



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

NICK A. KHOURI
STATE TREASURER

Bulletin No. 21 of 2015
EMPP and ESA Information
December 16, 2015

TO: Assessing Officers and County Equalization Directors

FROM: Michigan State Tax Commission

SUBJECT: Key Points for Assessors Administering MCL 211.9m and MCL 211.9n Exemptions for the 2016 Tax Year

The purpose of this Bulletin is to provide key points for assessors in administering the *qualified new personal property tax exemption* (MCL 211.9m) and the *qualified previously existing personal property tax exemption* (MCL 211.9n) for the 2016 tax year. This guidance is being provided to supplement the information contained in State Tax Commission Bulletins 7, 8 and 9 of 2015. Assessors should also refer to those Bulletins for further information and direction.

1. **Claiming the Exemption:** Beginning December 31, 2015 (for the 2016 assessment year), qualified new personal property and qualified previously existing personal property located on *Occupied Real Property* is exempt from ad valorem taxation and is instead subject to the State Essential Services Assessment (ESA). Additionally, certain P.A. 198 (IFT) Property and New Personal Property (P.A. 328) are subject to the State Essential Services Assessment. To claim this exemption, a fully completed Form 5278, *Affidavit and Statement for Eligible Manufacturing Personal Property and Essential Services Assessment*, must be received by the assessor of the local unit of government where the qualified personal property is located no later than February 20, 2016. Taxpayers should not complete this Affidavit and statement unless the personal property meets the definition of Eligible Manufacturing Personal Property (EMPP). Assessors must deny an exemption for personal property that is determined not to meet the eligibility requirements.
2. **Definitions to Determine Eligibility:** All Assessing Officers must understand the definitions outlined in Bulletin 7 of 2015. Of significance is the concept of *Occupied Real Property*, which can be a real property parcel, part of a real property parcel or several real property parcels. The main concept is that the property must be occupied as a single site by the taxpayer. Since the formula for determining qualification of the location for the EMPP exemption is different than the formula used to determine classification, it is possible for personal property classified as industrial to be disqualified as EMPP or for personal property classified as commercial to be qualified for the purposes of receiving the exemption.

Personal property is determined to be EMPP based on the predominant use of the personal property on the *Occupied Real Property*. If the predominant use of the personal property is for “*Industrial Processing*” and/or for “*Direct Integrated Support*,” then all the personal property on the *Occupied Real Property*, no matter who owns it, no matter what it is and no matter how it is used, is EMPP. The exception is personal property that is not owned, leased or used by the person who owns or leases the occupied real property and is brought to the site without a current active business purpose does not qualify as EMPP. Personal property can be used for Direct Integrated Support even if the taxpayer is not manufacturing on the site and even if the taxpayer is not a manufacturer.

3. **Form 5278:** The person claiming the exemption for the qualified new personal property and/or qualified previously existing personal property must properly file Form 5278, *Eligible Manufacturing Personal Property Affidavit and Statement for Personal Property and Essential Services Assessment*. Form 5278 contains the Affidavit to claim the EMPP exemption, the Personal Property Statement for EMPP that does not yet qualify for the exemption, (stays on ad valorem roll or IFT roll) and the required Essential Services Assessment filing (See Bulletin 9 of 2015). Since the STC adopted a single reporting form, if a taxpayer did not check *Yes* on the taxpayer’s 2015 personal property statement indicating the property was EMPP and the taxpayer qualifies for the EMPP exemption, the taxpayer is only required to file Form 5278 for the 2016 year. A separate Form 5278 is required to be filed for each parcel of personal property.

An assessor should not mail the Form 5278 to taxpayers whom he or she believes qualify for the EMPP exemption. Since the determination of whether personal property is EMPP is based on the use of the personal property, assessors have no means of reaching an absolute conclusion as to whether the personal property is EMPP. If the Form 5278 is sent to taxpayers who do not qualify, it mistakenly implies qualification and if the form is not sent to taxpayers who do qualify, it implies predetermination of an exemption claim. In either case, there may be negative financial ramifications to the taxpayer. Each taxpayer must independently determine whether it qualifies for exemption.

Taxpayers can obtain a copy of Form 5278 from the State Tax Commission website, www.michigan.gov/statetaxcommission, or www.michigan.gov/PPT. **Assessors should ensure that Form 5278 is timely filed and fully completed by the taxpayer.** Forms that are not fully completed should not be processed by the assessor. The assessor should carefully evaluate the business activities of the taxpayer to ensure that they meet the statutory requirements of the EMPP exemption.

To claim the EMPP exemption, the Affidavit (Form 5278) must be filed with the assessor of the local unit of government where the property is located by February 20, 2016. Properly filed means the form must be **filled out in its entirety** and must be properly submitted to the assessor of the Township or City where the personal property is located. For the 2016 tax year, because February 20 is a Saturday, Form 5278 must be filed with the local unit assessor no later than the next business day, which is Monday, February 22, 2016. Unlike the Small Taxpayer Exemption, **filed means actual receipt by the assessor.**

Neither the assessor nor the board of review has authority to grant the EMPP exemption if Form 5278 is not filed timely. It is suggested that the form should be date-stamped or date-inscribed on the date of actual receipt by the assessor. Late filed Affidavits should not be accepted by the local unit. Affidavits that are not properly filed or are late filed are not considered denied by the assessing officer for purposes of appeal rights.

EMPP that was first placed in service in 2006 through 2012 will still be reported as ad valorem personal property in Part 2 on Form 5278. Property meeting the definitions of *qualified new personal property* and *qualified previously existing personal property* first placed in service after 2012 and prior to 2006 will be exempt from ad valorem taxes and IFT specific taxes and will instead pay the State Essential Services Assessment and will report the personal property in Part 3 of Form 5278.

Taxpayers will report 100% of the Eligible Manufacturing Personal Property's fair market value at the time of the acquisition by the first owner. The assessor must understand that when reporting ESA acquisition cost ("fair market value") the determination which matters is not the year that the personal property was purchased by the first user but rather the year that the personal property was first placed "in service." Until the personal property is placed in service, it is "construction in progress." Construction in progress does qualify as EMPP if the property will qualify as EMPP when it is placed in service.

Taxpayers who do not occupy the Occupied Real Property but have personal property present on the site, claim the exemption based on whether the personal property on the site qualifies and must claim the exemption by filing Form 5278. The exception to this is leasing companies do not file for the EMPP exemption. In such instances, the customer (the lessee) reports the property and claims the exemption. Note: (Leasing companies do not ever file Form 5278 and do not report the personal property which is EMPP on the personal property statement regardless of whether the EMPP is currently exempt.)

Form 5278 must be filed each and every year that the taxpayer claims the exemption. It is important to note that it is possible for a taxpayer to qualify for one year but not the next year, based on the predominant use of the personal property.

4. **Special Acts:** The most difficult personal property tax changes involve the treatment of IFT (P.A. 198) and P.A. 328 (MCL 211.9f) property. Certain specific exemption certificates remain in effect until the EMPP becomes exempt under MCL 211.9m or MCL 211.9n.

First, the Assessing Officer must understand that an IFT certificate or an Act 328 exemption which was in effect on or after December 31, 2012 is extended until all the personal property is exempt, but only if the personal property is EMPP. In the case of a non-extended IFT (the original term of the IFT certificate covers the period until all of the property is EMPP), the assessor must continue to maintain the IFT parcel separately even after the IFT certificate expires, until all of the EMPP is exempt.

Not all EMPP will be immediately exempt. In the first year, 2016, only property first placed in service in before 2006 or after 2012 is exempt. The balance of the personal property at the site is still subject to ad valorem assessment or the IFT specific tax. In the case of property which benefits from exemption programs, some "in service" years may be exempt while other years are not exempt.

The assessor must understand that in the case of EMPP subject to an extended IFT certificate, the taxpayer may be responsible for paying both IFT specific tax and ESA specific tax. Assessors should review ESA Topics: IFT (P.A. 198) Property Reporting and Treatment document and Bulletin 8 of 2015 for further information.

5. **Approval/Denial of EMPP Exemption:** Assessors are required to ensure that all claims for exemptions are timely filed, complete and valid. Proper records supporting the assessor's approval or denial of the exemptions are required to be maintained. Assessors must deny the EMPP exemption in cases where he or she is convinced that the taxpayer does not qualify. Unlike the Small Business Taxpayer Exemption, where the assessor can retroactively deny for the current and three preceding years, the assessor can only enter a denial of the EMPP exemption for the current year.

Assessors must be aware that utility personal property as defined in MCL 211.34c is not used in industrial processing or direct integrated support.

The State Tax Commission has approved a sample form for the assessor's denial of a request for EMPP exemption. Assessors are encouraged to utilize this sample denial form to deny an exemption that is determined to not meet the eligibility requirements of MCL 211.9m and MCL 211.9n. The sample denial form is available on the Personal Property Tax page at www.michigan.gov/PPT and on the State Tax Commission's page under the What's New heading at www.michigan.gov/statetaxcommission.

Assessor Reporting Requirements: Assessors are required to have all data entered from Form 5278 uploaded to BS&A for submission to the Department of Treasury no later than April 1. Failure to submit the required report of ESA costs with the Department of Treasury by the April 1 deadline will impede the timely assessment of the ESA specific tax. Failure to transmit data by April 1 as required by statute and at the direction of the State Tax Commission, may result in further disciplinary action for nonfeasance of duties.

Assessors that do not have BS&A software and that have taxpayers claiming the EMPP exemption, must mail a hard copy of Form 5278 no later than February 29, 2016 to the ESA Section Manager at P.O. Box 30710, Lansing, Michigan 48909.

Assessors must enter all the information from Form 5278 into the assessing software. This requires that the assessor enter the reported acquisition costs in his or her computer database. The assessor should pay close attention to make sure the federal identification number (FEIN), parcel identification number and revenue sharing code are accurate in the assessing software for each personal property parcel.

The assessor cannot enter an override, since he or she is required to report the ESA acquisition costs to the Michigan Department of Treasury (through BS&A Software) prior to April 1, and must also have the non-exempt costs available to transmit electronically, upon request, for audit purposes.

Since many taxpayers who qualify for exemption will be multi-jurisdictional and since Treasury has no way of determining all of the local units where Form 5278 might be filed, Treasury cannot begin processing the ESA assessments until all local units have reported.

6. **Resources:** Due to the complicated nature of the EMPP Exemption and the associated ESA specific tax, assessors are not doing their taxpayers a service by attempting to provide guidance relating either to EMPP or the ESA and may be subject to legal liability for giving incorrect information. Instead, the State Tax Commission recommends that the assessors direct taxpayers to submit questions at the Treasury webpage:

www.michigan.gov/taxes

Then, “Property Tax” on the left margin

Then, “Essential Services Assessment” under the Personal Property Tax heading

Then, “Submit a Question” at the bottom under the Contact Us heading

More information is also available at www.michigan.gov/PPT. Specific questions and information regarding the Essential Services Assessment (ESA) can be found at www.michigan.gov/ESA.

7. **ESA Communications:** Communicating effectively is a high priority of the State Tax Commission and Department of Treasury. The Department of Treasury will use GovDelivery to disseminate information on the ESA in a timely and effective manner. The State Tax Commission requests that all assessors subscribe to the ESA GovDelivery listserv in order to receive important notices and guidance on the ESA. Information on how to subscribe is available on the Department of Treasury ESA website at www.michigan.gov/ESA (not a live link). Subscribers are responsible for updating their email if there are changes; Department of Treasury staff cannot make any changes to email addresses.
8. **Contacts:** Treasury staff is available to assist and answer questions. The following are key contacts:

ESA Program E-mail Address: ESAQuestions@michigan.gov