

March 2004 Legal Q&A
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Q: What is a property tax freeze?

A: Tax freezes are a relatively new concept for cities. A 2003 amendment to the Texas Constitution, H.J.R. 16, and an enacting bill, H.B. 136, provide that a city may freeze the homestead taxes of persons over the age of 65, similar to the current mandatory freeze on school district taxes. For example, if a person over 65 currently pays \$800 in city property taxes, that person will never pay more than that dollar amount during the person's lifetime, or during the lifetime of certain surviving spouses if the freeze is enacted. The freeze is at the option of the city council, except that an election is required if a petition is received by five percent of the registered voters in the city. TEX. CONST. art. VIII, § 1-b(h).

Q: If we pass a tax freeze, when does it go into effect?

A: The calendar year during which the tax freeze is adopted by the city essentially becomes the "baseline" year beyond taxes on the elderly or disabled cannot increase. For example, a city that passes the tax freeze anytime during calendar year 2004 would use the 2004 tax levy as the baseline amount for the freeze. Beginning in tax year 2005, therefore, the elderly and disabled would have their city tax bills frozen at the 2004 level regardless of rate or valuation increases. Put another way, the benefit of the tax freeze does not accrue until the tax year *after* the calendar year in which the freeze is enacted. TEX. TAX CODE ANN. § 11.261(b) (Vernon Supp. 2004).

Q: Is there a deadline to pass a city tax freeze?

A: No. A tax freeze enacted anytime in tax year 2004 is fully effective to freeze tax bills at the 2004 level. TML has been informed of some appraisal districts that are requesting that anticipated tax freeze ordinances be adopted and communicated to the district prior to a certain date in 2004, in June for example. These requests are likely based on a misunderstanding of the tax freeze legislation, which contains no such deadlines.

Q: If our city passes a tax freeze, can it change its mind later?

A: No. The legislation is clear that the tax freeze is permanent once enacted. TEX. CONST. art. VIII, § 1-b(h).

Q: How does the tax freeze interact with the optional senior tax exemption?

A: The tax freeze appears to be cumulative of the optional exemption.

Example: A city currently grants an optional homestead exemption of \$100,000. An elderly resident owning a homestead valued at \$125,000 would therefore currently pay city property taxes on only \$25,000 of value. If the city then adopted a tax freeze, the amount of taxes paid on the homestead would be "frozen" at the amount paid on the \$25,000 of remaining taxable value.

Even if the city later cancelled or reduced the \$100,000 optional exemption, the taxes would still be frozen at the amount paid on the \$25,000.

Q: How does the tax freeze interact with the ten percent cap on valuation increases?

A: The freeze is cumulative of the ten percent cap. The ten percent cap is a limit on the *taxable value* of the homestead, while the freeze applies to *total taxes paid*.

Q: How does the tax freeze interact with the senior deferral?

A: Unlike persons under 65, the elderly cannot lose their homesteads for non-payment of property taxes. TEX. TAX CODE ANN. § 33.06 (Vernon Supp. 2004). This is known as a “deferral.” The tax freeze is also cumulative of the deferral. As a result, the estates of non-tax paying seniors “enjoying” the freeze will owe less money than they would otherwise.

Q: With the combination of the optional elderly exemption, the ten percent valuation cap, the elderly freeze, and the elderly deferral, isn't it possible that some seniors will be effectively paying little or no property taxes?

A: Yes.

Q: What about persons who aren't yet 65 when the tax freeze is enacted?

A: The baseline year for the freeze would be the first tax year in which a person qualifies for an over-65 homestead exemption under state law.

Q: How is the tax freeze treated under Truth-in-Taxation laws?

A: Taxable value written-off due to a tax freeze will be considered lost value for truth-in-taxation purposes, meaning the city will get credit for the lost value in their effective and rollback rate calculations. *Id.* at 26.012(6)(B). The comptroller's office is in the process of revising its effective and rollback rate calculation tables to reflect the new freeze, which should be available in the comptroller's 2005 tax publications.

Q: What happens if a senior enjoying a tax freeze moves to a more expensive home in the same city?

A: The freeze essentially transfers to the new home, but the taxes owed would increase based on the ratio between the relative values of the old and new homesteads. *Id.* at 11.261(g).

Q: What happens if a person enjoying a tax freeze moves to a home in a different city?

A: Unlike the school district tax freeze, a city tax freeze is not transferable from city to city.