SUMMARY OF PROPOSAL #10
for consideration by the
ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE

TOPIC: Property Tax Relief Trust Fund

Summary of Proposal for Consideration

To use the excess funds in the Property Tax Relief Trust Fund from the one-half cent (0.5¢) sales tax under Arkansas Code §§ 26-52-302(c) and 26-53-107(c) that are not used to fund the homestead tax credit under Arkansas Constitution, Amendment 79, and Arkansas Code § 26-26-310, for other tax relief, effective for tax years beginning January 1, 2019.

Fiscal Analysis

According to the Department of Finance and Administration (DFA), all revenue deposited in the Property Tax Relief Trust Fund consists of the special revenues derived from the five-tenths percent (0.5%) sales tax dedicated to that purpose. For 2017, there were approximately seven hundred twenty thousand (720,000) credits certified to DFA for a total reimbursement of two hundred thirty million one hundred thousand dollars ($230,100,000) paid over the course of the entire year.

Each county collector must annually certify the total amount of real property tax reductions allowed within their county. DFA receives these certifications and determines each county's proportionate share of the total statewide reduction. DFA transmits this information to the State Treasurer who then makes distributions from the Property Tax Relief Trust Fund to each county treasurer in accordance with the counties proportionate share of the total statewide property tax reduction for that calendar year.

For 2017, after the payments were made for the entire year and the required disbursements of two million dollars ($2,000,00) each to cities and counties, there was a balance of approximately seventy-eight million six hundred thousand dollars ($78,600,000). In the past decade, the balance has fluctuated between approximately twenty-eight million eight hundred thousand dollars ($28,800,000) in 2012 and ninety-four million three hundred thousand dollars ($94,300,000) in 2008. According to DFA, any use of the fund balance of the Property Tax Relief Trust Fund must be done without depleting the Trust Fund and the ability to make monthly payments to cities and counties regardless of the revenue received in that specific month.

Legal Analysis

Background

Arkansas Constitution, Amendment 21, was adopted during the November 1936 general election. Amendment 21 provides a homestead tax exemption from ad valorem property tax on homesteads that do not exceed an assessed valuation of one thousand dollars ($1,000). However, if the assessed value of the homestead exceeds one thousand dollars ($1,000), the exemption will apply only to the first one thousand dollars ($1,000).

Arkansas Constitution, Amendment 79, also known as the "Property Tax Relief" Amendment was adopted during the November 2000 general election. Amendment 79 requires the General Assembly to provide an annual state credit of at least three hundred dollars ($300) against ad valorem property tax on a homestead. The tax credit may not exceed the amount of ad valorem property taxes owed. Arkansas Constitution, Amendment 79 did not create a funding mechanism for the homestead tax credit.

ACT 1 and ACT 2 of 2000 (2nd Ex. Sess.) were identical acts that created the Property Tax Relief Trust Fund, which was funded with an additional excise tax of five-tenths percent (0.5%) on all taxable sales of property and services subject to Arkansas sales tax. The act was codified under Arkansas Code §§ 19-5-1103, 26-26-310, 26-52-302(c) and 26-53-107(c). The act provided that the Property Tax Relief Trust Fund will reimburse each county treasurer for the property taxes reduced by the homestead tax credit from Arkansas Constitution, Amendment 79. The act provided that after the distributions have been made to each of the counties, the Chief Fiscal Officer of the State is required to determine that portion of the balance remaining in the Property Tax Relief Trust Fund that is in excess of the required reimbursement to the counties. Under the act, excess funds may be used in accordance with subsequent legislation to provide additional tax relief or financial assistance to school districts that incur a reduction in revenue as a direct result of Arkansas Constitution, Amendment 79.

ACT 1275 of 2001 amended Arkansas Code § 26-26-310(a) to provide that when the funds from the Property Tax Relief Trust Fund are received by the county treasurers, ninety-six percent (96%) of the funds are allocated and distributed to the various taxing entities within the county and four percent (4%) is retained in the fund of the commission of the county collector.

ACT 1892 of 2005 amended Arkansas Code § 26-26-310(b) to provide that one percent (1%) of the excess funds from the Property Tax Relief Trust Fund are to be used by the county assessors for administering the homestead tax credit under Arkansas Constitution, Amendment 79.

ACT 655 of 2009 amended Arkansas Code § 26-26-1118 to raise the homestead tax credit from the constitutionally mandated three hundred dollars ($300) to three hundred fifty dollars ($350). The homestead tax credit has not been amended since.

Potential Legal Issues

Under Arkansas Constitution, Amendment 79, the state is required to provide an annual state credit against ad valorem property tax on a homestead of at least three hundred dollars ($300). If the use of funds from the Property Tax Relief Trust Fund for additional tax relief deplete the funds available from the Property Tax Relief Trust Fund to reimburse the county treasurers for the homestead tax credit, the state is still constitutionally required to provide the homestead tax credit.

Arkansas Constitution, Article 16, § 11 states that no funds arising from a tax levied for any purpose shall be used for any other purposes. Under Arkansas Code § 26-26-310(2)(C)(iv) excess funds from the Property Tax Relief Trust Fund may be used to provide additional tax relief or financial assistance to school districts that incur a reduction in revenue as a result of the homestead tax credit. Without a constitutional amendment, using the revenues already collected from the Property Tax Relief Trust Fund for purposes other than providing tax relief or financial assistance to school districts may violate the provisions of Arkansas Constitution, Article 16, § 11, because the tax revenues would not be used for the purpose stated in the law. However, amending § 26-26-310 to allow these funds to be used for another purpose would not violate the constitution if only the funds collected after the law is amended are used for the new purpose.

Other States

- Iowa: Iowa has a homestead credit that is based on the first four thousand eight hundred fifty dollars ($4,850) of net taxable value. The Director of the Department of Administrative Services issues warrants on the homestead credit fund payable to the county treasurers. The homestead credit fund is apportioned each year from the state's general revenues to provide a credit against the tax on each eligible homestead in the state in an amount equal to the actual levy on the first four thousand eight hundred fifty dollars ($4,850) of actual value for each homestead. Accordingly, the funds apportioned from general revenues to provide a credit against the tax on eligible homesteads cannot be used for other purposes because Iowa apportions the funds based only on actual revenue needed to pay the credit. (IA St. § 425.1).

- Louisiana: Louisiana does not have a homestead tax credit. Instead, Louisiana provides a homestead tax exemption under Louisiana Constitution, Article 7, § 20. A bona fide homestead is exempt from state, parish, and special ad valorem taxes to the extent of seven thousand five hundred dollars ($7,500) of the assessed valuation of the homestead. (LA. Const. art. 7, § 20). The homestead tax exemption is funded by the Revenue Sharing Fund, which is allocated ninety million dollars ($90,000,000) annually from the state general fund, and the legislature may appropriate additional sums to the fund. The Revenue Sharing Fund is distributed annually solely on the basis of population and the number of homesteads in each parish in proportion to population and the number of homesteads throughout the state. Any balance remaining in a parish distribution is allocated to the municipalities and tax recipient bodies within each parish. A political subdivision may incur debt by issuing negotiable bonds and may pledge its portion of funds from the Revenue Sharing Fund for the payment of all or part of the principal and interest of such bonds. (LA Const. art. 7, § 26).

- Mississippi: Mississippi provides a standard homestead tax exemption on homes that are legally assessed on the land roll and owned and actually occupied as a home by bona fide residents of Mississippi who are heads of families. The amount of the exemption is based on the assessed value of the homestead up to a maximum of seven thousand five hundred dollars ($7,500) of assessed value. The exemption is provided against ad valorem property tax levied for school district purposes and county purposes. (MS St. §§ 27-33-3 and 27-33-75). The amount of the homestead tax exemption is limited to three hundred dollars ($300) of actual exempted tax dollars. (MS St. § 27-33-75).

Homeowners over the age of sixty-five (65), disabled American veterans, and disabled owners as defined by the Social Security Act (42 U.S.C. § 416) are provided an exemption from all ad valorem property taxes on the homestead and the amount of actual exempt tax dollars is not limited to a maximum of three hundred dollars ($300). The amount of the exemption is based on the assessed value of the homestead up to a maximum of seven thousand five hundred dollars ($7,500) of assessed value. (MS St. §§ 27-33-3, 27-33-67, and MR 35.IV.3.01). These same individuals are eligible for an additional homestead tax exemption from all ad valorem taxes in an amount equal to the difference between the assessed value of the homestead property on January 1, 2018, or January 1 of the first year that the homeowner qualified for the exemption and any increase in the assessed value of the homestead that results from a subsequent update in the valuation of the property. (MS. St. § 27-33-75). If a subsequent assessment results in a lower assessed value than the assessed value on January 1, 2018, or January 1 of the first year that the homeowner qualified for the exemption, then the exemption will be an amount equal to the difference between the lower assessed value and any increase in the assessed value of the homestead property from the subsequent update in valuation of the property. (MS. St. § 27-33-75). However, renovations, expansions, improvements or additions to promote energy efficiency, safety, or access to the property are not included in the determination of the additional exemption. (MS St. § 27-33-75(2)(c)).

The Tax Commission is responsible for reimbursing the revenue losses from the Mississippi homestead tax exemption. (MS St. § 27-33-41). The reimbursement is funded by general revenues, and the amount of the reimbursement is one hundred dollars ($100) per homestead applicant. (MS St. § 27-33-77). One half of the reimbursement is paid to reimburse the loss of county tax revenue, and one half of the reimbursement is paid to reimburse the loss of school tax revenue. (MS St. 27-33-77).

- Missouri: The Missouri Constitution permits the General Assembly to provide for homestead tax exemptions and credits; however, if the General Assembly provides a homestead tax exemption or credit, it must also provide restitution for any revenues lost to the respective political subdivisions. (MO Const. art. 10, § 6(a)).

  Missouri provides a homestead exemption credit on real estate property tax for persons over the age of sixty five (65) and individuals who are disabled that meet certain income requirements if those taxes increase at least two and one-half percent (2.5%) in a non-reassessment year or five percent (5%) in a reassessment year. The credit is for the amount of tax that exceeds the two and one-half percent (2.5%) or five percent (5%) increase in property tax. Because this homestead exemption credit reduces the revenues of political subdivisions, the law is required to provide restitution under Missouri Constitution, Article 10, § 6. Under this homestead exemption credit, if funds are appropriated from general revenues, the Director of the Department of Revenue will instruct the State Treasurer to distribute the appropriated funds to each county to offset the homestead exemption credit. If the general assembly does not provide the appropriated funding from general revenues, then the homestead exemption credit will not occur. (MO St. §§ 137.106(13) and (14)).

- Oklahoma: Oklahoma provides a homestead tax exemption against ad valorem property taxes. The homestead tax exemption exempts one thousand dollars ($1,000) of the assessed valuation of the homestead from ad valorem taxation. (68 OK St. § 2889). Oklahoma also provides an additional homestead tax credit to the extent of one thousand dollars ($1,000) of the assessed valuation on each homestead with a head of household whose gross household income does not exceed twenty thousand dollars ($20,000). (68 OK St. § 2890). Reimbursed funds to the counties are apportioned by the Tax Commission using the Ad Valorem Reimbursement Fund, and monies apportioned to this fund may also be transferred to other state funds or otherwise expended as directed by the legislature. (62 OK St. § 193). The county commissioners must submit claims for reimbursement to the commission, and the commission will either approve all or part of the claim for reimbursement. If there are insufficient funds in the reimbursement fund to pay all of the claims, claims for reimbursement for loss of revenue due to exemptions of ad valorem taxes for new or expanded manufacturing or research and development facilities are paid first, and any remaining funds are distributed for reimbursement of revenue for school district and county purposes due to the homestead tax exemption, followed by reimbursements for other ad valorem property tax exemptions. (62 OK St. § 193(C)). One percent (1%) of net general revenues received from state income tax are credited to the Ad Valorem Reimbursement Fund. (OK St. 68 § 2352(1)(d)).

- Tennessee: Tennessee only provides a homestead exemption that relates to execution and bankruptcy issues and does not relate to a reduction of ad valorem property tax. (TN Const. art. 11, § 11, and TN St. § 26-2-301). However, the General Assembly is allowed to provide tax relief for disabled individuals and for the elderly. (TN Const. art 2. § 28). As such, Tennessee provides that low-income individuals who are over the age of sixty-five (65) with an income less than twenty-four thousand dollars ($24,000), as adjusted for inflation, disabled persons, and disabled veterans may qualify for a rebate on the taxes paid on a specific portion of the value of property used as their residence. The tax refund is for the property taxes paid on the first twenty-seven thousand dollars ($27,000), as adjusted for inflation, of the full market value of the property, with the exception of disabled veterans, who receive reimbursement on the first one hundred seventy-five thousand dollars ($175,000) of the full market value of the property. The reimbursements are paid from the general revenues of the state, and the State Comptroller is required to estimate the cost of the homestead tax credit on an annual basis and provide the information to the Department of Finance and Administration for budgeting and appropriation of funds. (TN St. §§ 67-5-701 – 67-5-704). If the comptroller determines that funds for the appropriation are insufficient to permit full payment of claims under the homestead tax exemption, the comptroller is required to uniformly adjust the payments to permit all claims to be paid within the limits of the appropriation. (TN St. § 67-5-701).

- Texas: Texas provides for several types of homestead exemptions in its Constitution. The homestead exemptions are as follows:

    - General homestead exemption: a family or single adult is entitled to an exemption on county ad valorem property tax on the first three thousand dollars ($3,000) of the assessed value of the residence;
    - School taxes: all residential homestead owners are allowed a twenty-five thousand dollar ($25,000) homestead exemption from their home's value for school taxes;
    - County taxes: if a county collects a special tax for farm-to-market roads or flood control, a residential homestead is permitted to receive a three thousand dollar ($3,000) exemption for this tax. If the county grants an optional exemption for homeowners age sixty-five (65) or older or disabled, the owners will receive only the local-option exemption;
    - Exemption for individuals age sixty-five (65) or older and disabled for ad valorem property taxes for school districts: individuals age sixty-five (65) or older and disabled residential homestead owners may qualify for an additional ten thousand dollar ($10,000) homestead exemption for school district taxes. If the owner qualifies for the additional exemption based on both age and disability, the owner may choose only one (1) type of exemption;
    - Optional percentage exemption: any taxing unit, including a city, county, school, or special district, may offer an exemption of up to twenty percent (20%) of a home's value. However, the amount of an optional exemption cannot be less than five thousand dollars ($5,000). Each taxing unit decides if it will offer the exemption and at what percentage. This percentage exemption is added to any other home exemption for which an owner qualifies. The taxing unit must decide before July 1 of the tax year whether to offer this exemption. This exemption will expire on December 31, 2019; and

  Texas also offers a discretionary exemption for taxpayers who are age sixty-five (65) or older or disabled. A taxing unit may offer an additional exemption of at least three thousand dollars ($3,000) for taxpayers who are age sixty-five (65) or older or disabled, or both. This exemption is optional, and a taxing unit is not obligated to provide this exemption. However, if a county provides the other homestead tax exemptions, this additional exemption may not be taken in conjunction with the other homestead tax exemptions for the purposes of a county tax.

(TX Const. art 8, § 1-b, TX St. Tax Code §§ 11.13 - 11.131, and Texas Comptroller – What Homestead Exemptions are Available).

  Texas reimburses lost revenue for property tax exemptions related to school taxes collected from ad valorem property tax under the Foundation School Program from general revenues. (TX St. Education Code § 42.2522(a)(2) and TX St. Government Code § 403.302(d)). Beginning with the 2017-2018 school year, school districts are entitled to additional state aid to the extent that state and local revenue is less than what the revenue would have been as a result of the homestead tax credit. (TX St. Education Code § 42.2518). Texas also reimburses local governments for the lost revenue from the property tax exemption for a disabled veteran. The source of this reimbursement is from general revenues. (TX St. Local Government Code § 140.011). According to the State Comptroller's office, the state does not provide any further reimbursements to political subdivisions for revenues lost by way of an ad valorem homestead property tax exemption.