

Legislative Analysis



PERSONAL PROPERTY TAX EXEMPTIONS

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Senate Bills 489 (H-2) & 490 (H-1)

Sponsor: Sen. Jack Brandenburg

House Committee: Tax Policy

Senate Committee: Finance

(Enacted as Public Acts 153 and 154 of 2013)

Complete to 10-11-13

A SUMMARY OF SENATE BILLS 489 & 490 AS REPORTED FROM HOUSE COMMITTEE 10-9-13

Senate Bills 489 (H-2) and 490 (H-1) would make several "clean-up" amendments to the personal property tax exemptions enacted last session. Senate Bill 489 generally amends the process regarding the exemption provided to owners of industrial or commercial personal property with a combined taxable value of less than \$40,000. Senate Bill 490 generally amends the process regarding the exemptions provided for eligible manufacturing personal property.

Senate Bill 489 (H-2)

Section 9o (Eligible Personal Property)

Exemption Threshold

The act provides an exemption, beginning December 31, 2013, for commercial and industrial personal property if the combined *taxable value* of all such property owned by the taxpayer is less than \$40,000 in a particular tax collecting unit, (This is known as "eligible personal property"). Senate Bill 489 provides, instead, an exemption for commercial and industrial personal property owned by taxpayer in a particular tax collecting unit if the *true cash value* of the property is less than \$80,000.

Filing Date of Affidavit

The act requires taxpayers claiming the exemption to file an affidavit with the local tax collecting unit and the Department of Treasury by February 20. Senate Bill 489 deletes the requirement that the affidavit be filed with the Department of Treasury and moves the filing date to February 10. The substitute adds that if the property owner doesn't file a timely affidavit in 2014, an appeal with the March 2014 board of review may be filed in order to claim the exemption. (The bill also specifies that the State Tax Commission, rather than the Department of Treasury, would develop the affidavit form.)

Classification of Property

The exemption for eligible personal property applies to commercial and industrial personal property. The act defines commercial and industrial personal property by referring to property classified as such under Section 34c of the act. The substitute bill also includes commercial and industrial property that would have been classified as such were it not for the exemptions provided in Sections 9o, 9m, or 9n.

Control over Property

Under the act, the property subject to the exemption would have to be owned by, or under the control, of the owner. Senate Bill 489 provides instead that the property would have to be owned by, leased to, or in the possession of the owner or a related entity.

The bill defines "related entity" to mean a person that directly or indirectly controls, is controlled by, or is under common control with the person claiming the exemption.

The bill further defines "control," "controlled by," or "under common control" to mean the possession of the power to direct or cause the direction of the management and policies of a related entity, directly or indirectly, whether derived from a management position, ownership interest, beneficial interest, or equitable interest; or contractual or similar agreement. There would be a rebuttable presumption that control exists if any person, directly or indirectly, owns, controls, or holds the power to vote, directly or by proxy, 10% or more of the ownership interest of any other person or has contributed more than 10% of the capital of the other person. Indirect ownership would include ownership through attribution or through intermediary entities.

Appeals Process

Senate Bill 489 also provides that if the local assessor believes that the property for which the exemption is claimed is not eligible for the exemption, the assessor may deny the claim for exemption by notifying the taxpayer of the reasons for the denial and advising the taxpayer of the right to appeal the denial to the local board of review. The bill would permit the local assessor to deny the claim for exemption for the current tax year and any of the three immediately preceding years, and require the tax roll to be amended and revised tax notices be sent out reflecting the denial of the exemption.

Section 19 (Personal Property Statement)

The bill requires the local assessor or supervisor to notify personal property owners of the requirement to file a personal property statement. This notice would also have to include information on the exemptions available for qualified new personal property (Sec. 9m), qualified previously existing personal property (Sec. 9n), and eligible personal property (Sec. 9o). The bill requires this notice to be sent by January 10. (The act currently requires the statement to be submitted by February 20.)

The bill also adds that the statement remitted by taxpayers for 2015 would have to include a schedule of when any personal property listed in the statement would be eligible for exemption as qualified new personal property (Sec. 9m) or qualified previously existing personal property (Sec. 9n).

Section 21 (Fraudulent Claim for Exemption)

The bill provides that if a person fraudulently claims an exemption for personal property under Sections 9m, 9n, or 9o, that person would be guilty of a misdemeanor punishable by imprisonment of 30 days to 6 months and/or a fine of \$500 to \$2,500. The assessor would have to report suspected fraudulent claims to the prosecuting attorney.

Section 22 (Books and Records)

Eligible Personal Property

The bill provides that a person filing a claim for an exemption of eligible personal property (Sec. 9o) would have to maintain adequate books and records relating to the description, the date of purchase or acquisition, purchase price or lease amount, or value of all industrial or commercial personal property for a period of four years. The person would have to make those records available to the local assessor, county equalization department, and the Department of Treasury for four years after the exemption is claimed.

Eligible Manufacturing Personal Property

The bill also requires a person filing a claim for exemption of qualified new personal property (Sec. 9m) or qualified previously existing personal property (Sec. 9n) to maintain adequate books and records regarding the description, date of purchase or acquisition, purchase or lease price, value, customary industrial use, asset classification grouping, until that property is no longer eligible for exemptions under Sec. 9m or Sec. 9n. The person would have to make those records available to the local assessor, county equalization department, and the Department of Treasury in any year in which the person claims an exemption.

The local assessor would have to retain all affidavits claiming the exemptions under Sec. 9m, Sec. 9n, or Sec. 9o, for at least four years after completion of the assessment roll.

Section 30 (March Board of Review)

Appeal to the Board of Review

The act requires that local boards of review (which hear taxpayer challenges regarding their tax assessment) meet in March of each year to examine the tax roll and hear taxpayer challenges for current year assessments. Senate Bill 489 would add provisions regarding the appeal of a denial of a claim for exemption under Sections 9m, 9n, and 9o. For eligible personal property exemptions (Sec. 9o), the board may hear appeals for the current tax year and the immediately preceding three tax years. For qualified new personal property (Sec. 9m) or qualified previously existing personal property (Sec. 9n), the board may only hear appeals for the current year.

Appeal to the Michigan Tax Tribunal

If the board denies a claim for exemption, the taxpayer may appeal the decision to the Michigan Tax Tribunal. If the board approves the exemption, it would have to notify the appropriate officials of the affected local governments and notify the taxpayer, who would be required to file an affidavit claiming the exemption.

Section 53b (July and December Board of Review)

The act requires that that local Boards of Review meet in July and December of each year to hear taxpayer appeals regarding qualified errors, principal residence exemptions, qualified agricultural exemptions, and poverty exemptions. The bill would add provisions regarding the appeal of a denial of a claim for exemption under Sections 9m, 9n, and 9o. The bill contains similar language as provided in Section 30 regarding notice

to the appropriate local officials and taxpayers regarding a decision of the review board, and providing that a decision of the review board to deny a claim for exemption may be appealed to the Michigan Tax Tribunal. The bill would include in the definition of "qualified error" an error made in the denial of a claim for exemption for personal property under Sections 9m, 9n, and 9o.

Senate Bill 490 (H-1)

Definition of Eligible Manufacturing Personal Property

Sections 9m and 9n of the act provide an exemption for eligible manufacturing personal property that is qualified new personal property (Sec. 9m) or qualified previously existing personal property (Sec. 9n). Generally, eligible manufacturing personal property is defined to mean personal property that is located on real property and used more than 50% of the time in industrial processing or in direct integrated support. The act determines the percentage of use in industrial processing or direct integrated support by multiplying the true cash value of the property, multiplied by the percentage of time used in industrial processing or direct integrated support. The act sums this calculation for all personal property and divides the sum total by the true cash value of all personal property located on that parcel of real property.

Percentage of Use in Industrial Processing or Direct Integrated Support

The bill alters the definition of eligible manufacturing personal property to mean personal property that is "predominantly used" (i.e., more than 50%) in industrial processing or direct integrated support and located on "occupied real property." The percentage of use would be determined by: multiplying the original cost of all personal property by the percentage of use in industrial processing or in direct integrated support, and dividing the resulting product of that calculation by the total original cost of all personal property located on that parcel of real property. The industrial processing use of personal property would be based on the percentage of the industrial processing exemption the property would be eligible for under the sales and use taxes. The substitute bill specifies that personal property could not be used to generate electricity for sale.

Definition of Occupied Real Property

The bill would define "occupied real property" to generally mean real property that is owned, leased, or otherwise occupied by a person claiming the exemption under Section 9m or 9n and any contiguous real property that is entirely owned, leased, or otherwise occupied by a person claiming the exemption that hosts a single, integrated business operation engaged primarily in industrial processing and/or direct integrated support.

Definition of Industrial Processing

The bill replaces the definition of "industrial processing" in the act by referring instead to the definition as used in the General Sales Tax Act (MCL 205.54t) or the Use Tax Act (MCL 205.94o). The existing definition in the act is similar to the definition used in the sales and use taxes.

Definition of Direct Integrated Support

The bill generally provides greater detail in the definition of what constitutes "direct integrated support" for the purpose of determining property that is considered eligible manufacturing property.

Direct integrated support is defined to include research and development functions, testing and quality control functions, engineering functions, warehousing facilities, and sorting and distribution centers. The bill specifies that research and development functions, testing and quality control functions, and engineering functions apply to goods produced in industrial processing and conducted in furtherance of that industrial processing.

Under the act, warehousing facilities must directly support industrial processing and must store tangible personal property. The bill, instead, provides that direct integrated support includes receiving or storing equipment, materials, supplies, parts, or components for industrial processing (or the resulting scrap or waste materials) at the industrial processing site or any another site owned or leased by the owner or lessee of the industrial processing site. It also includes storing finished goods inventory if the inventory was produced by a business primarily engaged in industrial processing and if the inventory is stored at the site where it was produced or at another site owned or leased by the business that produced the inventory.

Section 9m (Qualified New Personal Property)

The act provides an exemption beginning December 15, 2015, for eligible manufacturing that is "qualified new personal property."

Definition of New Personal Property

"New personal property" is defined in the act to mean property that (1) was not, before January 1, 2013, subject to or exempt from taxation and was not in use or placed in service in the state; (2) before January 1, 2013, was not in use or placed in service outside of the state; and (3) was initially purchased from a vendor or new property after December 31, 2012. The bill, instead, defines "new personal property" to mean property that was initially placed in service in this state or outside of the state after December 31, 2012.

Affidavit Filing Requirements

The act requires a person claiming a qualified new personal property exemption to file an affidavit with the local tax collecting unit and the Department of Treasury by February 20, 2016. The bill would delete the requirement that the affidavit be filed with the Department of Treasury. The affidavit would have to be filed by February 10 of the first year in which the person is claiming the exemption. The affidavit would apply to all existing qualified new personal property (at the time the affidavit was filed) as well as any subsequently acquired qualified new personal property.

The bill would delete provisions exempting a person who files an affidavit claiming an exemption for qualified new personal property in 2016 from also having to file a personal property statement under Section 19 of the act (MCL 211.19), and exempting owners of

qualified new personal property from filing the affidavit or the Section 19 statement in 2017 and subsequent years.

The bill provides, instead, that in 2015, if an affidavit claiming the exemption under Section 9m would have to be filed by February 10, 2016, and the person claiming the exemption filed the Section 19 statement (or the filing requirement was not applicable), the person would not have to file the Section 19 statement for that qualified new personal property in 2016. The bill further provides that beginning in 2017, a person claiming the exemption under Section 9m would not be required to file the Section 19 statement for qualified new personal property that is exempt from taxes as provided in Section 9m. This applies to persons other than those claiming an exemption under Section 9m for personal property that was subject to an industrial facilities exemption under Section 9f of 1974 PA 198 in 2015.

For property subject to an industrial facilities exemption under Section 9f of 1974 PA 198 in 2015, the person would not have to file a Section 19 statement in the year they first claim a Section 9m exemption if they complied with the filing requirements of Section 19 in 2015 and if they timely filed the affidavit claiming the exemption under Section 9m. If the person did not file a Section 19 statement in 2015, they would be required to file the statement in the first year in which they claim the exemption under Section 9m, but would not be required to file the Section 19 statement in subsequent years.

Denial of Affidavit

The bill also provides that if the local assessor believes that the property for which the exemption is claimed is not eligible for the exemption, the assessor may deny the claim for exemption by notifying the taxpayer of the reasons for the denial and advising the taxpayer of the right to appeal the denial to the local board of review. The bill would permit the local assessor to deny the claim for exemption for the current tax year and any of the three immediately preceding years, and require the tax roll to be amended and revised tax notices be sent out reflecting the denial of the exemption.

Books and Records Requirements

The bill would require taxpayers claiming the exemption for qualified new personal property to maintain books and records as provided in Section 22 (as amended by Senate Bill 489).

Fraudulent Claims

The bill would subject a person fraudulently claiming the qualified new personal property exemption to the same penalties as provided in Section 21(2) (as amended by SB 489).

Section 9n (Qualified Previously Existing Personal Property)

Affidavit

The act provides an exemption, beginning December 31, 2015, to qualified previously existing personal property. This generally applies to eligible manufacturing property that has been subject to or exempt from the collection of taxes for the immediately preceding 10 years or would have been subject to taxes or exempt if located in that state for that period. (This basically phases in the exemption each year until all such property would become exempt in 2023)

The act requires an owner of qualified previously existing personal property to claim the exemption by filing an affidavit with the local tax collecting unit and the Department of Treasury by February 20. The bill would delete the requirement that the affidavit be filed with the Department of Treasury. The affidavit would, instead, have to be filed by February 10 of the first year in which the person is claiming the exemption

The act provides that if an affidavit claiming the exemption under Section 9n is filed, the owner of the qualified previously existing personal property is not required also to file the Section 19 personal property statement. The bill would delete this provision.

Instead, the bill provides that if the person complied with the Section 19 filing requirements in 2015 (or if the filing requirements did not apply because the property was acquired in 2015 or later), the person would not be required also to file a statement of personal property for that property in the first year for which the exemption was claimed or in any subsequent year. If the person filed an affidavit but did not comply with Section 19(9) with respect to the property in 2015, the person would have to file a statement of personal property in the first year for which the exemption was claimed, but not in any subsequent year. If a person claiming an exemption for qualified previously existing personal property had not filed an affidavit as required by Section 9n, the property would be subject to taxation and the person would have to file a statement of personal property.

Denial of Affidavit

The bill also provides that if the local assessor believes that the property for which the exemption is claimed is not eligible for the exemption, the assessor may deny the claim for exemption by notifying the taxpayer of the reasons for the denial and advising the taxpayer of the right to appeal the denial to the local board of review. The bill would permit the local assessor to deny the claim for exemption for the current tax year and any of the three immediately preceding years, and require the tax roll to be amended and revised tax notices be sent out reflecting the denial of the exemption.

Books and Records Requirements

The bill would require taxpayers claiming the exemption for qualified previously existing personal property to maintain books and records as provided in Section 22 (as amended by Senate Bill 489).

Fraudulent Claims

The bill would subject a person fraudulently claiming the qualified previously existing personal property exemption to the same penalties as provided in Section 21(2) (as amended by Senate Bill 489).

FISCAL IMPACT:

As written, both of these bills would have indeterminate effects on state and local revenues.

The primary impact of Senate Bill 489 derives from changing the limit of the personal property exemption from \$40,000 in taxable value to \$80,000 in true cash value. This

change should have no fiscal impact, as taxable value is calculated as 50% of true cash value.

Changes to the definitions of eligible manufacturing personal property, direct integrated support, and industrial processing are the main drivers of the fiscal impact of Senate Bill 490. Some of these changes reduce while others expand the types of personal property that qualify for exemption. On balance, the definitional changes could have a small but indeterminate fiscal impact relative to current law, as the value of personal property affected by these changes cannot be determined.

The bills add a misdemeanor provision. The cost of local incarceration in a county jail and local misdemeanor probation supervision varies by jurisdiction. Penal fine revenues benefit local libraries, which are the constitutionally-designated recipients of those revenues.

POSITIONS:

The Department of Treasury supports the bills. (10-9-13)

The Michigan Manufacturers Association supports the bills. (10-10-13)

The Michigan Chamber of Commerce supports the bills. (10-9-13)

The Small Business Association of Michigan supports the bills. (10-9-13)

The Grand Rapids Area Chamber of Commerce supports the bills. (10-9-13)

The Michigan Municipal League, the Michigan Townships Association, and the Michigan Association of Counties indicated neutral positions. (10-2-13)

The Michigan Assessors Association indicated opposition the bills on 1-2-13

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.