



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 489 and 490 (as enacted)
Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACTS 153 & 154 of 2013

Date Completed: 12-16-13

CONTENT

Senate Bill 489 amended the General Property Tax Act to revise the exemption for industrial or commercial personal property owned by a single taxpayer in a local unit where the combined value of all such property owned by or under the control of that taxpayer is less than a specified amount. The bill does the following:

- Refers to a combined true cash value of less than \$80,000, rather than a combined taxable value of less than \$40,000.
- Revises the description of the property eligible for the exemption.
- Authorizes an assessor to deny an exemption for the current year and the three previous years, and issue a corrected tax bill, if he or she believes that the property is not eligible.

The bill does the following with respect to this exemption and the exemptions for new and previously existing eligible manufacturing personal property:

- Makes it a misdemeanor for a person to fraudulently claim an exemption.
- Requires assessing officers to notify taxpayers of the availability of these exemptions.
- Requires a person claiming an exemption to maintain adequate books and records and provide access to them.
- Requires assessors to preserve affidavits claiming the exemptions for four years.
- Permits the denial of an exemption to be appealed to a board of review.
- Allows a person claiming an exemption to appeal a board of review's decision to the Michigan Tax Tribunal.

The bill also requires a taxpayer's statement of personal property for 2015 to indicate when the property will qualify for an exemption for eligible manufacturing personal property.

Senate Bill 490 amended the Act to revise the exemptions for industrial and commercial personal property that is new or previously existing eligible manufacturing personal property. The bill does the following:

- Revises the calculation of use in industrial processing or direct integrated support, in the definition of "eligible manufacturing personal property".

- **Revises the definitions of "industrial processing" and "direct integrated support".**
- **Allows an exemption to be claimed for personal property located on real property owned, leased, or occupied by the person claiming the exemption or by an affiliated person.**
- **Revises the definition of "new personal property", and specifies that an affidavit claiming an exemption for new personal property applies to all existing and subsequently acquired qualified new personal property.**
- **Deletes a requirement that an affidavit claiming an exemption for new personal property be filed by February 20, 2016.**
- **Revises provisions under which a person is not required to file an affidavit claiming an exemption or a statement of personal property in subsequent years.**
- **Authorizes an assessor to deny an exemption and issue a corrected tax bill if he or she believes that the property is not eligible.**

The bills took effect on November 5, 2013.

(Please note: The sections of the Act providing for the exemptions described above are part of a package of legislation enacted in 2012 to phase out the personal property tax through exemptions, and provide mechanisms to potentially replace a portion of the lost revenue. These sections will be repealed, and related amendments will no longer be effective, if the voters do not approve a question on the August 2014 ballot. As required by Public Act 408 of 2012, the question is whether to authorize a local use tax that will generate a specified amount of revenue, and reduce the State use tax by the same amount. For a detailed discussion of these issues, please see the Senate Fiscal Agency *State Notes* article, "Personal Property Tax Reform Legislation", Winter 2012.)

Senate Bill 489

Eligible Property

As enacted by Public Act 401 of 2012, Section 9o of the General Property Tax Act provided for an exemption, beginning December 31, 2013, for industrial personal property or commercial personal property owned by a person in a local tax collecting unit, if the combined taxable value of all such property owned by or under the control of the person was less than \$40,000 in that local unit.

Under the bill, instead, this exemption may be claimed if the combined true cash value of all industrial and commercial personal property in a local tax collecting unit owned by, leased by, or in the possession of the owner or a related entity is less than \$80,000 on December 31 of the preceding year. (As discussed below, taxable value of \$40,000 is equivalent to true cash value of \$80,000.)

The bill provides that the property may not be leased to or used by a person that previously owned it or a person that, directly or indirectly, controls, is controlled by, or is under common control with the person that previously owned the property.

The bill defines "related entity" as a person that, directly or indirectly, controls, is controlled by, or is under common control with the person claiming the exemption. "Person" means an individual, partnership, corporation, association, limited liability company, or any other legal entity.

The bill defines "control", "controlled by", and "under common control of", and establishes 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 includes ownership through attribution or through one or more intermediary entities.

Originally, Section 9o defined "commercial personal property" as personal property classified as commercial personal property under Section 34c of the Act. Under the bill, the term also includes personal property that would be classified as commercial personal property under Section 34c if not exempt from the collection of taxes under the Act under Section 9o or Section 9m or 9n (the sections amended by Senate Bill 490).

Claiming the Exemption; Denial

In order to claim the exemption under Section 9o, a person must file an affidavit with the local tax collecting unit in which the property is located in each tax year. The bill requires the affidavit to be filed by February 10, instead of February 20 as originally required. The bill also deleted a requirement that the affidavit be filed with the Department of Treasury, as well.

Under the bill, if the assessor of the local tax collecting unit believes that the personal property is not eligible personal property, the assessor may deny that claim by giving the person that filed the affidavit written notice of the reason for the denial, and advising the person that the denial may be appealed to the board of review during that tax year.

The assessor may deny a claim for exemption for the current year and for the three preceding calendar years. If the assessor denies a claim for exemption, he or she must remove the exemption of that property. Depending on whether the tax roll is in the possession of the local unit or the county, the assessor or the county treasurer must amend the tax roll and, within 30 days, issue a corrected tax bill or a supplemental tax bill for any additional taxes, plus interest at the rate of 1% per month and penalties computed from the date the taxes were last payable without interest or penalty.

Taxes levied in a corrected or supplemental tax bill must be returned as delinquent on the March 1 in the year immediately following the year in which the corrected or supplemental tax bill is issued.

For 2014 only, if an owner of eligible personal property did not timely file an exemption under Section 9o, the bill allows the owner to file an appeal with the March 2014 board of review to claim the exemption.

Notice to Taxpayer; Statement of Personal Property

The Act requires a supervisor or other assessing official to require any person believed to possess personal property to make a statement of all the personal property of that person, and deliver the statement to the supervisor or assessor by a deadline in February of each year. Under the bill, this applies except as provided in Section 9m, 9n, or 9o. (Under Section 9o, if an affidavit claiming the exemption is filed, the property owner does not also have to file a statement of personal property. Sections 9m and 9n contain similar provisions.)

The bill requires a notice from the supervisor or other assessing official regarding this statement to do the following:

- Notify the person of the exemptions available under Sections 9m, 9n, and 9o.
- Explain where information about those exemptions, the forms and requirements for claiming them, and the forms for the statement of personal property are available.

The bill also changes the filing deadline from February 20 to February 10, and requires a notice from the supervisor or other assessing official to be sent or delivered by January 10 each year.

In addition, the bill requires a statement of personal property for 2015 to include a schedule of when any personal property included in the statement will become eligible for exemption under Section 9m or 9n.

Fraudulent Claim of Exemption

Under the bill, if a person fraudulently claims an exemption for personal property under Section 9m, 9n, or 9o, the person is guilty of a misdemeanor punishable by imprisonment for at least 30 days but not more than six months, or a fine of at least \$500 but not more than \$2,500, or both.

If the assessor for the local tax collecting unit is satisfied that a person is liable under this provision, the assessor must report the case to the prosecuting attorney of the county in which the property is located.

Books & Records; Preservation of Affidavits

The bill requires a person who claims an exemption under Section 9o to maintain adequate books and records relating to the description, the date of purchase, lease, or acquisition, and the purchase price, lease amount, or value of all industrial personal property and commercial personal property owned by, leased by, or in the possession of that person or a related entity for four years after filing an affidavit claiming the exemption. The person also must provide access to the books and records if requested by the local assessor, county equalization department, or Department of Treasury for four years following the year in which the person files the affidavit.

In addition, a person who files an affidavit claiming an exemption for personal property under Section 9m or 9n must maintain adequate books and records relating to the same information, as well as the customary industrial use for that property, and its asset classification grouping as applied in mass appraisal techniques for assessing property, until that property is no longer eligible for exemption under Section 9m or 9n. The person must provide access to the books and records if requested by the local assessor, county equalization department, or Department of Treasury in any year in which that person claims an exemption for that property under Section 9m or 9n.

The bill requires the assessor of a local tax collecting unit to preserve all affidavits claiming an exemption for personal property filed under Sections 9m, 9n, and 9o for at least four years after completing of the assessment roll for which the affidavits are filed.

Board of Review

Section 30 of the Act requires a board of review to meet on certain dates in March to hear protests regarding the assessed value or tentative taxable value of property. A board of review must schedule a final meeting after it makes a change in assessed value or tentative taxable value, or adds property to the assessment roll. The bill also requires a board of review to schedule a final meeting after it exempts personal property under Section 9m, 9n, or 9o and removes it from the assessment roll.

At the request of a person whose property is assessed, if sufficient cause is shown, the board of review must correct the assessed value or tentative taxable value of the property. Under the bill, for the appeal of a denial of a claim of exemption for personal property under

Section 9m, 9n, or 9o, the board of review must remove the property from the assessment roll if an exemption is approved.

Section 53b of the Act sets forth procedures under which qualified errors can be corrected upon appeal to a board of review, which must meet in July and December for this purpose. (As a rule, qualified errors are clerical mistakes affecting property assessments.) The bill includes in the definition of "qualified error" an error made in the denial of a claim of exemption for personal property under Section 9m, 9n, or 9o. The bill generally extends the existing procedures to appeals regarding these exemptions. For the appeal of a denial of a claim of exemption under Section 9m, 9n, or 9o, the board of review may remove the personal property from the assessment roll.

The bill requires a board of review, if it approves a Section 9m, 9n, or 9o exemption under Section 30 or Section 53b, to file an affidavit with the proper officials involved in the assessment and collection of taxes, and requires all affected official records to be corrected.

A correction that approves an exemption under Section 9o may be made for the year in which the appeal was filed and the immediately preceding three tax years. A correction that approves an exemption under Section 9m or 9n may be made only for the year in which the appeal was filed.

If the board of review does not approve an exemption under Section 9m, 9n, or 9o, the person claiming it may appeal that decision in writing to the Michigan Tax Tribunal.

Senate Bill 490

Eligible Manufacturing Personal Property

Public Acts 401 and 403 of 2012 added Sections 9m and 9n to the General Property Tax Act to provide exemptions for industrial and commercial personal property that meets the definition of "eligible manufacturing personal property", beginning December 31, 2015. Section 9m applies to "qualified new personal property" and Section 9n applies to "qualified previously existing personal property" (as described below).

Originally, the 2012 amendments required property to be located on a parcel of real property and used more than 50% of the time in industrial processing or in direct integrated support, in order to qualify as eligible manufacturing personal property. The Act set forth a formula to calculate percentage of use.

Under the bill, instead, the personal property must be located on occupied real property and be "predominantly used" in industrial processing or direct integrated support. Property will be predominantly used in that manner if the result of a calculation set forth in the bill is more than 50%. The bill specifies that personal property is used in industrial processing if it is not used to generate electricity for sale and if its purchase or use by the person claiming the exemption would be eligible for exemption under Section 4t of the General Sales Tax Act or Section 4o of the Use Tax Act (which provide exemptions for industrial processing equipment). For an item of personal property that is used in industrial processing, its percentage of use in industrial processing must equal the percentage of the exemption the property would be eligible for under either of those sections.

The bill defines "occupied real property" as all of the following:

- A parcel of real property that is entirely owned, leased, or otherwise occupied by a person claiming an exemption.

- Contiguous parcels of real property that are entirely owned, leased, or otherwise occupied by a person claiming an exemption and that host a single, integrated business operation engaged primarily in industrial processing, direct integrated support, or both.
- The portion of a parcel of real property that is owned, leased, or otherwise occupied by a person claiming the exemption or by an affiliated person.

The bill defines "affiliated person" as a sole proprietorship, partnership, limited liability company, corporation, association, flow-through entity, member of a unitary business group, or other entity related to a person claiming an exemption.

Previously, "industrial processing" meant the conversion or conditioning of tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to ultimately be sold at retail. The bill, instead, specifies that "industrial processing" means that term as defined in Section 4t of the General Sales Tax Act or Section 4o of the Use Tax Act. (The definitions in those Acts are virtually the same as the previous definition in the General Property Tax Act, but the other definitions also specify that industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.)

Previously, "direct integrated support" meant research and development functions, testing and quality control functions, engineering functions, warehousing facilities that directly support the owner or lessee engaging in industrial processing and that store tangible personal property owned by that owner or lessee, and sorting and distribution centers that optimize transportation and use just-in-time inventory management and material handling for inputs to industrial processing.

The bill defines "direct integrated support", instead, as any of the following:

- Research and development related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
- Testing and quality control functions related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
- Engineering related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
- Receipt or storage of equipment, materials, supplies, parts, or components for industrial processing, or scrap materials or waste resulting from industrial processing, at the industrial processing site or at another site owned or leased by the owner or lessee of the industrial processing site.
- Storage of finished goods inventory if the inventory was produced by a business engaged primarily in industrial processing and is stored either at the site where it was produced or at another site owned or leased by the business that produced by the inventory.
- Sorting, distributing, or sequencing functions that optimize transportation and just-in-time inventory management and material handling for inputs to industrial processing.

Exemption for New Property

Exempt Property. Under Section 9m, beginning December 15, 2015, qualified new personal property is exempt from the collection of taxes under the General Property Tax Act. Under the bill, this applies to qualified new personal property for which an exemption has been properly claimed.

"Qualified new personal property" means property that is eligible manufacturing personal property and is new personal property. The definition previously referred to property that was new personal property after December 31, 2012.

Section 9m previously defined "new personal property" as property meeting all of the following conditions:

- Before January 1, 2013, it was not subject to or exempt from the collection of taxes under the General Property Tax Act, except exempt inventory, and was not in place or placed in service in this State.
- Before January 1, 2013, it was not in use or placed in service outside of this State.
- It was initially purchased from the manufacturer, dealer, distributor, or other vendor of new property after December 31, 2012.

The bill defines "new personal property", instead, as property that was initially placed in service in this State or outside of this State after December 31, 2012.

Claiming the Exemption; Filing Statement of Personal Property. Section 9m previously required an owner of qualified new personal property to claim the exemption by filing an affidavit with the local tax collecting unit in which the property was located and with the Department of Treasury by February 20, 2016. An affidavit had to be filed only in 2016.

Under the bill, instead, if a person claiming an exemption under Section 9m has not filed an affidavit in any prior year with the local tax collecting unit, the person must file the affidavit with that local unit by February 10 of the first year for which the person is claiming the exemption for qualified new personal property in the local unit. The bill specifies that the affidavit applies to all existing and subsequently acquired qualified new personal property.

Previously, if an affidavit claiming the exemption under Section 9m was filed in 2016, the owner of the qualified new personal property would not also have to file a statement of personal property under the Act for that property in 2016. Beginning in 2017 and each subsequent year, an owner of qualified new personal property would not have to file an affidavit claiming the exemption or a statement of personal property for that property. The bill deleted these provisions.

Under the bill, if an affidavit claiming the exemption is filed by February 10, 2016, and the person claiming the exemption complied with Section 19(9) in 2015, or if that requirement did not apply because the property was acquired in 2015, the person will not be required to file a statement of personal property for that property in 2016. (Under Senate Bill 489, Section 19(9) requires a statement of personal property for 2015 to include a schedule of when any personal property included in the statement will become exempt under Section 9m or 9n.) Beginning in 2017, the person will not have to file a statement of personal property for qualified new personal property exempt under Section 9m.

These provisions do not apply to a person claiming an exemption for personal property that is subject to Section 9f of the General Property Tax Act or Public Act 198 of 1974. (Section 9f applies to new personal property owned or leased by an eligible business in an eligible local assessing district. Public Act 198 applies to a facility subject to an industrial facilities exemption certificate.) In that case, if an affidavit claiming the exemption is filed as provided in the bill, and the person claiming the exemption complied with Section 19(9) in 2015, the person will not have to file a statement of personal property for that qualified new personal property in the first year for which the person is claiming an exemption under Section 9m or in any subsequent year. If the person did not comply with Section 19(9) in 2015, however, the person must file a statement of personal property for the qualified new personal property in the first year for which the exemption is claimed, but not in any subsequent year.

If the person claiming the exemption under Section 9m has not filed an affidavit as required, the personal property for which the exemption is claimed will be subject to the collection of taxes and the person must file a statement of personal property.

Qualified Previously Existing Personal Property

Under Section 9n, beginning December 31, 2015, qualified previously existing personal property is exempt from the collection of taxes under the General Property Tax Act. Under the bill, this applies to qualified previously existing personal property for which an exemption has been properly claimed. (To qualify, property must have been subject to taxation for at least 10 years. This exemption will apply first to property acquired before 2006.)

Originally, Section 9n required 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, instead, requires a person to claim the exemption by filing an affidavit with the local tax collecting unit as provided below.

Originally, if an affidavit claiming the exemption under Section 9n was filed, the owner of the qualified previously existing personal property did not also have to file a statement of personal property for that property in that tax year or any following tax year. The bill deleted this provision.

Under the bill, if a person claiming the exemption has not filed an affidavit under Section 9n in any prior year with the local tax collecting unit claiming an exemption for that property, the person must file the affidavit with that local unit by February 10 of the first year for which the exemption is being claimed. If the person complied with Section 19(9) with respect to that property in 2015, or if the filing requirement in Section 19(9) did not apply because the property was acquired in 2015 or later, the person will not also have to file a statement of personal property for that property in the first year for which the exemption is claimed or in any subsequent year. If the person files an affidavit but did not comply with Section 19(9) with respect to the property in 2015, the person must file a statement of personal property in the first year for which the exemption is claimed, but not in any subsequent year.

If a person claiming an exemption for qualified previously existing personal property has not filed an affidavit as required by Section 9n, the property will be subject to taxation and the person must file a statement of personal property.

Denial of Exemption

Under the bill, if the assessor of a local tax collecting unit believes that personal property for which an affidavit claiming an exemption is filed under Section 9m or 9n is not qualified new personal property or qualified previously existing personal property, as applicable, the assessor may deny that claim by giving the person that filed the affidavit written notice of the reason for the denial and advising the person that the denial may be appealed to the board of review under Section 30 or 53b. The assessor may deny a claim for exemption for the current year only.

If the assessor denies a claim for exemption, he or she must remove the exemption of that property from the tax roll and the local treasurer, within 30 days, must issue a corrected tax bill for any additional taxes.

MCL 211.9o et al. (S.B. 489)
211.9m & 211.9n (S.B. 490)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills will have an indeterminate and likely negligible impact on State and local unit revenue. Revenue most likely will be affected by two amendments: 1) the changes in the definition of eligible personal property contained in Senate Bill 489, and 2) the changes in the definitions of eligible manufacturing personal property, direct integrated support, and industrial processing contained in Senate Bill 490. The changes in Senate Bill 489 will generally reduce the value of the exemption, reducing the revenue loss to the State and local units once the exemption begins taking effect December 31, 2013. However, the potential magnitude of the changes is unknown and will depend on the specific characteristics of affected taxpayers and the local units in which affected property is located.

The changes in Senate Bill 490 may either increase or decrease the value of the exemptions relative to previous law. The changes will likely exclude some property that otherwise would qualify under the original definitions, but also will likely include some property that otherwise would be excluded by those definitions. The relative magnitude of these changes is unknown and also will depend on the specific characteristics of affected taxpayers and the local units in which affected property is located.

The amendments in Senate Bill 489 that change the property affected by the exemption from total property with a taxable value of less than \$40,000 to total property with a true cash value of less than \$80,000 are not expected to have a fiscal impact. Generally, the taxable value of personal property equals one-half of the true cash value. However, exempt property is generally regarded as having a taxable value of zero. As a result, those amendments will not effectively change the property included under the exemption, but remove some potential ambiguity regarding what property is eligible for the exemption.

In addition, the new misdemeanor penalty for fraudulently claiming an exemption will have an impact on local units of government, which will incur costs of imprisonment, to the extent that people are prosecuted, convicted, and sentenced to imprisonment. Penal fine revenue will benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.