

Eligible Personal Property Exemptions for Assessors

Presented by Tim Schnelle, Manager of the
Commercial/Industrial/Utilities Valuations Section, Assessment
and Certification Division, Michigan Department of Treasury

December 17, 2013

The purpose of today's presentation is to:

- Provide you with a basic understanding of the legislation as a whole.
- Provide you with detailed information relating to those portions of the legislation which will take effect for the 2014 assessment year.
- Alert you to several areas where you may be likely to encounter difficulties in implementing the enactments.

Contrary to the understanding of many taxpayers and assessors, the Acts do not provide for the complete exemption of business personal property. Instead, they provide for exemptions in two separate categories.

The two categories of exemptions are:

- The “Eligible Personal Property” exemption (sometimes informally referred to as the (Small Taxpayer Exemption); and,
- Two “Eligible Manufacturing Personal Property” exemptions, one for new “Eligible Manufacturing Personal Property” and the other for previously existing “Eligible Manufacturing Personal Property.”

The Eligible Personal Property Exemption

- The exemption applies to personal property which is classified either as commercial personal property or as industrial personal property.
- The determination of whether the true cash value is less than \$80,000 must be based on all commercial personal property and industrial personal property owned by, leased to, or in the possession of that owner or a related entity in that local assessing unit.
- It is possible for an owner that is assessed for less than \$80,000 of true cash value of personal property to be ineligible for the “Eligible Personal Property” exemption.

The Eligible Personal Property Exemption (Cont'd)

- The legislation provides that an affidavit claiming the exemption for “Eligible Personal Property” must be filed by February 10th.
- In 2014 only, a taxpayer that has missed the February 10th deadline may claim the exemption at the March Board of Review.
- The personal property statement will continue to be due on February 20.

The Eligible Personal Property Exemption (Cont'd)

- The definition of “Eligible Personal Property” considers and includes indirect control situations when determining that the true cash value of the claimant’s personal property is less than \$80,000.
- The legislation defines “control”, “controlled by”, “under common control with”, and “related entity,” in an effort to prevent a taxpayer from gaining exemption by means of titling property in the names of related entities.
- The phrase "Related entity" means a person that, directly or indirectly, controls, is controlled by, or is under common control with the person claiming an exemption under this section.

The Eligible Personal Property Exemption (Cont'd)

- The word "Person" means an individual, partnership, corporation, association, limited liability company, or any other legal entity.
- The exemption is not available to personal property which is leased or used by a person that directly or indirectly controls, is controlled by, or is under common control with the person that previously owned the property. This provision deals with sale and leaseback situations.
- The legislation authorizes an assessor to deny the exemption if the assessor believes that the property does not qualify.

The Eligible Personal Property Exemption (Cont'd)

- The legislation authorizes an assessor to retroactively deny an exemption for the current year and the three previous years, and issue a corrected tax bill, plus interest and penalties, if he or she believes that the property was not eligible.

The Eligible Personal Property Exemption (Cont'd)

Entitlement to the exemption is determined by adding together the true cash value of the personal property which the taxpayer, or a related entity:

- Owns,
- Leases; or
- Possesses,

in the entire assessment unit.

The Eligible Personal Property Exemption (Cont'd)

The exemption is granted to taxpayers who own or use a small amount of personal property in the local assessing unit, not to taxpayers who have small assessments because they are leasing or borrowing part of the personal property that they use to conduct their business. Therefore, the true cash value of the personal property which is owned, leased or possessed in the assessment unit, is added together to determine whether the taxpayer is entitled to the "Small Taxpayer Exemption."

Notice that only the property owned by the taxpayer is exempted. The personal property of lessors and other owners of personal property considered in determining the exemption for that taxpayer is not exempt unless they separately qualify for the exemption based on the property which they and related entities own, lease or possess in the local assessing unit.

The Eligible Personal Property Exemption (Cont'd)

- To claim the exemption, the Taxpayer must file Form 5076, *Affidavit of Owner of Eligible Personal Property Claiming Exemption from Collection of Taxes* by February 10th of the assessment year.
- The Taxpayer cannot receive, and the Assessor cannot grant, the Eligible Personal Property exemption unless the taxpayer fully completes and returns the Affidavit to the Assessor, so that it is actually received by the assessor by February 10 of the assessment year. The exception is 2014, when the March Board of Review can also grant the exemption.
- The Taxpayer must file the *Affidavit* every year to continue to receive the exemption.

The Eligible Personal Property Exemption (Cont'd)

- If the Taxpayer files a fully completed Affidavit Form 5076 with the Assessor by February 10th of the assessment year, the Taxpayer is excused from filing a personal property statement for that assessment year.
- For the 2014 assessment year only, if the Taxpayer fails to return the *Affidavit* by February 10th, then the Taxpayer is permitted to petition the March Board of Review for the exemption.
- If the exemption is denied by the Assessor, then that denial may be appealed to the March, July or December Board of Review, and the Taxpayer may also appeal to the Michigan Tax Tribunal.

Areas of Particular Concern to Assessors & Taxpayers

Trade Fixtures

Trade Fixtures are items attached to real property by a tenant, which the tenant has the right to remove at the end of the lease term and which can be detached for use elsewhere without destroying the item in question.

- Under Michigan Law, if the lease is silent, the tenant has the right to remove such items. Most leases do not prevent the removal of trade fixtures.
- Trade fixtures do not become part of the real property and, instead, they remain personal property.

Areas of Particular Concern to Assessors & Taxpayers

Trade Fixtures (Con'd)

- MCL 211.8(k) specifically provides that trade fixtures are assessable as personal property. The true cash value of trade fixtures must be included in determining whether the tenant is eligible for the “Small Taxpayer Exemption.”
- A difficulty is that taxpayers frequently record trade fixture costs in the leasehold improvement section of their fixed asset accounting records, and then report them as leasehold improvements rather than as personal property.

Areas of Particular Concern to Assessors & Taxpayers

Tenant installed leasehold improvements

- Tenant installed leasehold improvements are improvements to the land or structures of the landlord which have been made by the tenant.
- Leasehold Improvements are distinguished from trade fixtures by the fact that the leasehold improvements cannot be removed for use elsewhere without destroying them.
- During the tenancy of the lessee, *leasehold improvements* may be assessed to the tenant, as personal property, to the extent that the improvements add to the value of the real property and are not included in the assessment of the real property.

Areas of Particular Concern to Assessors & Taxpayers

Tenant installed leasehold improvements (Con'd)

- Leasehold improvements may be assessed as personal property pursuant to MCL 211.8(h) (unless the lease existed before 1984 and has not been substantially renegotiated since). In the alternative, leasehold improvements may be assessed to the real property interest of the landlord, based on the fact that they are really improvements to real property, not personal property at all.

Areas of Particular Concern to Assessors & Taxpayers

- Trade fixtures must be assessed as personal property to the tenant, and leasehold improvements may be assessed either as personal property to the tenant or as real property to the landlord. However, leasehold improvements are essentially real property in nature.
- Taxpayers generally have difficulty in distinguishing trade fixtures from leasehold improvements, particularly since they often book trade fixtures in their leasehold improvement asset accounts.
- This failure to discern the difference between trade fixtures and leasehold improvements may result in them mistakenly failing to consider the true cash value of trade fixtures when completing Affidavit Form 5076.

Areas of Particular Concern to Assessors & Taxpayers

The methods used by taxpayers to calculate the true cash value

- Many taxpayers will not understand that they must add together the true cash values of *all* the personal property used in *all* of their *business locations* in the assessment unit, whether *owned, leased or possessed by a related party* or *owned, leased or possessed by the taxpayer itself*.
- Taxpayers have difficulty in calculating true cash value for the personal property they own and for the personal property owned by related entities.
- Taxpayers have particular difficulty in determining the true cash value of personal property which they or a related entity lease or possess.

Reset Form

Michigan Department of Treasury
5076 (11-13)

Parcel Number

2014

Affidavit of Owner of Eligible Personal Property Claiming Exemption from Collection of Taxes (As of 12-31-2013)

Notice Questions regarding this form should be directed to the assessor of the city or township where the personal property is located. This form was approved by the State Tax Commission on November 4, 2013 under the authority of Public Act 206 of 1893. This form must be filed by the owner or the owner's authorized agent.

Name and Address of Owner

To claim an exemption, this Affidavit must be received by the Assessor no later than February 10, 2014.

IMPORTANT INFORMATION: This affidavit will exempt property owned only by the entity filing the affidavit. If personal property is leased to or used by an entity other than the property's owner, the owner of that personal property must file the affidavit for that property, not the lessee or the user. The owner may file the affidavit and claim the exemption only if the True Cash Value of all of the commercial or industrial personal property located within the city or township that is owned by, leased to, or in the possession of the owner or a related entity was less than \$80,000 on December 31, 2013.

Name of Local Unit of Government		
City _____		Township _____
List all addresses where Personal Property is located within the City or Township. (may attach additional sheets)		Names of Owners or Partners (If sole Proprietorship or Partnership)
County	Owner Telephone Number	Legal Name of Owner, if different from above
Assumed Names Used by Legal Entity, if any		Description of Owner's Business Activity and NAICS Code
Check only one: _____		

<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Limited Liability Co. MI ID# _____		<input type="checkbox"/> Corporation MI ID# _____		<input type="checkbox"/> Partnership	
Name and Telephone Number of Person in Charge of Personal Property Records			Address where Personal Property Records are Kept		
Names of all other businesses having personal property, including any leasehold improvements assessed as personal property at the locations included in this affidavit (attach additional sheets as necessary)				Date Business Began in Local Tax Collecting Unit	

The undersigned certifies that:

1. I am the owner of the commercial personal property and industrial personal property being claimed as exempt or I am the duly authorized agent.
2. The True Cash Value of all the Personal Property, as defined by Public Act 153 located within the city or township indicated above, that is owned by, leased to, or in the possession of the owner or related entity was less than \$80,000 on December 31, 2013.
3. Below are the procedures used to determine that the True Cash Value of the Eligible Personal Property was less than \$80,000 on December 31, 2013:
 - a) The determination of True Cash Value was based on the State Tax Commission's recommended valuation procedures as set forth on Form 632, *Personal Property Statement (L-4175)*. Attach an explanation of the method used if your answer is NO. Yes No
 - b) The determination of True Cash Value includes all assessable personal property, located within the city or township listed on this Affidavit that is owned by, leased to, or in the possession of the owner or related entity. This shall include all trade fixtures and may include leasehold improvements not assessed as real property. Attach an explanation if not all personal property is included. Yes No N/A

I hereby certify that the information contained within, and attached to, this Affidavit provides a full and true statement of all personal property owned, leased, or in the possession of the owner or related entity on December 31, 2013.

Printed Name	Signature	Date
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Indicate which:

Sole Proprietor
 Partner
 Officer
 Managing Member
 Agent (attach letter of authority)

Trade Fixtures: Items of property that have been attached to real estate by a tenant to facilitate the tenant's use of the property for business purposes and which are both capable of being removed and are removable by the tenant under the terms of the lease. Examples of trade fixtures are certain costs related to telephone and security systems and most signs.

Leasehold Improvements: Land improvements, such as paving and landscaping, and improvements made by a tenant to structures owned by the landlord. Leasehold improvements are characterized by the fact that they cannot be removed for use elsewhere because they will be destroyed by removal. Leasehold improvements may be assessed as real property to the owner of the real property or may be assessed as personal property to the tenant.

Additional information can be located in Public Act 153 and State Tax Commission Bulletin 11 of 2013.

<input type="checkbox"/> Sole Proprietorship		<input type="checkbox"/> Limited Liability Co. MI ID# _____		<input type="checkbox"/> Corporation MI ID# _____		<input type="checkbox"/> Partnership	
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Printed Name	Signature	Date

Indicate which:

Sole Proprietor Partner Officer Managing Member Agent (attach letter of authority)

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- Below are the procedures used to determine that the True Cash Value of the Eligible Personal Property was less than \$80,000 on December 31, 2013:
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Additional information can be located in Public Act 153 and State Tax Commission Bulletin 11 of 2013.

Areas of Particular Difficulty

- *Calculating True Cash Value*
- *Determining True Cash Value for Leased or Possessed Personal Property*
- *Distinguishing between Real Property and Personal Property*
- *Lack of rigorous application, or rigorous application, of the three part test by the Tax Tribunal.*
- *The identification of Trade Fixtures*
- *The Identification of Installation Costs for Machinery and Equipment.*
- *The handling of Leasehold Improvements.*
- *The handling of property which the Michigan Legislature or State Tax Commission has specifically indicated is personal property.*