



**House
Legislative
Analysis
Section**

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PROP. TAX: LEASED EQUIPMENT

**Senate Bill 215 (Substitute H-3)
First Analysis (3-22-94)**

**Sponsor: Sen. Mat Dunaskiss
Senate Committee: Finance
House Committee: Taxation**

THE APPARENT PROBLEM:

Some businesses obtain the equipment they use in their operations through lease/financing arrangements made possible by companies that specialize in this. Representatives of small businesses say these arrangements are essential to small businesses because banks are often not willing to finance smaller purchases. Representatives of the leasing companies describe themselves as operating like mortgage brokers, making financing available so that businesses can obtain needed equipment. Difficulties have arisen as a result of these arrangements, tax specialists say. It is not always clear whether an arrangement is a lease or an installment sale, which makes a difference as to who is considered the owner of the property for the purpose of reporting the property and paying the personal property taxes due to local units of government. Reportedly, there has been litigation over this issue. Small leasing companies complain of the burden of reporting and paying taxes on property that other businesses are using all over the state. They must deal with numerous taxing jurisdictions (and may not always know in which jurisdiction equipment is being used). They then must charge the lessees of the property for the taxes, adding to the paperwork burden. However, larger leasing companies, say tax specialists, prefer maintaining control over reporting and paying personal property taxes, and local assessors do not want personal property reported only by the users of the property. Legislation has been proposed that would address these issues.

THE CONTENT OF THE BILL:

The bill would amend the General Property Tax Act to specify, generally speaking, when a for-profit business using personal property on which it was making periodic payments to another for-profit business would be responsible for the personal property taxes. (It would require a written agreement between the two businesses.) The bill

would apply to personal property assessments made after 1994 and before 2000.

Qualified Personal Property. The property involved would be that on which a retail sales tax had been paid or liability accrued contemporaneously with the user acquiring possession of the property (or would have been had the property not been exempt) and that was subject to a certain kind of agreement entered into after December 31, 1993. The relevant agreement would be one in which 1) a for-profit business was obtaining the right to use or possess personal property in exchange for making periodic payments for a noncancellable term of 12 months or more; and 2) the party making the payments would be able to obtain legal title to the property by making all of the payments or all of the payments and a final payment. (That final payment would have to be less than the true cash value of the property determined by using state tax commission multipliers for personal property.) Further, the agreement would have to require the party making periodic payments to report the personal property as required by the act and pay the taxes assessed against the property.

Qualified Business. The business making property available for use by another business would have to be one that obtained services from 30 or fewer employees (or employees of independent contractors performing services substantially similar to employees) during a random week in the year ending on the tax day. (The "random week" would be established by the State Tax Commission for the preceding year no later than January 15 each year.) If a business was an entity under common control or a member of an affiliated group, as those terms are used in the Single Business Tax Act, the number of employees would include all employees of the group and employees of independent contractors of the group rendering services to the qualified business.

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Reporting of Equipment. The qualified business making property available would be required to file the required reporting statement of personal property to the local unit of government no later than February 1. The party responsible for the tax (the user of the property) would be required to file the statement by February 20. The statement by the qualified business would have to contain: the name of the qualified business; the user responsible for the payment of the tax; the type of property; the location of the property, as indicated in its records; the purchase price, including sales tax, freight, and installation; the year the property was purchased; if the qualified business was the manufacturer, the original selling price or, if there was no original selling price, the original cost; the amount and frequency of periodic payments required of the user; and an affirmation that the business was a qualified business and that property was qualified personal property. (The State Tax Commission would be required to develop additions to the mandatory statement to assure that property reported was certified under oath to be qualified personal property reported by a qualified business.)

A copy of the statement would be provided to each user of property responsible for paying the tax along with a notice that the user was responsible for reporting the property and for paying the tax. If the statement was not filed by the qualified business by February 1, or if property was not included in the filed statement, then the property would be assessable and taxable to the business making the property available, regardless of whether the business was a qualified business or the property qualified property.

Examination by Local Unit. A designee of the local tax collecting unit who was a certified assessor could examine the books and records of a business filing the required statement so as to determine if a business was a qualified business and property was qualified property. A person would not be required to be a certified personal property examiner to examine the books and records.

Nonprofit Organizations. The bill specifies that it would not affect the requirements for reporting or assessing personal property acquired or possessed by a nonprofit organization.

MCL 211.8a

HOUSE COMMITTEE ACTION:

The House Taxation Committee reported out a substitute version of Senate Bill 215 that limited the bill's application to small leasing/financing companies. As passed by the Senate, the bill would have made the payment of personal property taxes the responsibility of the lessee/user if the lease or use agreement so provided, regardless of the size of the leasing company.

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

The bill would provide for a simpler, clearer process for the reporting and paying of personal property taxes when the user of the property was involved in a lease/finance arrangement with a small leasing company. In those circumstances, the responsibility for paying personal property taxes to a local unit would lie with the user of the property if that was called for by the agreement between the lessor and lessee. (In this sense, the legislation is permissive.) This arrangement would apply if the leasing company had 30 or fewer employees. The leasing company would still have to report the personal property to local units (and send a copy to the user of the property). Proponents of the bill say it will lead to improved tax administration because the user of the property will deal with tax officials in the jurisdictions where the property is located, leading to more accurate reporting. It will also allow the user to make timely appeals of assessments (whereas now the user does not know the amount of tax until billed by the equipment lessor). The users of the property ultimately bear the cost of the taxes now anyway through payments of taxes and administrative costs to the lessor; the bill would reduce the administrative and paperwork burdens on the small leasing company and allow the equipment user more control over the personal property tax process. It would also reduce litigation over this issue.

POSITIONS:

The Small Business Association of Michigan supports the bill. (3-16-94)

Representatives of the Equipment Leasing Association have indicated their support for the bill. (3-16-94)

A representative of the Michigan Assessors Association testified in support of the bill. (3-16-94)

The Michigan Townships Association supports the bill. (3-16-94)

Representatives of Oakland County and the Oakland County Equalization Department indicated support for the bill. (3-16-94)

A representative of Women in Equipment Leasing (WIEL) testified in support of the bill. (3-16-94)