



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5525 (Substitute H-1 as passed by the House)
House Bill 5526 (Substitute H-1 as passed by the House)
House Bills 5527 and 5545 (as passed by the House)
Sponsor: Representative Aric Nesbitt (H.B. 5525)
Representative Jeff Farrington (H.B. 5526, 5527, & 5545)
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 4-26-16

CONTENT

The bills would amend various statutes that allow property tax exemptions for eligible manufacturing personal property, and provide for the imposition of an Essential Services Assessment. The proposed changes generally involve procedure and administration.

House Bill 5525 (H-1) would amend the State Essential Services Assessment Act to do the following:

- Make changes relating to the combined document filed by an eligible claimant and the assessment calculation statement.
- Specify that leasing companies would not be eligible for an exemption and could not use the combined document.
- Include provisions for property that is considered "construction in progress".
- Make various changes to the administration and process of appealing an assessment levied under the Act, a penalty, or a rescission.
- Allow the Department of Treasury to request the State Tax Commission to rescind exemptions under certain circumstances, rather than require the rescission.
- Provide for appeals to the Michigan Tax Tribunal, rather than the State Tax Commission.
- Require the State Tax Commission, rather than the Department, to perform certain administrative responsibilities.

House Bill 5526 (H-1) would amend the General Property Tax Act to do the following:

- Allow an owner of qualified new or existing personal property who did not file a required form by February 22, 2016, or filed an incomplete form, to file until May 31, 2016.
- Remove mentions of filing an affidavit or statement and, instead, require the use of a combined document to claim a personal property tax exemption under Sections 9m and 9n of the Act (for "qualified new personal property" and "qualified previously existing personal property", respectively).
- Specify that leasing companies would not be eligible to receive the exemption and could not use the combined document.

- **Revise provisions relating to the denial of a claim for an exemption and the appeal of a denial.**
- **Specify that utility personal property and personal property used in the generation, transmission, or distribution of electricity for sale would not be eligible manufacturing personal property, and provide that neither are included in a calculation that determines whether personal property located on occupied real property is predominately used in industrial processing or direct integrated support.**
- **Delete, alter, or add definitions of terms used throughout the Act.**
- **Require the State Tax Commission, instead of the Department of Treasury, to perform various administrative responsibilities.**

House Bill 5527 would amend Public Act 198 of 1974, which provides for the establishment of plant rehabilitation districts and industrial development districts in local governmental units, and industrial facilities exemption certificates, to require a holder of an industrial facilities exemption certificate that has been extended, to file a combined document required under Section 9m or 9n of the General Property Act instead of an affidavit, when indicating the portion of a facility that is eligible manufacturing personal property.

House Bill 5545 would amend the Alternative State Essential Services Act to make changes similar to the amendments to the State Essential Services Act proposed by House Bill 5525 (H-1).

Each of the bills is described in more detail below.

House Bill 5525 (H-1)

The "state essential services assessment" is a specific tax on eligible personal property owned by, leased to, or in the possession of an eligible claimant (a person claiming an exemption for the property) on December 31 of the year immediately preceding the assessment year. The assessment took effect on January 1, 2016.

Proceeds of the Essential Services Assessment (ESA) must be credited to the General Fund.

"Eligible personal property" means personal property that is exempt under Section 9m or 9n of the General Property Tax Act; personal property that is eligible manufacturing personal property as defined in Section 9m and that has an approved exemption under Section 9f of the Act unless certain conditions are satisfied; personal property subject to an extended industrial facilities exemption certificate under Section 11a of Public Act 198 of 1974; and personal property that is subject to an extended exemption under Section 9f(8)(a) of the General Property Tax Act. (Those sections are discussed below.)

Combined Document

Currently, for any year before 2023, the Department of Treasury may require eligible claimants to file by February 20 of the year a combined document that includes the affidavit under Sections 9f(9), 9m, and 9n of the General Property Tax Act; the affidavit under Section 11a of Public Act 198 of 1974; a statement under Section 19 of the General Property Tax Act; and a report of the acquisition cost and year of acquisition by the first owner of eligible personal property.

The bill, instead, would require the combined document to include the form to claim the exemption under Sections 9f(9), 9m, and 9n of the General Property Tax Act and under Section 11a of Public Act 198 of 1974; a report of the fair market value and year of acquisition

by the first owner of eligible personal property; and for any year before 2023, the statement under Section 19 of the General Property Tax Act.

The bill specifies that, for eligible personal property exempt under the Michigan Renaissance Zone Act, an eligible claimant would have to report the fair market value of that personal property at the time of acquisition by the first owner, including the cost of freight, sales tax, installation, and other capitalized costs, except capitalized interest.

The combined document must be in a form prescribed by the State Tax Commission, and must be filled with the assessor of the township or city in which the eligible personal property is located. The assessor must transmit the information contained in the combined document, and other parcel information required by the Department, to the Department by April 1. The bill would require the combined document to be in a form prescribed by the Department.

(Section 9f of the General Property Tax Act allows an exemption, pursuant to a local resolution, for new personal property that is owned or leased by an eligible business in an eligible local assessing district. Section 9f(9) requires the eligible business to file an affidavit with the assessor of the local unit of government where the property is located. Section 19 of the Act requires any person whom an assessment officer or supervisor believes possesses personal property to make a statement containing various information relating to the personal property. Sections 9m and 9n of the Act, and Section 11a of Public Act 198 of 1974 are described in detail below.)

Assessment Calculation Statement

Under the State Essential Services Assessment Act, the Department must collect and administer the assessment, and, by May 1 in each assessment year, must make available to each eligible claimant in electronic form a statement for the calculation of that assessment. The claimant must electronically submit the completed statement to the Department by August 15 of each assessment year.

The bill would require that statement to be developed from the information submitted by the eligible claimant on the combined document as required under the General Property Tax Act, and would require each claimant to revise electronically as necessary and certify the completed statement by August 15 of each assessment year.

Leasing Companies

The bill provides that leasing companies would not be eligible to receive an exemption and could not use the combined document. With respect to personal property that was the subject of a lease agreement, regardless of whether the agreement constituted a lease for financial or tax purpose, all of the following would apply:

- If the personal property were eligible manufacturing personal property, the lessee and lessor could elect that the lessee report the leased personal property on the combined document.
- An election made by the lessor and the lessee would have to be made in a form and manner approved by the Department.
- Absent an election, the personal property would have to be reported by the lessor on the personal property statement unless the exemption for eligible manufacturing personal property was claimed by the lessee on the combined document.

Construction in Progress

Under the State Essential Services Assessment Act, the rate of the ESA is based on when the eligible personal property was acquired by the first owner. The rate decreases for property owned over a period of time.

Under the bill, for property that is construction in progress only, "acquired by" would mean the year the property is first reported on the combined document filed under the Act in the report of the fair market value and year of acquisition by the first owner of qualified new personal property or qualified previously existing personal property. Beginning in 2017, for construction in progress, the acquisition cost used in determining the ESA would be half of the fair market value of that personal property at the time of acquisition by the first owner.

Appeals

Under the Act, an eligible claimant may appeal an assessment levied under the Act or a penalty or rescission of an exemption to the State Tax Commission by filing a petition by December 31 in that tax year. An eligible claimant also may appeal an assessment issued as a result of an audit conducted under the Act by filing a petition with the State Tax Commission within 30 days of the date of that assessment's issuance. The Department may appeal to the State Tax Commission by filing a petition for the current calendar year and three immediately preceding calendar years.

The Department or any eligible claimant may appeal the determination of the State Tax Commission to the Michigan Tax Tribunal within 35 days of the date of the determination. The bill would delete this provision.

The bill would allow an eligible claimant or the Department to file an appeal with the Michigan Tax Tribunal, instead of the State Tax Commission, and would extend the deadline for a claimant to submit an appeal from 30 to 35 days of the date of the assessment's issuance.

Rescission of Exemption

The Act required the State Tax Commission to rescind the exemption under Section 9m, 9n, or 9f of the General Property Tax Act or Section 11a of Public Act 19f of 1974, for an assessment year in which an eligible claimant does not submit payment in full, or if the State Tax Commission discovers that the property is not eligible under the Section 9m or 9n of the General Property Tax Act.

Under the bill, upon request of the Department, the State Tax Commission would have to issue an order to rescind an exemption due to nonpayment of if the Department discovered that the claimant was not eligible.

House Bill 5526 (H-1)

Section 9m of the General Property Tax Act provides for the exemption of qualified new personal property for which an exemption has been properly claimed beginning on December 31, 2015. Section 9n provides for the exemption of qualified previously existing personal property for which an exemption has been properly claimed beginning on December 31, 2015. Section 53b provides for the appeal and correction process of qualified errors under certain sections of the Act, including Sections 9m and 9n.

"Qualified new personal property" means property that is eligible manufacturing personal property, and is new personal property. "New personal property" means property that was initially placed in service in or outside of Michigan after December 31, 2012, or that was

construction in progress on or after December 31, 2012, that had not been placed in service either in or outside of Michigan before 2013.

"Qualified previously existing personal property" means personal property that is eligible manufacturing personal property and was first placed in service in or outside of Michigan more than 10 years before the current calendar year.

"Eligible manufacturing personal property" is defined below.

2016 Exemption Filing Extension

The bill states that, for 2016 only, if an owner of qualified new personal property or qualified previously existing personal property had not filed Form 5257 by February 22, 2016, or filed an incomplete form by that date, to claim the exemption under Section 9m or 9n with the assessor of the city or township in which the qualified new personal property was located, that owner could file Form 5278 with the assessor of the city or township in which the qualified new personal property or qualified previously existing personal property was located no later than May 31, 2016.

If the assessor determined that the property qualified for the exemption, the assessor immediately would have to amend the assessment roll to reflect the exemption. The assessor would have to transmit the affidavits filed, or the information contained in the affidavits filed, under Section 9m or 9n, and other parcel information required by the Department, to the Department in the form and manner prescribed by the Department by June 7, 2016. The owner would still be required to meet all deadlines required under the State Essential Services Assessment Act.

If the assessor of the township or city believed that personal property for which an affidavit claiming an exemption was filed under this provision by May 31, 2016, was not qualified new personal property or qualified previously existing personal property, the assessor could deny that claim for exemption by notifying the person that filed the affidavit in writing of the reason for the denial and advising the person that the denial could be appealed to the Michigan Tax Tribunal within 35 days of the date of denial.

Combined Documents, Affidavits, & Statements

Under the General Property Tax Act, to claim a personal property tax exemption, a person must file an affidavit with the assessor of the township or city in which the qualified new personal property or qualified previously existing personal property is located. The affidavit must be in a form prescribed by the State Tax Commission. An affidavit claiming an exemption applies to all existing and subsequently acquired qualified new personal property or qualified previously existing personal property. The assessor of the township or city must annually transmit the affidavits filed, or the information contained in them and other parcel information required by the Department, to the Department in a form and manner prescribed by the Department no later than April 1. The bill would delete these provisions, along with provisions regarding the requirements of filing affidavits and statements under different circumstances.

Instead, a person would have to claim the exemption under Section 9m or 9n by filing each year a combined document that included the form to claim the exemption under Section 9m or 9n; a report of the fair market value and year of acquisition by the first owner of qualified new personal property; and for any year before 2023, a statement under Section 19.

The combined document would have to be in a form and manner prescribed by the Department, and would have to be completed and delivered to the assessor of the township or city in which the qualified new personal property or qualified previously existing personal property was located by February 20 of each year.

The assessor would have to transmit to the Department the information contained in the combined document, and other parcel information required by the Department, in a form and manner prescribed by the Department by April 1.

In addition, Section 9f allows the governing body of an eligible local assessing district, or the board of a Next Michigan Development Corporation, to adopt a resolution exempting from the collection of taxes under the Act all new personal property leased or owned by an eligible business located in an eligible district (e.g., an industrial development district, a renaissance zone, an enterprise zone, or a brownfield redevelopment zone).

An eligible business that owns or leases new personal property that is exempt under the section and that is eligible personal property must of file an affidavit with the city or township assessor. The bill, instead, would require the eligible business to file the combined documents as prescribed on Sections 9m and 9n.

Leasing Companies

The bill provides that leasing companies would not be eligible to receive the exemption under Sections 9m or 9n and could not use the combined document. With respect to personal property that was the subject of a lease agreement, regardless of whether the agreement constituted a lease for financial or tax purpose, the same conditions as specified in House Bill 5525 (H-1) would apply.

Denial of Claim

Under the Act, if the assessor of a township or city believes that personal property for which an affidavit claiming an exemption is filed is not qualified new personal property or qualified previously existing personal property, he or she may deny that claim for exemption by notifying the person that filed the affidavit in writing of the reason for the denial and advising the person that the denial may be appealed to the board of review.

Under the bill, instead, if the assessor of the township or city believed that personal property for which the form claiming an exemption was timely filed by February 20 each year was not qualified new personal property or qualified previously existing personal property, or the form was incomplete, the assessor could deny that claim for exemption by notifying the person that filed the form in writing of the reason for the denial and advising the person that the denial would have to be appealed to the board of review by filing a combined document.

If the denial were issued after the first meeting of the March board of review that followed the organizational meeting, the appeal of the denial would be either to the March board of review or the Michigan Tax Tribunal by filing a petition and a completed combined document within 35 days of the denial notice.

Utility Personal Property

The Act defines "eligible manufacturing personal property" as all personal property located on occupied real property if that personal property is predominately used in industrial processing or direct integrated support. For personal property that is construction in progress and part of a new facility not in operation, "eligible manufacturing personal property" means all personal property that is part of that new facility if that personal property will be predominately used in industrial processing when the facility becomes operational.

Personal property that is not owned, leased, or used by the person who owns or leases occupied real property where the personal property is located is not eligible manufacturing personal property, unless the personal property is located on the occupied real property to carry on a current on-site business activity.

Personal property that is placed on occupied real property solely to qualify the personal property for an exemption under Section 9m or 9n is not eligible manufacturing personal property. Personal property located on occupied real property is predominately used in industrial processing or direct integrated support if the result of a calculation included under the Act is more than 50%.

In that calculation, the Act states that personal property is used in industrial processing if it is not used to generate, transmit, or distribute electricity for sale, if it is not utility personal property as described in Section 34c(3)(e), and if 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 4o of the Use Tax Act (which provide an exemption for industrial processing personal property). The bill would delete this provision.

Under the bill, utility personal property as described in Section 34c(3)(e) and personal property used in the generation, transmission, or distribution of electricity for sale also would not be eligible manufacturing personal property, and would not be included in certain calculations that determine whether personal property located on occupied real property is predominately used in industrial processing or direct integrated support.

(According to Section 34c(3)(e), utility personal property includes electronic transmission and distribution systems, substation equipment, spare parts, gas distribution systems, water transmission and distribution systems; oil wells and allied equipment such as tanks, gathering lines, field pump units, and buildings; inventories not exempt by law; gas wells with allied equipment and gathering lines; oil or gas field equipment stored in the open or in warehouses such as drilling rigs, motors, pipes, and parts; gas storage equipment; and transmission lines of gas or oil transporting companies.)

Definition Additions or Modifications

The Act defines "original cost" as the fair market value of personal property at the time of acquisition by the first owner. (The term is used in the calculation referred to above.)

Under the bill, "fair market value" would mean the fair market value of personal property at the time of acquisition by the first owner, including the cost of freight, sales tax, installation, and other capitalized costs, except capitalized interest. There would be a rebuttable presumption that the acquisition price paid by the first owner for personal property, and any costs of freight, sales tax, installation, and other capitalized costs, except capitalized interest, reflect the fair market value.

The Act defines "occupied real property" as any of the following:

- A parcel of real property that is entirely owned, leased, or otherwise occupied by a person claiming an exemption under Section 9m or 9n.
- Contiguous parcels of real property that are entirely owned, leased, or otherwise occupied by a person claiming an exemption under Section 9m or 9n and that host a single, integrated business operation engaged primarily in industrial processing, direct integrated support, or both.

The bill states that contiguity would not be broken by a boundary between local tax collecting units, a road, a right-of-way, or property purchased or taken under condemnation proceedings by a public utility for power transmission lines if the two parcels separated by the purchased or condemned property were a single parcel prior to the sale or condemnation. "Single, integrated business operation" would mean a company that combines one or more related operations or divisions and operates as a single business unit.

House Bill 5527

Public Act 198 of 1974 allows local units of government to approve applications for industrial facilities exemption certificates for new and speculative buildings and replacement facilities located in a plant rehabilitation district or an industrial development district. An approved application is forwarded to the State Tax Commission, which issues an exemption certificate if the facility conforms with the Act. A certificate essentially grants a property tax abatement to a facility, which then is subject to an Industrial Facilities Tax that is lower than standard property taxes.

Under Section 11a, if a facility was subject to an industrial facilities exemption certificate on or after December 31, 2012, that portion of the facility that is eligible manufacturing personal property must remain subject to the Industrial Facilities Tax and must remain exempt from ad valorem property taxes until that eligible manufacturing personal property would otherwise be exempt from the collection of taxes under Section 9m, 9n, or 9o of the General Property Tax Act. The holder of an industrial facilities exemption certificate that has been extended must indicate that portion of a facility that is eligible manufacturing personal property by filing an affidavit with the assessor of the township or city in which the property is located by February 20 of the first year that the property is eligible personal property, in a manner provided under the State Essential Services Assessment Act.

The bill would require the filing of a combined document as described under Section 9m or 9n of the General Property Tax Act, instead of an affidavit, would require filing the combined document indicating the eligible manufacturing personal property each year.

(Section 9o of the General Property Tax Act allows an exemption 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 is less than \$80,000.)

House Bill 5545

The Alternative State Essential Services Assessment Act provides for the "alternative state essential services assessment", which is a specific tax on eligible personal property owned by, leased to, or in the possession of an eligible claimant on December 31 of the year immediately preceding the assessment year. The assessment took effect on January 1, 2016, and is 50% of the State ESA.

Under the State Essential Services Assessment Act, the Michigan Strategic Fund board may, by resolution, exempt from the State ESA personal property designated in the resolution that is owned by, leased to, or in the possession of an eligible claimant. In the resolution, the board may determine that the eligible personal property must be subject to the alternative assessment, instead.

Proceeds of the assessment collected under the Alternative State Essential Services Assessment Act must be credited to the General Fund.

The bill would make generally the same amendments to the Act as House Bill 5525 (H-1) would make to the State Essential Services Assessment Act.

MCL 211.1053 et al. (H.B. 5525)
211.9f et al. (H.B. 5526)
207.561a (H.B. 5527)
211.1073 et al. (H.B. 5545)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The Department of Treasury estimates that the proposed change in the treatment of construction in progress would reduce State revenue from the Essential Services Assessment by approximately \$3.6 million General Fund/General Purpose (GF/GP) annually beginning in FY 2016-17. The Department also estimates that the proposed change in the treatment of certain property related to the Industrial Facilities Tax would reduce State revenue from the ESA by approximately \$500,000 GF/GP annually for six years beginning in FY 2016-17. Other changes in the bills generally would address implementation issues with the personal property tax reform package and to that extent are not expected to have a significant fiscal impact. For 2016 only, the bills would extend the deadline for filing the affidavit and statement for eligible manufacturing personal property and the essential services assessment tax exemption. It is expected that allowing additional time for applications would bring personal property tax exemptions and State revenue from the Essential Services Assessment and Alternative Essential Services Assessment closer to original estimates.

The bills would move the appeals process from the State Tax Commission within the Department of Treasury to the Michigan Tax Tribunal within the Department of Licensing and Regulatory Affairs, which would likely result in an increase in cases for the Tax Tribunal.

Fiscal Analyst: Elizabeth Pratt
Cory Savino

S1516\5525sa

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.