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PERSONAL PROPERTY TAX REFORM

By Carl Rashid, Jr. and William C. Lentine

INTRODUCTION

In an attempt to create a more “manufacturing friendly” state, Governor Snyder signed into law, 10 Public Acts implementing personal property tax reform in the State of Michigan. The Michigan legislature adopted the proposed legislation during the “lame-duck” session of the legislature in December, 2012. The major proponents of eliminating manufacturing personal property taxes were led by the Governor, the Lieutenant Governor and the Michigan Manufacturers Association. In the Governor’s view, Michigan has now tackled what he called “the second dumbest tax in the United States” (after the MBT) by signing this series of bills to repeal the state’s personal property tax.¹ Many states in the Great Lakes area and several manufacturing states in the middle Atlantic region have eliminated personal property taxes.² In other words, the Governor is attempting to make Michigan competitive with other states in the region and a more attractive business environment generally by implementing personal property tax reform. However, voters will generally need to agree with the Governor because voter approval is required for the Acts to become effective. If the Public Acts are approved by the voters of Michigan at the general election, to be held in August 2014, these Public Acts will eliminate ad valorem taxes on industrial property over a period of several years.

Effective on March 28, 2013, seven of the Public Acts, 397 through 403, reduce, eliminate or both reduce and eliminate personal property taxes. Public Acts 406, 407 and 408 are intended to provide replacement of a portion of the tax revenues that will be lost to local governments. This article summarizes and analyzes the Public Acts (397 – 403) that provide for exemption from personal property taxes and not the Acts that provide for reimbursement (PA 404, 406 and 407). PA 408 of 2012, in effect repeals PA 397 through 403, unless approved by a majority of the qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014.

Stakeholders in support of the phase out argue that for decades, legislators and members of the business

community have tried to repeal this tax because Michigan is one of the only states in the region that has not yet phased out the tax hindering the growth of Michigan companies and deterring investment in Michigan. On the other hand, stakeholders opposed to the elimination of personal property taxes argue that lost revenues will not be fully replaced and local governments will lose much needed resources and the residents of those communities will lose necessary services. Irrespective of which side of the aisle voters may fall on, they will likely hear more about this issue as the date for the vote approaches.

The question that will be presented to the electors at the election to be held on the August regular election date in 2014 is:

APPROVAL OR DISAPPROVAL OF THE AMENDATORY ACT DEDICATING A PORTION OF THE USE TAX REVENUE TO BENEFIT METROPOLITAN AREAS THROUGHOUT THIS STATE

The amendatory act adopted by the Legislature would:

1. Dedicate a portion of the existing state use tax as a local tax levied by a new metropolitan areas authority.
2. Distribute revenue from that local tax throughout the state for local purposes, including police and fire protection.
3. Increase that portion of the state use tax currently dedicated for aid to schools.
4. Prohibit the total use tax rate from exceeding the constitutional limit of 6%.

Should this amendatory act be approved?

YES []

NO []

Enacting Section 2. If approved by the qualified electors of this state as provided in enacting Section 2, this amendatory act takes effect January 1, 2015.

DEFINITIONS

The Acts which bring about personal property tax reform have a unique language all their own. In reviewing Acts 397-406, of 2012, the following definitions will be of great assistance:

“Direct integrated support” means research and development functions, testing and quality control functions, engineering functions, warehousing facilities that directly support the owner or lessee engaging in industrial processing and that store tangible personal property owned by that owner or lessee, and sorting and distribution centers that optimize transportation and use just-in-time inventory management and material handling for inputs to industrial processing.

“Eligible manufacturing personal property” means all personal property that is located on a parcel of real property if that personal property is used more than 50% of the time in industrial processing or in direct integrated support. The percentage of use of personal property in industrial processing or in direct integrated support shall be determined in the following manner: (i) Multiply the true cash value of each industrial item of personal property located on that parcel of real property by its percentage of use in industrial processing or in direct integrated support; (ii) Add the result of the calculation under subparagraph (i) for all personal property located on that parcel of real property; and (iii) Divide the result of the calculation under subparagraph (ii) by the total true cash value of all personal property located on that parcel of real property.

“Industrial processing” means the conversion or conditioning of tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to ultimately be sold at retail. Industrial processing does not include the generation of electricity for sale.

“New personal property” means property that meets all of the following conditions: (i) Before January 1, 2013, was not subject to or exempt from the collection of taxes under this act, except inventory exempt under section 9c, and was not in use or placed in service in this state; (ii) Before January 1, 2013, was not in use or placed in service outside of this state; and (iii) Was initially purchased from the manufacturer, dealer, distributor, or other vendor of new property after December 31, 2012.

“Qualified new personal property” means property that meets all of the following conditions: (i) Is eligible manufacturing personal property and (ii) Was new personal property after December 31, 2012.

“Qualified previously existing personal property” means personal property that meets all of the following conditions: (i) Is eligible manufacturing personal property; (ii) Meets any of the following conditions: (A) Has been subject to or exempt from the collection of taxes under this act for the immediately preceding 10 years; (B) If that personal property was located both outside of and within this state in the immediately preceding 10 years, that personal property was subject to or exempt from the collection of taxes under this act, or would have been subject to or exempt from the collection of taxes under this act if located in this state, for the immediately preceding 10 years; and (C) If that personal property was located outside of this state in the immediately preceding 10 years, that personal property would have been subject to or exempt from the collection of taxes under this act for the immediately preceding 10 years if that personal property had been located in this state.

“Commercial personal property” means personal property classified as commercial personal property under section 34c.

“Eligible personal property” means property that is industrial personal property or commercial personal property. The combined taxable value of all industrial personal property and commercial personal property owned by or under the control of the owner claiming is less than \$40,000.00 in that local tax collection unit an exemption is available.

ACTS

In an effort to provide clarity on the Acts which bring about personal property tax reform, each of the Acts are summarized below.

**PA 397 of 2012 (MCL 207.561a)
Facility Subject To Industrial Facilities Exemption
Certificate**

A facility subject to an Industrial Facilities Exemption Certificate (“IFEC”) on December 31, 2012, shall remain subject to the industrial facilities tax, and shall remain exempt from ad valorem property taxes until that eligible manufacturing personal property would otherwise be exempt from the collection of taxes under MCL 211.9m, 211.9n, and 211.9o. This provision applies only to the portion of the facility that is eligible manufacturing personal property.

**PA 398 of 2012 (MCL 207.712a)
Facility Subject To Technology Park
Facilities Exemption Certificate**

A facility subject to a technology park facilities exemption certificate on December 31, 2012, shall remain subject to the technology park facilities tax, and shall remain

exempt from ad valorem property taxes until that eligible manufacturing personal property would otherwise be exempt from the collection of taxes under MCL 211.9m, 211.9n, and 211.9o. This provision applies only to the portion of the facility that is eligible manufacturing personal property.

**PA 399 of 2012 (MCL 211.9f)
New Personal Property Located In One Or More
Eligible Districts**

New personal property exempt under this section on December 31, 2012, the eligible manufacturing shall remain exempt until the later of the following: (i) the date that eligible manufacturing personal property would otherwise be exempt under MCL 211.9m, 211.9n or 211.9o; or (ii) the date that eligible manufacturing personal property is no longer exempt under the resolution of the governing body of the eligible local assessing district creating the exemption. The exemption is commonly known as an Act 328 personal property tax exemption.

**PA 400 of 2012 (MCL 125.2121)
Facility Certified As A Qualified Business
In Enterprise Zone**

A facility that was certified as a qualified business on December 31, 2012, shall remain subject to the specific tax levied under the Enterprise Zone Act for that portion of the facility that is eligible manufacturing personal property until that eligible manufacturing personal property would otherwise be exempt from the collection of taxes under MCL 211.9m, 211.9n or 211.9o.

**PA 401 of 2012 (MCL 211.9m)
Qualified New Personal Property**

Beginning December 31, 2015, (“2016 tax year”) Qualified New Personal Property (“QNPP”) is exempt from the collection of taxes. An owner of QNPP shall claim the exemption by filing an affidavit with the local tax collecting unit and the department of treasury not later than February 20, 2016.

**PA 402 of 2012 (MCL 211.9o)
Eligible Personal Property With Taxable Value
Of Less Than \$40,000.00**

Beginning December 31, 2013, eligible personal property is exempt from the collection of taxes under this act. An owner shall claim the exemption by annually filing an affidavit with the local taxing unit with the department of treasury not later than February 20 in each tax year.

Eligible personal property means property that meets all of the following conditions: (i) is industrial personal property or commercial personal property; and (ii) the combined taxable value of all industrial and commercial personal property owned by or under the control of the owner claiming exemption is less than \$40,000.00 in that local tax collecting unit. Industrial personal property means personal property classified as industrial personal property under MCL 211.34c(3)(c). Commercial personal property means personal property classified as commercial personal property under MCL 211.34c(3)(b).

**PA 403 of 2012 (MCL 211.9n)
Qualified Previously Existing Personal Property**

Beginning December 31, 2015, and each year thereafter, Qualified Previously Existing Personal Property is exempt from the collection of taxes. An owner shall claim exemption by filing an affidavit with the local taxing unit and department of treasury not later than February 20th.

Qualified previously existing personal property means property that is eligible manufacturing personal property and meets all of the following conditions: (a) Has been subject to or exempt from the collection of taxes under this act for the immediately preceding 10 years; (b) if located both outside of and within this state in the immediately preceding 10 years and was or would have been subject to or exempt from the collection of taxes if located in this state for the immediately preceding 10 years; and (c) if located outside of this state in the immediately preceding 10 years and would have been subject to or exempt from the collection of taxes for the immediately preceding 10 years if it had been located in this state.

PPT REFORM SUMMARY

- **PA 397** - Eligible Manufacturing Personal Property subject to IFT on 12/31/2012, shall remain exempt from ad valorem tax and subject to IFT until exempt under MCL 211.9m, 211.9n or 211.9o.
- **PA 398** - Eligible Manufacturing Personal Property subject to tech park facilities tax on 12/31/2012 shall remain exempt from ad valorem tax and subject to tech park facilities tax until exempt under MCL 211.9m, 211.9n or 211.9o.
- **PA 399** - Eligible Manufacturing Personal Property exempt on 12/31/2012 under PA 328 shall remain exempt until later of the date it is no longer exempt under resolution granting exemption *or* it would otherwise be exempt under MCL 211.9m, 211.9n or 211.9o.

- **PA 400** - Eligible Manufacturing Personal Property certified as a qualified business in an Enterprise Zone on 12/31/2012 shall remain subject to that specific tax until otherwise exempt under MCL 211.9m, 211.9n or 211.9o.
- **PA 401** - Eligible Manufacturing Personal Property will be exempt, beginning 12/31/2015 (2016 tax year), if acquired after 12/31/2012.
- **PA 402** - Exempts all commercial and industrial personal property if the total taxable value is less than \$40,000.00 in that local tax collecting unit.
- **PA 403** - Eligible Manufacturing Personal Property will be exempt, beginning 12/31/2015, if it has been subject to taxation for at least 10 years, i.e., property acquired before 2006 will be exempt. The 2006 date will advance each year after 2016 so that by 2023 all eligible manufacturing personal property will be exempt.

Public Act	Purpose	Effective Date	Subject to Approval at August 2014 Election	Comment
397	Exempts Eligible Manufacturing Personal Property ("EMPP") subject to Industrial Facilities Tax (PA 198 of 1974) on 12/31/2012.	3/28/2014	Yes	EMPP remains subject to IFT until exempt under MCL 211.9m, 9n or 9o.
398	Exempts Eligible Manufacturing ("EMPP") subject to Tech Park Facilities Tax as of 12/31/2012.	3/28/2014	Yes	EMPP remains subject to Tech Park Facilities Tax until exempt under MCL 211.9m, 9n or 9o.
399	Exempts Eligible Manufacturing Personal Property ("EMPP") that was exempt under PA 328 on 12/31/2012.	3/28/2014	Yes	EMPP exempt under PA 328 will remain exempt until later of the date of it is no longer exempt under exemption resolution or it would be exempt under MCL 211.9m, 9n or 9o.
400	Eligible Manufacturing Personal Property ("EMPP") belonging to a certified qualified business in an Enterprise Zone on 12/31/2012.	3/28/2014	Yes	EMPP shall remain subject to specific Enterprise Zone Tax until exempt under MCL 211.9m, 9n or 9o.
401	Eligible Manufacturing Personal Property ("EMPP") acquired after 12/31/2013 will be exempt beginning 12/31/2015. (2016 tax year)	3/28/2014	Yes	EMPP acquired after 12/31/2012 is exempt beginning with the 2016 tax year.
402	Exempts all commercial and industrial personal property with a total taxable value of less than \$40,000 beginning 12/31/2013 for 2014 tax year.	3/28/2014	Yes	Commercial and industrial personal property taxable value must be less than \$40,000 to qualify.
403	Eligible Manufacturing Personal Property will be exempt beginning 12/31/2015 if it has been subject to tax for at least 10 years.	3/28/2014	Yes	EMPP purchased before 2006 will be exempt beginning 12/31/2015. The 2006 date will advance each year.

CONCLUSION

The phaseout of personal property taxes could become final upon voter approval in 2014. Voters will likely hear more about the issue and all stakeholders should have at least a basic understanding of the proposed landscape. In short, Michigan may become more competitive for businesses generally because of the phaseout of personal property taxes.

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ENDNOTES

- 1 Joseph Henchman, Michigan Approves Phaseout of Destructive Personal Property Taxes, December 2012, available at: <http://taxfoundation.org/blog/michigan-approves-phaseout-destructive-personal-property-taxes> (last accessed on 9/17/2013).
- 2 See David Zin, Chief Economist, State Notes (Winter 2013), page 4, available at: <http://www.legislature.mi.gov/documents/2011-2012/billanalysis/Senate/pdf/2011-SFA-1065-N.pdf> (last accessed on 9/17/2013).

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