clauses currently provide:

> The Legislature shall provide, in such manner as it deems appropriate, tax relief to elderly low-income taxpayers through payments by the State to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities, or Towns.

* * *

> The Legislature may provide tax relief to home owners totally and permanently disabled, irrespective of age, as provided herein for the elderly.

Tenn. Const. art. II, § 28.

The first clause, by its express terms, gives the General Assembly considerable latitude to provide tax relief to elderly low-income taxpayers "in such manner as it deems appropriate." That same latitude extends to the provision of tax relief for the disabled because the second clause authorizes the General Assembly to provide relief to the disabled "as provided herein for the elderly." The only constraint is that relief afforded under these clauses must be provided "through payments by the State to *reimburse* all or part of the taxes paid" and "such reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities, or Towns." Accordingly, the General Assembly may not provide tax relief under these clauses by reducing the amount that a taxpayer owes because such a reduction would impose the financial burden of the relief upon the local taxing jurisdiction. *See* Tenn. Att'y Gen. Op. 96-044 (Mar. 13, 1996). The relief under these clauses must be through "payments by the State" that reimburse the taxpayer for all or part of the taxes that the taxpayer paid. *Id*. *See* Tenn. Att'y Gen. Op. 99-216 (Oct. 27, 1999) (General Assembly cannot empower a municipality to provide for property tax relief to elderly homeowners, disabled homeowners or disabled veterans under these clauses because the relief must be provided by "State" reimbursements to taxpayers).

In short, the original tax relief clauses permit the General Assembly to provide tax relief to elderly low-income taxpayers and the disabled "in such manner as it deems appropriate" as long as it observes the overall constraint that relief must be through State payments that reimburse the taxpayers.

In contrast to the original tax relief clauses, the aforementioned 2006 amendment to article II, section 28 "is written in an unusually restrictive manner." *See* Tenn. Att'y Gen. Op. 07-33 (March 23, 2007). The amendment sets forth a precise tax relief program for the elderly – a "tax freeze" – that the General Assembly may authorize local governments to adopt. The amendment, which was inserted between the two tax relief clauses set forth above,[1] causes the tax relief portion of article II, section 28 to currently read:

> The Legislature shall provide, in such manner as it deems appropriate, tax relief to elderly low-income taxpayers through payments by the State to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities, or Towns.
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> By general law, the Legislature may authorize the following program of tax relief:

[1] The placement of the 2006 amendment to article II, section 28 is discussed in Tenn. Att'y Gen. Op. 07-156 (Nov. 21, 2007).

(a) The legislative body of any county or municipality may provide by resolution or ordinance that:

(1) Any taxpayer who is sixty-five (65) years of age or older and who owns residential property as the taxpayer's principal place of residence shall pay taxes on such property in an amount not to exceed the maximum amount of tax on such property imposed at the time the ordinance or resolution is adopted;

(2) Any taxpayer who reaches the age of sixty-five (65) after the time the ordinance or resolution is adopted, who owns residential property as the taxpayer's principal place of residence shall thereafter pay taxes on such property in an amount not to exceed the maximum amount of tax on such property imposed in the tax year in which such taxpayer reaches age sixty-five (65); and

(3) Any taxpayer who is sixty-five (65) years of age or older who purchases residential property as the taxpayer's principal place of residence after the taxpayer's sixty-fifth birthday shall pay taxes in an amount not to exceed the maximum amount of tax imposed on such property in the tax year in which such property is purchased.

(b) Whenever the full market value of such property is increased as a result of improvements to such property after the time the ordinance or resolution is adopted, then the assessed value of such property shall be adjusted to include such increased value and the taxes shall also be increased proportionally with the value.

(c) Any taxpayer or taxpayers who own residential property as their principal place of residence, whose total or combined annual income or wealth exceeds an amount to be determined by the general assembly shall not be eligible to receive the tax relief provided in subsection (a) or (b).

The Legislature may provide tax relief to home owners totally and permanently disabled, irrespective of age, as provided herein for the elderly.

Tenn. Const. art. II, § 28.

The amendment sets out a specific program of tax relief for the elderly that the General Assembly may authorize, as well as the provisions of the resolution or ordinance that a county or municipality may adopt if the General Assembly authorizes the program. *See* Tenn. Att'y Gen. Op. 07-33 (March 23, 2007).[2] Consistent with the amendment, the General Assembly enacted the Property Tax Freeze Act, which allows the legislative body of any county or municipality to adopt

[2] While the amendment sets forth a tax relief program for the "elderly" in the form of a tax freeze, this Office has previously opined that the placement of the amendment before the original tax relief clause addressing the disabled does not preclude the General Assembly from authorizing a tax freeze program for disabled homeowners because article II, section 28 authorizes the General Assembly to provide tax relief to the disabled "as provided herein for the elderly." *See* Tenn. Att'y Gen. Op. 07-156 (Nov. 21, 2007). But any tax freeze program authorized for disabled homeowners must be the same as the tax freeze program provided for the elderly. *Id.*

the "tax freeze" program described in the Act. *See* 2007 Pub. Acts ch. 581 (codified at Tenn. Code Ann. § 67-5-705).

In sum, as long as the constraints and substantive provisions are observed, an administrative division of Tennessee's tax relief program into two separate components, in and of itself, would not violate article II, section 28 of the Tennessee Constitution.

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