HOUSE RESEARCH ORGANIZATION bill analysis | 5/4/2001 | HB 2306 Chisum (CSHB 2306 by Grusendorf)

SUBJECT: Extending homestead status to a home owned by a family-owned business

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 6 ayes — Averitt, Solomons, Denny, Grusendorf, Hopson, Pitts

0 nays

3 absent — Marchant, Menendez, Wise

WITNESSES: For — John Rothermal, Stewart Title

Against — None

BACKGROUND: Tax Code, sec. 11.13 authorizes various property-tax exemptions for a residence that the property owner uses as a homestead. Sec. 11.26 freezes the total amount of school district taxes imposed on the residence homestead of a person age 65 or older at the amount of tax imposed in the first year in which that person qualified for the 65-and-older tax exemption under sec. 11.13(c).

Sec. 23.23 caps at 10 percent the annual increase in the appraised value of a residence homestead.

DIGEST: CSHB 2306 would extend the application of the Tax Code's property-tax exemptions and its limitations on taxation and appraised value increases for residence homesteads to a residential property owned by family-owned business and used as a homestead by a person who held an interest in that business and would qualify for the tax exemption or limitation. The bill also would amend the relevant sections of the Tax Code to provide that the transfer of property to the owner's family-owned business would not end the tax exemption or limitation under those sections if the owner or the owner's spouse continued to live there.

The bill would define a family-owned business as a business entity of which a majority was owned directly or indirectly by or for the benefit of people who were either:

- related by blood or adoption as a parent, child, sibling, grandparent, grandchild, great grandparent/grandchild, a parent's sister or brother (i.e., aunt or uncle), or a sibling's child (i.e., niece or nephew);
- married to each other;
- related as a spouse's — and, where there were children of the marriage, an ex-spouse's — parent, child, sibling, grandparent, or grandchild; or
- acting in a fiduciary capacity (for example, as a trustee, officer, or director) for people who were related in one of the above ways.

A conveyance of a residential homestead property from its owner to the owner's family-owned business would not be considered a change of the property's ownership if the owner or the owner's spouse continued to live there. The property would continue to be listed on the tax rolls as owned by the occupant, and the occupant and the family-owned business would be jointly and severally liable for the taxes on the property.

A homestead would retain its homestead status and protections even if it was owned by or conveyed to a family-owned business, but the property would be subject to the interests of the creditors of the family-owned business. The homestead rights could not prevent the family-owned business from transferring, mortgaging, or encumbering the residence owned by it.

CSHB 2306 would take effect on the date on which voters approved the constitutional amendment that would be proposed by CSHJR 67 by Chisum. If voters did not approve CSHJR 67, the bill would have no effect.

SUPPORTERS SAY:

CSHB 2306 would allow people to hold their homes in limited family partnerships or trusts that were set up for purposes of estate tax planning without losing their property-tax exemptions. Currently, if a person wishes to transfer his or her home along with other assets into a limited family partnership, for instance, he or she might lose the homestead exemption for property tax purposes. That would reduce the usefulness of this estate planning tool. CSHB 2306 would eliminate that problem.

At the same time, CSHB 2306 would preserve the occupant's ability to claim the property taxes paid on the home as a federal income-tax deduction. In fact, by making the occupant and the family-owned business jointly liable for the taxes, the bill would permit either the occupant or the business to claim the deduction, depending on whom it might benefit the most.

Though the person's home would become subject to the debts of the family-owned business, this would be consistent with the Legislature's shift in recent years to allow homeowners to encumber or otherwise use their homesteads as they see fit, such as through home equity loans, but to leave in place protections from creditors whom the homeowners did not anticipate or intend to have recourse to their homestead.

OPPONENTS SAY:

CSHB 2306 unwisely would encourage people to place their homes in family-owned businesses, making the home subject to the creditors of the business, because it would eliminate the immediate drawback to placing the home in a family-owned business — the loss of the property-tax exemption for the homestead.

The bill and its accompanying constitutional amendment, HJR 67, are unnecessary because there are other ways to protect a home from estate taxes without losing homestead protections. For instance, the homeowner could establish a qualified personal residence trust and transfer the home into it to avoid estate taxes without subjecting the home to creditors' claims.

NOTES:

The committee substitute added the language that would make the homestead subject to the creditors of the family-owned business.

CSHJR 67 by Chisum, which would propose amending the Texas Constitution to allow the changes made by this bill, is on today's Constitutional Amendments Calendar.