

# Legislative Analysis



## QUALIFIED HEAVY EQUIPMENT RENTAL PERSONAL PROPERTY SPECIFIC TAX ACT

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<http://www.house.mi.gov/hfa>

### House Bills 5778 and 5779 as introduced

Sponsor: Rep. Jim Ellison  
Committee: Tax Policy  
Complete to 9-1-20

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bills 5778 and 5779 would exempt certain heavy equipment rental personal property from taxation under the General Property Tax Act and levy a specific tax of 2% on the rental of that equipment. The bills would be effective beginning January 1, 2021.

**House Bill 5779** would create a new act, the Qualified Heavy Equipment Rental Personal Property Specific Tax Act.

#### Exemption from property tax

Under the new act, beginning December 31, 2020, *qualified heavy equipment rental personal property* for which an exemption was claimed as described below would be exempt from the collection of taxes under the General Property Tax Act.

*Qualified heavy equipment rental personal property* would mean any construction, earthmoving, or industrial equipment that is *mobile* and rented to customers by a *qualified renter* for a term of less than a year or under an open-ended contract. It would include attachments for that equipment or ancillary equipment or tools primarily used for construction or industrial purposes. It would not include handheld tools or equipment designed solely for industry-specific uses in oil and gas exploration, mining, or forestry. Examples would include:

- A self-propelled vehicle that is not designed to be driven on the highway.
- Industrial electrical generation equipment.
- Industrial lift equipment.
- Industrial material handling equipment.
- Industrial portable heating, ventilation, and air-conditioning equipment.
- Industrial compressors, generators, or pumps.
- Equipment used in shoring, shielding, and ground trenching.
- Equipment or vehicles that do not need a title under the Michigan Vehicle Code.

*Mobile* would mean that the equipment is not intended to be permanently affixed to real property for its use and that it can be moved among worksites.

*Qualified renter* would mean a person engaged in a line of business described in code 532310 or 532412 of the North American Industry Classification System (NAICS)<sup>1</sup> that primarily rents qualified heavy equipment rental personal property to the public and not primarily to an affiliate for use directly by that affiliate.

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<sup>1</sup> General rental centers and construction, mining, and forestry machinery and equipment rental businesses.

**To claim an exemption**, a qualified renter would have to file a statement with the Department of Treasury, on a form and in a manner prescribed by the department, by December 1 of the calendar year immediately before a calendar year in which the exemption will be claimed. The statement would have to list the addresses of all Michigan locations where the qualified renter rents the qualified heavy equipment rental personal property and identify each item of property for which the exemption is being claimed for the first time. The information in the statement would be taxpayer confidential information. The statements and the information in them would be exempt from disclosure under the Freedom of Information Act (FOIA).

By December 15 of each year, the Department of Treasury would have to post a **listing of all property reported** on a statement filed as above, and other information as determined by the department, and make it available to each local tax collecting unit where a qualified renter rents qualified heavy equipment rental personal property. Local assessors would have to review the listing annually and remove any exempt property from their tax roll. The department and local assessors would have to preserve statements claiming an exemption for at least four calendar years after the date they were filed.

**To rescind a claim** of exemption, a qualified renter would have to file a statement with the Department of Treasury by December 1 of the year immediately before the year in which the property will be no longer eligible for the exemption. The department would have to transmit rescission statements to the appropriate tax collecting unit annually by December 15.

If the Department of Treasury had reason to believe that either the property or the renter did not meet the requirements of the act, **the department could deny**, for the current year only, a claim for exemption. The department would have to notify both the person filing the claim and the local tax collecting unit, and the local unit would have to amend its tax roll and issue a corrected tax bill within 30 days of the denial. A person could appeal a denial.

A qualified renter claiming an exemption would have to keep **adequate records** describing the personal property and its customary use and would have to retain, for four calendar years, copies of all contracts and similar documents for renting that property. The renter would have to provide access to those records if requested by the Department of Treasury.

A person who **fraudulently claimed** an exemption would be guilty of a misdemeanor punishable by imprisonment in the county jail for at least 30 days and up to six months, by a fine of at least \$500 and up to \$2,500, or by both imprisonment and a fine. If the Department of Treasury believed that a person made a fraudulent claim, it would have to report it to the prosecuting attorney of a county where the property is or was located.

#### **Qualified heavy equipment rental personal property tax**

The act would levy, beginning January 1, 2021, a qualified heavy equipment rental personal property **tax on each transaction** of a qualified renter renting property in Michigan that is exempt from property tax as described above. The tax would be paid by the customer renting the property. The tax would be in an amount equal to 2% of the rental price net of any customer credits given at the end of the rental.

The qualified renter would collect the tax. The Department of Treasury would have to make available to qualified renters, by February 1, 2022, and each February 1 thereafter, an electronic **reporting statement** form for calculating, reporting, and filing the tax collected by the renter

in the previous calendar year. Each qualified renter would have to submit to the department, on a quarterly basis, the completed reporting statement and full payment of the tax for the previous reporting period, less any credits or overpayments to which the renter was entitled. A renter that failed to submit timely payment could be assessed a penalty of 1% a week on the unpaid balance, up to a maximum of 5% of the amount due and unpaid. Amended statements and refunds of overpayments would be handled similarly to amended returns and refunds for the sales tax. Statements would not be subject to disclosure under FOIA.

If the Department of Treasury discovered that property was not eligible for an exemption, or if a qualified renter failed in a reporting period to timely submit payment in full and any penalty as described above, the department would have to issue an **order rescinding the exemption** for the relevant property, and the local tax collecting unit would then have 30 days to issue amended tax bills for any taxes under the General Property Tax Act, including penalty and interest, that were owed due to rescission of the exemption. A person could appeal a rescission.

The Department of Treasury would have to implement an **audit program**, including at least the audit of reporting statements for the current and three immediately preceding calendar years. Assessments resulting from an audit could include a penalty of 1% per week on unpaid balances, up to a maximum of 5% of the total amount due and unpaid, plus interest at the rate of 1.5% per month. Refunds resulting from an audit would be paid with interest at the rates and in the manner applicable to sale tax refunds. Failure to pay an assessment resulting from an audit would be subject to the exemption rescission provisions described above. The results of an audit could be appealed in the same way that relevant sales or use tax appeals are conducted.

A qualified renter that acquired or **opened a new location** not previously subject to the tax, or that sold or closed an existing location previously subject to the tax, would have to start collecting and remitting the tax, or stop doing so, as applicable, in a manner and at times consistent with the collection and remittance of the sales tax.

The **tax would not apply** to the rental of qualified heavy equipment rental personal property to the state, a local unit of government in Michigan, a federally recognized Indian tribe, any unit of the federal government, or any other public body corporate in Michigan. The tax would also not apply to interstate transactions (that is, the rental of property from inside Michigan to a customer who takes possession of it outside Michigan—or the rental of property from outside Michigan to a customer who takes possession of it in Michigan).

#### **Distribution of tax proceeds**

The act would create the **Qualified Heavy Equipment Rental Personal Property Exemption Reimbursement Fund**, into which all proceeds from the tax levied under the act would be deposited. The state treasurer would direct the investment of the fund, crediting to it any interest or earnings from those investments, and the Department of Treasury would be the administrator of the fund for auditing purposes. Money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund.

Upon appropriation, and no later than May 20, the Department of Treasury would have to **distribute the tax proceeds** deposited in the fund for rentals that occurred in the previous calendar year as follows:

- First, to the department, an amount equal to its costs in administering the distribution of tax proceeds in the previous calendar year, to a maximum of \$250,000.

- Second, the remaining balance as follows:
  - 90% to local tax collecting units where business was conducted that contributed to the taxes being distributed. This distribution would be proportionally allocated based on the average annual taxable value of qualified heavy equipment rental personal property subject to property taxes in calendar years 2017, 2018, and 2019. A local tax collecting unit claiming a distribution would have to provide the Department of Treasury with supporting documentation. Within 35 days after receiving an allocation, a local tax collecting unit would have to distribute it to taxing units for which it collects property taxes in the same proportion as it distributes property taxes.
  - 10% to counties, cities, villages, and townships not receiving a share of the distribution above. This distribution would be proportionally allocated based on distributions made under the Local Community Stabilization Authority Act.

**Other provisions**

Taxes under the act would not be subject to capture by a **tax increment finance authority** created under the Recodified Tax Increment Financing Act or the Brownfield Redevelopment Financing Act, although such an entity could share in the distribution of an allocation to a local tax collecting unit where business contributing to the tax was conducted, as described above.

The Department of Treasury could **promulgate rules** as necessary to administer the act.

**House Bill 5778** would amend the General Property Tax Act to exempt from taxation under that act, beginning December 31, 2020, qualified heavy equipment rental personal property for which an exemption was properly claimed under the Qualified Heavy Equipment Rental Personal Property Specific Tax Act.

Proposed MCL 211.9p

The bills are tie-barred to one another, which means that neither can take effect unless both are enacted.

**FISCAL IMPACT:**

The bills would exempt qualified heavy equipment rental personal property from the property tax act and replace the lost revenue with a 2% levy on the rental price each time the equipment is rented. Given the lack of information, it cannot be determined whether the 2% levy will generate more or less revenue than the existing property tax.

It is also likely the distribution of revenue collected under the 2% levy will differ from collections under the existing property tax, especially since the 10% share would be distributed to only cities, villages, townships, and counties, and would exclude such taxing entities as community colleges, libraries, authorities, and schools

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