



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bills 489 and 490 (as introduced 9-12-13)  
Sponsor: Senator Jack Brandenburg  
Committee: Finance

Date Completed: 9-18-13

**CONTENT**

**Senate Bill 489** would amend 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 taxable value of all such property owned by or under the control of that taxpayer is less than \$40,000. The bill would do the following:

- Revise the description of the property eligible for the exemption.
- Authorize 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 believed that the property was not eligible.

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

- Make it a misdemeanor for a person to fraudulently claim an exemption.
- Require assessing officers to notify taxpayers of the availability of these exemptions.
- Require a taxpayer's statement of personal property for 2015 to indicate when the property would qualify for an exemption for eligible manufacturing personal property.
- Require a person claiming an exemption to maintain adequate books and records and provide access to them.
- Require assessors to preserve affidavits claiming the exemptions for four years.
- Permit the denial of an exemption to be appealed to a board of review.
- Allow a person claiming an exemption to appeal a board of review's decision to the Michigan Tax Tribunal.

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

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

- **Allow 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.**
- **Revise the definition of "new personal property", and specify that an affidavit claiming an exemption for new personal property would apply to all existing and subsequently acquired qualified new personal property.**
- **Delete a requirement that an affidavit claiming an exemption for new personal property be filed by February 20, 2016.**
- **Revise provisions under which a person is not required to file an affidavit claiming an exemption or a statement of personal property in subsequent years.**
- **Authorize an assessor to deny an exemption and issue a corrected tax bill if he or she believed that the property was not eligible.**

(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 provides 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 is less than \$40,000 in that local unit.

Under the bill, instead, this exemption could 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 were 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 property could not be leased to or used by a person that previously owned it or a person that, directly or indirectly, controlled, was controlled by, or was under common control with the person that previously owned the property.

"Related entity" would mean a person that, directly or indirectly, controls, is controlled by, or is under common control with the person claiming the exemption. "Person" would mean an individual, partnership, corporation, association, limited liability company, or any other legal entity.

The bill would define "control", "controlled by", and "under common control of", and would establish a rebuttable presumption that control existed if any person, directly or indirectly, owned, controlled, or held the power to vote, directly or by proxy, 10% or more of the ownership interest of any other person or had contributed more than 10% of the capital of the other person. Indirect ownership would include ownership through attribution or through one or more intermediary entities.

### 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 and with the Department of Treasury by February 20 in each tax year. The bill would require the affidavit to be filed by February 10, and would delete the requirement to file with the Department.

If the assessor of the local tax collecting unit believed that the personal property was not eligible personal property, the assessor could 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 could be appealed to the board of review during that tax year.

The assessor could deny a claim for exemption for the current year and for the three preceding calendar years. If the assessor denied a claim for exemption, he or she would have to remove the exemption of that property. Depending on whether the tax roll was in the possession of the local unit or the county, the assessor or the county treasurer would have to 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 would have to be returned as delinquent on the March 1 in the year immediately following the year in which the corrected or supplemental tax bill was issued.

### 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 February 20 of each year. Under the bill, this would apply except as provided in Section 9m or 9n (the sections Senate Bill 490 would amend) or Section 9o. (Under Section 9o, if an affidavit claiming the exemption is filed, the property owner is not also required to file a statement of personal property. Sections 9m and 9n contain similar provisions.)

The bill would require 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 were available.

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

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

### Fraudulent Claim of Exemption

Under the bill, if a person fraudulently claimed an exemption for personal property under Section 9m, 9n, or 9o, the person would be 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 were satisfied that a person was liable under this provision, the assessor would have to report the case to the prosecuting attorney of the county in which the property was located.

#### Books & Records; Preservation of Affidavits

The bill would require a person who claimed 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 would have to 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 filed the affidavit.

In addition, a person who filed an affidavit claiming an exemption for personal property under Section 9m or 9n would have to 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 was no longer eligible for exemption under Section 9m or 9n. The person would have to 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 claimed an exemption for that property under Section 9m or 9n.

The assessor of a local tax collecting unit would have 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 were 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 would require a board of review to schedule a final meeting after it exempted personal property under Section 9m, 9n, or 9o and removed 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 would have to remove the property from the assessment roll if an exemption were approved.

Section 53b of the Act sets forth procedures under which qualified errors can be corrected upon appeal to a board of review. (As a rule, qualified errors are clerical mistakes affecting property assessments.) The bill would include 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 would extend the current 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 could remove the personal property from the assessment roll.

If a board of review approved an exemption under Section 30 or Section 53b, it would have to file an affidavit with the proper officials involved in the assessment and collection of taxes, and all affected official records would have to be corrected. The board also would have to require the person claiming the exemption to execute the affidavit provided for in Section 9m, 9n, or 9o.

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

If the board of review did not approve an exemption, the person claiming it could 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).

To qualify as eligible manufacturing personal property, property must be located on a parcel of real property and used more than 50% of the time in industrial processing or in direct integrated support. The percentage of use must be calculated according to a formula set forth in the Act.

Under the bill, instead, the personal property would have to be located on occupied real property and be "predominantly used" in industrial processing or direct integrated support. Property would be predominantly used in that manner if the result of a calculation set forth in the bill were more than 50%. The bill specifies that personal property would be used in industrial processing to the extent 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).

The bill would define "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.

"Affiliated person" would mean 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.

Currently, "industrial processing" means 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" would mean 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 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.)

Currently, "direct integrated support" means 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 would define "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.
- Receiving or storing 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.
- Storing 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 would apply to qualified new personal property for which an exemption had been properly claimed.

Currently, "qualified new personal property" means property that is eligible manufacturing personal property and was new personal property after December 31, 2012. The bill would define the term as eligible manufacturing personal property that is new personal property.

Section 9m defines "new personal property" as property that meets 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 would define "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. Currently, an owner of qualified new personal property must claim the exemption under Section 9m by filing an affidavit with the local tax collecting unit in which the property is located and with the Department of Treasury by February 20, 2016.

The bill, instead, would require a person to claim the exemption by filing an affidavit with the local tax collecting unit as provided below. The affidavit would apply to all existing and subsequently acquired qualified new personal property.

If a person claiming an exemption under Section 9m had not filed an affidavit in any prior year with the local tax collecting unit, the person would have to file the affidavit with that local unit by February 10 of the first year for which the person was claiming the exemption for qualified new personal property in the local unit.

Filing in Subsequent Years. Currently, if an affidavit claiming the exemption under Section 9m is filed in 2016, the owner of that qualified new personal property is not required also 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 is not required to file an affidavit claiming the exemption or a statement of personal property for that property. The bill would delete these provisions.

Under the bill, if an affidavit claiming the exemption were 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 would not be required to file a statement of personal property for that property in 2016. (Under Senate Bill 489, Section 19(9) would require a statement of personal property for 2015 to include a schedule of when any personal property included in the statement would become exempt under Section 9m or 9n.) Beginning in 2017, the person would not have to file a statement of personal property for qualified new personal property exempt under Section 9m.

These provisions would not apply to a person claiming an exemption for personal property that was 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 were filed as provided in the bill, and the person claiming the exemption complied with Section 19(9) in 2015, the person would not have to file a statement of personal property for that qualified new personal property in the first year for which the person was 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 would have to file a statement of personal property for the qualified new personal property in the first year for which the exemption was claimed, but not in any subsequent year.

If the person claiming the exemption under Section 9m had not filed an affidavit as required, the personal property for which the exemption was claimed would be subject to the collection of taxes and the person would have to 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 would apply to qualified previously existing personal property for which an exemption had 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.)

An owner of qualified previously existing personal property must claim the exemption by filing an affidavit with the local tax collecting unit and the Department of Treasury by February 20. The bill, instead, would require a person to claim the exemption by filing an affidavit with the local tax collecting unit as provided below.

Currently, 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 a statement of

personal property for that property in that tax year or any following tax year. The bill would delete this provision.

Under the bill, if a person claiming the exemption had 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 would have to file the affidavit with that local unit by February 10 of the first year for which the exemption was 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 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 Exemption

Under the bill, if the assessor of a local tax collecting unit believed that personal property for which an affidavit claiming an exemption was filed under Section 9m or 9n was not qualified new personal property or qualified previously existing personal property, as applicable, the assessor could 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 could be appealed to the board of review under Section 30 or 53b. The assessor could deny a claim for exemption for the current year only.

If the assessor denied a claim for exemption, he or she would have to remove the exemption of that property from the tax roll and the local treasurer, within 30 days, would have to 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 would have an indeterminate and likely negligible impact on State and local unit revenue. Revenue would most likely 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 would generally reduce the value of the exemption under current law, 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 would depend on the specific characteristics of affected taxpayers and the local units in which affected property is located.

The changes in Senate Bill 490 could either increase or decrease the value of the exemptions relative to current law. The changes would likely exclude some property that otherwise will qualify under the current definitions, but also would likely include some property that otherwise will be excluded by the current definitions. The relative magnitude of these changes is unknown and also would 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 would 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 would not effectively change the property included under the exemption, but would remove some potential ambiguity regarding what property is eligible for the exemption.

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

Fiscal Analyst: David Zin

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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.