

Legislative Analysis



PPT FOLLOW-UP LEGISLATION

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House Bill 4553 (reported from committee as H-2)
House Bill 4554 (reported from committee as H-3)
Sponsor: Rep. David C. Maturen

Analysis available at
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House Bill 4555 (reported from committee as H-3)
House Bill 4556 as introduced
Sponsor: Rep. Ken Yonker

House Bills 4557 & 4558 as introduced
Sponsor: Rep. Jim Townsend

Committee: Tax Policy
Complete to 5-18-15

BRIEF SUMMARY:

House Bills 4553 through 4558 make a number of changes relative to the personal property tax repeal approved by voters in August 2014.

Ballot Proposal 1 of 2014 put into effect the changes to the personal property tax, passed as Public Act 80 of 2014, commonly known as the personal property tax repeal. Broadly speaking, the impact of PA 80 was to:

- Reduce business taxes through the phase-out of the tax on personal property, such as machinery, equipment, tools, and computers. This benefitted manufacturers and associated commercial enterprises, as well as all businesses with relatively small amounts of personal property.
- Reimburse local units for the loss of personal property tax revenue, as well as protect school funding. The reimbursement comes from the newly created Local Community Stabilization Authority, which has the authority to levy a portion of the state's use tax for this purpose.
- Create the State Essential Services Assessment, with revenue directed to the General Fund, to partially offset the loss of the use tax revenue allocated to reimburse local units. This is a small assessment on exempted personal property, based on its age and acquisition cost.

House Bill 4553 amends the General Property Tax Act in sections 9f, 9m, and 9n (MCL 211.9f, 211.9m, and 211.9n respectively). The bill refines and establishes reporting requirements related to personal property tax exemptions, as well as extends the exemption to personal property not yet in use.

House Bill 4554 amends the State Essential Services Assessment (ESA) Act, Public Act 92 of 2014. The bill contains a change to the base of the tax, as well as a number of

technical, administrative, and definitional changes. These make up the bulk of the changes to existing law contained in this bill package.

House Bill 4555 amends the Alternative Essential Services Assessment Act, Public Act 93 of 2014. The changes in this bill are the same as those in HB 4554. The alternative assessment is a mechanism that allows businesses that wish to invest \$25 million or more in eligible manufacturing personal property in the state to pay the ESA at half the rate. Other than the rate difference, there are no other substantive differences between the two acts. This would remain the only difference if these bills become law. As a result this analysis will refer solely to the ESA when discussing the proposed changes.

House Bill 4556 amends the Local Community Stabilization Authority Act, Public Act 86 of 2014, with a number of definitional and administrative changes, including changes to how local unit reimbursement is defined and calculated, and an increase in the amount of use tax levied by the authority.

House Bill 4557 amends Public Act 198 of 1974, otherwise known as the Industrial Facilities Tax, to conform to the definitional and reporting changes created by other bills in this package.

House Bill 4558 amends the Use Tax Act to conform to the changes in House Bill 4556.

FISCAL IMPACT:

This package of bills should have no impact on state revenues. The change in the State Essential Services Assessment tax base, resulting from the changes to the definition of acquisition cost, may affect revenues to a small extent. However, this change does not affect the fiscal impacts estimated for the original PPT repeal package. According to the Department of Treasury, the method used to make that estimate, along with the estimates of the small taxpayer exemption and debt loss, accounts for these changes already. As a result, all state revenue projections will remain the same.

Some local units may see an increase in their small taxpayer exemption and debt loss reimbursements due to the changes in House Bill 4556.

THE APPARENT PROBLEM:

After voters approved the changes to the tax code in PA 80 of 2014, a number of issues with the administration of property tax exemptions and the State Essential Services Assessment (ESA) were discovered. This includes issues with filing for the exemption, the audit process, record keeping, and determining the value of personal property subject to the ESA. This package of six bills seeks to streamline the process, clarify intent, and generally make this part of the tax code consistent with the code as a whole.

DETAILED SUMMARY OF THE BILLS:

House Bill 4554 makes several changes to the structure of the State Essential Services Assessment. This includes a change to the tax base and the due date. Under current law,

the tax is due by September 15 (starting in 2016). The bill would move this due date up to August 15, in order to leave enough time for both the Department of Treasury and taxpayers to address any problems before the department is required to submit deficient filings and payments to the State Tax Commission.

The bill also makes a substantive change to the ESA tax base. The State Essential Services Assessment tax base is the acquisition cost of the eligible exempt manufacturing personal property (EMPP). Under current law, acquisition cost is defined as the fair market value of that property at the time of acquisition by the current owner. House Bill 4554 would change the definition of acquisition cost to the fair market value of the property at the time of acquisition by the first owner. This change also applies to the definition of acquisition cost for personal property with an industrial facilities exemption certificate (issued under PA 198 of 1974) and exempt personal property under the Michigan Renaissance Zone Act (PA 376 of 1996).

For any firm purchasing previously used EMPP, this change would increase their tax liability. However, the millage rate under the ESA decreases from 2.4 mills in the first 5 years of ownership, 1.25 mills in years 6 through 10, and 0.9 mills for every year after that. Under current law, the first year of ownership refers to the first year the current owner has possession of the property. The changes in this bill would set the first year of ownership starting with the first owner, rather than the current one. So while the current owner's tax base will be determined by the original cost of the personal property, the rate will be lowered according to how long it has been in use, simulating the depreciation in the value of that property.

House Bill 4554 makes the following changes to the administration of the ESA, which are not in current law:

- Allow the Department of Treasury to accept returns filed using department approved software and in a form and manner determined by the department.
- Allow a claimant to file an amended return for the current year until September 15.
- Provide for late payment penalties on amended returns. These penalties are waived in the first year a claimant files, if the claimant self-reports.
- Allow for the department to issue refunds if there is an overpayment. (This is not in current law) Changes to this section in substitute H-3 require that Treasury pay interest on refunds as provided in section 37 of the Tax Tribunal Act (MCL 205.737).
- Require the department to develop an audit program, as well as create additional procedures to handle assessments, interest, refunds, collections, payment deadlines, and rescission of the EMPP exemption.
- Allow for an appeal of an assessment resulting from an audit. The claimant would have 30 days from the date of the assessment to file an appeal with the State Tax Commission.
- Allow for an appeal of an audit determination of the State Tax Commission. The claimant would have 35 days to file an appeal with the State Tax Tribunal.

Under current law, the penalty for non-compliance with the ESA (either failing to file a return or failing to pay the assessment in full) is the rescission of all exemptions for EMPP on all of the owner's parcels. House Bill 4554 would limit this rescission to the individual parcel on which that particular EMPP is located. The bill would change language to require the State Tax Commission to "issue an order" rather than "direct" a local assessor to rescind the exemption. Changes to this section in substitute H-3 allow the State Tax Commission to rescind an exemption if it discovers the property is not EMPP under sections 9m and 9n of the General Property Tax Act.

Additionally, House Bill 4554, in combination with House Bill 4557, works to correct an issue with EMPP that is also exempt from ad valorem property taxes under PA 198 of 1974, otherwise known as the Industrial Facilities Tax. Under current law, when determining the ESA liability of personal property with an industrial facilities exemption certificate, the acquisition cost means one half of the fair market value at the time it was acquired by the current owner (this would change to the first owner under the proposed legislation, as described above). It was intended that only property with exemption certificates effective in 2013 or earlier would determine their acquisition cost in this way. However, under current law it would be possible for a local government to issue a certificate for any newer personal property, thus cutting their ESA liability in half. Changes to Section 3(a) of the ESA Act would eliminate this possibility.

House Bill 4557 would also require holders of industrial facilities exemption certificates to file an affidavit with the township or city assessor, indicating the portion of their facility that is EMPP. The affidavit must be filed by February 10 of the first year in which there is EMPP, and in a form prescribed by the State Tax Commission.

House Bill 4553 amends the General Property Tax Act in several ways:

- Persons claiming an exemption would have the ability to rescind that exemption if the property no longer qualifies. A complementary change would allow the Department of Treasury to collect a list of the exemptions claimed or rescinded from local assessors
- Persons claiming the exemption would have to report the location of EMPP once the exemption is claimed, rather than in 2019, as is stipulated under current law.
- The term "Person" is redefined to refer to individuals, businesses, and all legal entities (partnership, LLC, etc.). These persons would then subject to all of the required record keeping.
- Finally, the changes make it possible to claim an exemption for manufacturing personal property that is part of "construction in progress" or has not yet been put into service, provided the property will be exempt once it is in use. The bill would exclude this property from the so-called 50% test, which allows for the exemption of manufacturing personal property. Multiply the value of all personal property on a particular piece of real property by the percent each piece is used in industrial processing or direct integrated support. If that amount exceeds 50% of the total value of all personal property, then all of the personal property is considered "eligible manufacturing personal property" (MCL 211.9m). Changes to this section in the H-2 substitute further clarify that this property "will be"

predominantly used in industrial processing, and that it will support "current on-site" business activities.

House Bill 4556 amends the Local Community Stabilization Authority Act. This authority is given the ability to levy a portion of the state's use tax, which is then used to reimburse local units for the loss in property tax revenues resulting from the personal property tax exemption. Changes to this act include:

- For Fiscal Year 2015-16, local units are reimbursed for their losses due to the "small taxpayer exemption loss." Under current law, this reimbursement is based on the change in taxable value between calendar years 2013 and 2014. The bill would allow communities to choose the larger of (1) the change in taxable value between calendar years 2013 and 2014 or (2) the change in taxable value between calendar years 2013 and 2015.
- The bill changes the definition of "debt loss." Under current law, municipalities that are not local or intermediate school districts, or tax increment financing authorities, can recover the loss of any specific tax levied for the payment of principal and interest on debt incurred before January 1, 2013. House Bill 4558 would change this definition to also include any debt approved (but not yet incurred) by voters before that same date, as well as any industrial facilities tax exemptions. The definition of "specific tax" is changed later in the act, in order to include the industrial facilities exemptions as part of the definition of debt loss.
- Under current law, the dollar amount of use tax levied by the authority is specified in statute by fiscal year. House Bill 4556 would switch this to a calendar year basis. It would also authorize the authority to use up to \$300,000 of its use tax levy to cover its administrative costs. This amount has been added to the existing statutory amounts for calendar years 2016 through 2019. There is a complementary change made to the Use Tax Act by House Bill 4558.
- The bill also extends the deadline for local units to report to the Department of Treasury the percentage of their general operating millage that is used to fund essential services (e.g. police, fire, EMS, etc.)

BACKGROUND INFORMATION:

The repeal of personal property taxes, put in place by PA 80 of 2014, exempts three categories of personal property: commercial and industrial personal property of small taxpayers, new manufacturing personal property, and existing manufacturing personal property (exempted in Sections 9o, 9m, and 9n, respectively, of the General Property Tax Act). Small taxpayers are defined as those who own industrial and/or commercial personal property with a combined true cash value of less than \$80,000. This property has been exempt since November 2013.

Existing and new manufacturing personal property are exempt from property taxes if they are "eligible manufacturing personal property" or EMPP. To be eligible, the property must

be used in industrial processing (as defined in Section 4t of the sales tax act, MCL 205.54t, excluding power generation equipment) or in direct integrated support. All of the personal property on a particular piece of real property is considered EMPP if it passes the so-called 50% test. Multiply the value of all personal property on that real property by the percent each piece is used in industrial processing or direct integrated support. If that amount exceeds 50% of the total value of all personal property, then it is all classified as EMPP, and therefore exempt.

The key difference between existing and new manufacturing personal property is when that property becomes exempt. New property is defined as eligible property which was put into service after December 31, 2012. All of this property will become exempt in 2016. Existing property is exempted in phases. Starting in 2016, and in each year afterward, property will be eligible for the exemption if it was subject to tax 10 or more years before. This means that property subject to tax in 2006 or earlier will become EMPP in 2016, property subject to tax in 2007 will become EMPP in 2017, and so on, until 2023 when all such property will be exempt.

In order to hold local units harmless, PA 80 also created the Local Community Stabilization Authority (LCSA). This authority directly levies a portion of the state use tax and distributes it to local units. The portion of the use tax levied by the authority is defined in statute as a specific dollar amount for each fiscal year until Fiscal Year 2027-28, with the amount increasing by 1% each year after that. This amount is intended to reimburse local units for 100% of their property tax loss that affects school (local and ISD) debt loss, intermediate school district taxes, school operating loss not reimbursed by the School Aid Fund, losses related to cost of providing "essential services" (police, fire, etc.), tax increment financing losses, and the revenue lost from the small taxpayer exemption.

The amount of the use tax levied by the LCSA is drawn from the state's General Fund. To offset some of these losses, the state created the State Essential Services Assessment (ESA). The tax is assessed based on the acquisition cost of EMPP. Under current law, once personal property becomes EMPP, it is assessed at 2.4 mills against its acquisition cost for the first five years after it is acquired, 1.25 mills for the next five years, and 0.9 mills thereafter. There is also an Alternative State Essential Services Assessment. A firm that has an approved plan to invest \$25 million in new eligible personal property in the state would pay half the millage rate of the regular ESA.

For more detailed information on all of the aspects of PA 80, as well as fiscal information, please see the full analysis on the House Fiscal Agency website at: www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2014_1_Personal_Property_Tax_Summary.pdf

ARGUMENTS:

For:

Voters approved the repeal of the personal property tax on eligible manufacturing personal property. The technical details, however, were not worked out fully when this exemption was put in place. Since there is no fiscal impact created by the technical changes contained in these bills, and local communities will still receive the same amount of reimbursement

as stipulated in the original legislation, these fixes should be approved by the current legislature.

POSITIONS:

Michigan Department of Treasury testified in support of HB 4553-4558. (5-6-15)

Michigan Municipal League testified in support of the bills. (5-6-15)

Michigan Manufacturers Association testified in support of the bills. (5-6-15)

Michigan Township Association testified in support of the bills. (5-6-15)

Others indicating support were representatives from the Michigan Chamber of Commerce, the Detroit and Grand Rapids Chambers of Commerce, and the National Federation of Independent Business. (5-6-15)

Legislative/ Fiscal Analyst: Adam Desrosiers

■ 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.