

HOUSE BILL No. 5494

November 28, 2007, Introduced by Rep. Calley and referred to the Committee on Tax Policy.

A bill to amend 1893 PA 206, entitled "The general property tax act," by amending sections 7hh and 8a (MCL 211.7hh and 211.8a), section 7hh as added by 2004 PA 252 and section 8a as amended by 1998 PA 537.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7hh. (1) Notwithstanding the tax day provided in section
2 2 and except as limited in subsection (5) and otherwise provided in
3 subsection (7), for taxes levied after December 31, 2004, real and
4 personal property of a qualified start-up business is exempt from
5 taxes levied under this act for each tax year in which all of the
6 following occur:

7 (a) The qualified start-up business applies for the exemption

1 as provided in subsection (2) or (3).

2 (b) The governing body of the local tax collecting unit adopts
3 a resolution approving the exemption as provided in subsection (4).

4 (2) Except as otherwise provided in subsection (3), a
5 qualified start-up business may claim the exemption under this
6 section by filing an affidavit on or before May 1 in each tax year
7 with the assessor of the local tax collecting unit. The affidavit
8 shall be in a form prescribed by the state tax commission. The
9 affidavit shall state that the qualified start-up business was
10 eligible for and claimed the qualified start-up business credit
11 under section 31a of the single business tax act, 1975 PA 228, MCL
12 208.31a, **OR SECTION 415 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA**
13 **36, MCL 208.1415**, for the applicant's last tax year ending before
14 May 1. The affidavit shall include all of the following:

15 (a) A copy of the qualified start-up business's annual return
16 filed under the single business tax act, 1975 PA 228, MCL 208.1 to
17 208.145, **OR THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101**
18 **TO 208.1601**, in which the qualified start-up business claimed the
19 qualified start-up business credit under section 31a of the single
20 business tax act, 1975 PA 228, MCL 208.31a, **OR SECTION 415 OF THE**
21 **MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1415**.

22 (b) A statement authorizing the department of treasury to
23 release information contained in the qualified start-up business's
24 annual return filed under the single business tax act, 1975 PA 228,
25 MCL 208.1 to 208.145, **OR THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36,**
26 **MCL 208.1101 TO 208.1601**, that pertains to the qualified start-up
27 business credit claimed under section 31a of the single business

1 tax act, 1975 PA 228, MCL 208.31a, **OR SECTION 415 OF THE MICHIGAN**
2 **BUSINESS TAX ACT, 2007 PA 36, MCL 208.1415.**

3 (3) If a qualified start-up business applies for an extension
4 for filing its annual single business tax return under section 73
5 of the single business tax act, 1975 PA 228, MCL 208.73, **OR SECTION**
6 **505 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1505**, the
7 qualified start-up business may claim the exemption under this
8 section after May 1 if all of the following conditions are met:

9 (a) The governing body of the local tax collecting unit adopts
10 a resolution under subsection (4)(b) approving the exemption for
11 all qualified start-up businesses that apply for an extension for
12 filing the annual single business tax return under section 73 of
13 the single business tax act, 1975 PA 228, MCL 208.73, **OR SECTION**
14 **505 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1505.**

15 (b) The qualified start-up business submits a copy of its
16 application for an extension for filing its annual single business
17 tax return under section 73 of the single business tax act, 1975 PA
18 228, MCL 208.73, **OR SECTION 505 OF THE MICHIGAN BUSINESS TAX ACT,**
19 **2007 PA 36, MCL 208.1505**, and the affidavit described in subsection
20 (2) to the December board of review provided in section 53b. For
21 purposes of section 53b, an exemption granted under this subsection
22 shall be considered the correction of a clerical error.

23 (4) On or before its last meeting in May in each tax year, the
24 governing body of a local tax collecting unit may adopt a
25 resolution approving the exemption provided in this section. The
26 clerk of the local tax collecting unit shall notify in writing the
27 assessor of the local tax collecting unit and the legislative body

1 of each taxing unit that levies ad valorem property taxes in the
2 local tax collecting unit. Before acting on the resolution, the
3 governing body of the local tax collecting unit shall afford the
4 assessor and a representative of the affected taxing units an
5 opportunity for a hearing. A resolution approving the exemption
6 provided in this section may be for 1 or both of the following:

7 (a) One or more of the individual qualified start-up
8 businesses that claim the exemption under this section by filing an
9 affidavit on or before May 1 as provided in subsection (2).

10 (b) All qualified start-up businesses that claim the exemption
11 under this section after May 1 as provided in subsection (3).

12 (5) A qualified start-up business shall not receive the
13 exemption under this section for more than a total of 5 tax years.
14 A qualified start-up business may receive the exemption under this
15 section in nonconsecutive tax years.

16 (6) If an exemption under this section is erroneously granted,
17 the tax rolls shall be corrected for the current tax year and the 3
18 immediately preceding tax years. The property that had been subject
19 to that exemption shall be immediately placed on the tax roll by
20 the local tax collecting unit if the local tax collecting unit has
21 possession of the tax roll or by the county treasurer if the county
22 has possession of the tax roll as though the exemption had not been
23 granted. A corrected tax bill shall be issued for the tax year
24 being adjusted by the local tax collecting unit if the local tax
25 collecting unit has possession of the tax roll or by the county
26 treasurer if the county has possession of the tax roll. If an owner
27 pays the corrected tax bill issued under this subsection within 60

1 days after the corrected tax bill is issued, that owner is not
2 liable for any penalty or interest on the additional tax. If an
3 owner pays a corrected tax bill issued under this subsection more
4 than 60 days after the corrected tax bill is issued, the owner is
5 liable for the penalties and interest that would have accrued if
6 the exemption had not been granted from the date the taxes were
7 originally levied.

8 (7) Real and personal property of a qualified start-up
9 business is not exempt from collection of the following:

10 (a) A special assessment levied by the local tax collecting
11 unit in which the property is located.

12 (b) Ad valorem property taxes specifically levied for the
13 payment of principal and interest of obligations approved by the
14 electors or obligations pledging the unlimited taxing power of the
15 local governmental unit.

16 (c) A tax levied under section 705 or 1212 of the revised
17 school code, 1976 PA 451, MCL 380.705 and 380.1212.

18 (8) As used in this section, "qualified start-up business"
19 means that term as defined in section 31a of the single business
20 tax act, 1975 PA 228, MCL 208.31a, **OR SECTION 415 OF THE MICHIGAN**
21 **BUSINESS TAX ACT, 2007 PA 36, MCL 208.1415.**

22 Sec. 8a. (1) Qualified personal property made available by a
23 person that is a qualified business for use by another person shall
24 not be assessed to the qualified business and instead is assessable
25 and taxable to the user who acquires or possesses the qualified
26 personal property to the extent provided for in this section.

27 Property assessed under this section shall not be required to be

1 assessed separately from other personal property assessed to the
2 user.

3 (2) A person who is a qualified business that makes available
4 qualified personal property shall file the statement required by
5 section ~~18-19~~ not later than February 1. A person to whom qualified
6 personal property is taxable as provided in this section shall file
7 the statement required by section ~~18-19~~ by February 20 and shall
8 include the qualified personal property on that statement. The
9 statement filed by the qualified business shall include, itemized
10 for each user, all of the following for all qualified personal
11 property:

12 (a) The name of the qualified business.

13 (b) The user responsible for payment of the tax.

14 (c) The type of property.

15 (d) The location of the property, as indicated in the records
16 of the qualified business.

17 (e) The purchase price including sales tax, freight, and
18 installation.

19 (f) The year the property was purchased.

20 (g) If the qualified business is the manufacturer of the
21 property, the original selling price, and if there is no original
22 selling price, then the original cost.

23 (h) The amount and frequency of periodic payments required of
24 the user.

25 (i) An affirmation that the person making the statement is a
26 qualified business and that property included in the statement is
27 qualified personal property as defined in this section.

1 (3) A user of qualified personal property may request from the
2 assessor, and the assessor shall provide, a copy of that portion of
3 the statement filed by the qualified business by February 1 that
4 includes qualified personal property for that user. If a good faith
5 statement is not filed by February 1, or if property is not
6 included in the statement required to be filed by February 1, then
7 that property omitted or not reported is assessable and taxable to
8 the person who makes the property available regardless of whether
9 the person is a qualified business or the property is qualified
10 personal property.

11 (4) A designee of the local tax collecting unit who is a
12 certified assessor may examine the books and records of a person
13 who files the statement required by section ~~18-19~~ that are
14 necessary to determine if property included in the statement
15 required by section ~~18-19~~ is qualified personal property. A person
16 is not required to be a certified personal property examiner to
17 examine books and records pursuant to this subsection.

18 (5) The state tax commission shall develop additions to the
19 statement required by section ~~18-19~~ necessary to assure that
20 property reported pursuant to subsection (2) is certified under
21 oath to be qualified personal property reported by a person to whom
22 qualified personal property is taxable.

23 (6) As used in this section:

24 (a) "Employee" means a person who performs a service for wages
25 or other remuneration under a contract of hire, written or oral,
26 express or implied.

27 (b) "Qualified business" means a for-profit business that

1 obtains services relating to that business from 30 or fewer
2 employees or employees of independent contractors performing
3 services substantially similar to employees during a random week in
4 the year ending on the tax day. If a person is ~~an entity under~~
5 ~~common control or is a member of an affiliated group as those terms~~
6 ~~are used in section 36(7) of the single business tax act, 1975 PA~~
7 ~~228, MCL 208.36~~ **A UNIFIED BUSINESS GROUP AS THAT TERM IS DEFINED IN**
8 **SECTION 117 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL**
9 **208.1117**, the number of employees from whom services are obtained
10 includes all employees of the **UNITARY BUSINESS** group and employees
11 of independent contractors of the **UNITARY BUSINESS** group rendering
12 services to the qualified business.

13 (c) "Qualified personal property" means property on which a
14 retail sales tax has been paid or liability accrued contemporaneous
15 with the user acquiring possession of the property, or on which
16 sales tax would be payable if the property was not exempt, and that
17 is subject to an agreement entered into after December 31, 1993 to
18 which all of the following apply:

19 (i) A party engaged in a for-profit business obtains the right
20 to use or possess personal property in exchange for making periodic
21 payments for a noncancelable term of 12 months or more.

22 (ii) The party making periodic payments can obtain legal title
23 to the property by making all the periodic payments or all of the
24 periodic payments and a final payment that is less than the true
25 cash value of the property determined using state tax commission
26 cost multipliers for personal property.

27 (iii) The written agreement between the qualified business and

1 the party making periodic payments requires that party to report
2 the property as qualified personal property pursuant to section ~~18~~
3 **19** and to pay taxes assessed against the property.

4 (d) "Random week" means a 7-day period during a calendar year
5 beginning on a Monday and ending on a Sunday that is selected at
6 random. Not later than January 15 each year, the state tax
7 commission shall establish the random week for the immediately
8 preceding year.

9 (7) This section does not affect the requirements for
10 reporting or assessing personal property acquired or possessed by a
11 nonprofit organization.