

New Tax Exemption for Up to \$80,000 in Personal Property Could Benefit Clients and Counsel

By Jason C. Long

At the end of 2012, the Michigan legislature adopted and Governor Snyder signed a package of bills to fundamentally change the state's property tax system. The changes will phase out the personal property tax so that by the 2024 tax year there will be no personal property tax in Michigan. Significant components of the phase-out depend on popular approval in August 2014 elections and would not go into effect until 2016. But one component taking effect in 2014 exempts commercial and industrial personal property that a taxpayer controls in one jurisdiction if the property's market value is less than \$80,000. The Michigan Economic Development Corporation has identified this as a "small business" exemption, and it can benefit both small-business clients and small law firms.

The exemption

Beginning with the 2014 tax year, the General Property Tax Act exempts personal property a taxpayer or a related entity owns, leases, or possesses in one taxing jurisdiction that is classified commercial or industrial and is worth less than \$80,000. Such property is identified as "eligible personal property" in the new legislation:

"Eligible personal property" means property that meets all of the following conditions:

- (i) Is industrial personal property or commercial personal property.
- (ii) The combined true cash value of all industrial personal property and commercial personal property in that local tax collecting unit owned by, leased to, or in the possession of the person claiming an exemption under this section or a related entity on December 31 of the immediately preceding year is less than \$80,000.00.
- (iii) Is not leased to or used by a person that previously owned the property or a person that, directly or indirectly, controls, is controlled by, or is under common control with the person that previously owned the property.¹

The initial version of the exemption applied to commercial and industrial personal property with a taxable value less than \$40,000 that the taxpayer owns. An amendment in November 2013 revised the exemption such that personal property the taxpayer or a related entity owns, leases, or possesses must have a total true cash value less than \$80,000 to qualify as eligible personal property. Likewise, the amendment added the limitation in subpart (iii), which appears to be intended to prohibit manipulation of location or ownership to qualify property for an exemption.² Location is important because the exemption is jurisdiction-specific, meaning a taxpayer and its related entities may own, lease, or possess personal property in a number of cities or townships. As long as the personal property in each city or township is worth less than \$80,000, that property may qualify for the exemption. Notably, the exemption is not for the first \$80,000 in personal property; the

total amount of personal property the taxpayer owns, leases, or possesses in any single taxing jurisdiction must be worth less than \$80,000 to qualify for the exemption.

Breaking down the exemption

A number of terms identifying "eligible personal property" are already defined in the General Property Tax Act, assisting in applying the exemption. Most fundamentally, the act defines "personal property" to encompass "all goods, chattels, and effects" as well as other specific items.³ Aside from certain items the act identifies as personal property, an item is likely to be personal property if it does not satisfy the three-part analysis of annexation, adaptation, and intent to become a fixture and therefore real property.⁴ More practically, personal property will generally include all equipment, machinery, and furniture.

The act also identifies which personal property is classified as industrial and commercial.⁵ Whether an item of personal property falls into one of these classifications depends in large part on whether the real property where the personal property is located falls into one of these classifications.⁶ A rule of thumb is if the property is used for manufacturing or to prepare materials for manufacturing, it may qualify as industrial property. Otherwise, business property will

This new exemption will allow many small businesses, including many law firms, to forego paying personal property taxes beginning in 2014.

If the use tax is not approved, the personal property tax phase-out will be repealed and the small-business exemption will be for 2014 only.

likely qualify as commercial property. Between the two definitions, any property used primarily as a business is likely to be classified such that personal property located there would fall into either the industrial or commercial classification.

Next, the new legislation provides a definition of “related entity” that refers to a person who “directly or indirectly, controls, is controlled by, or is under common control” with a person claiming an exemption.⁷ In turn, the new legislation also defines “control,” “controlled by,” and “under common control with,” taking the broad view that common control can emanate from common ownership, management, or corporate officers. It also provides a rebuttable presumption that entities are under common control when there is 10 percent common ownership or contribution to capital between them.⁸

Finally, of course, “true cash value” means a property’s “usual selling price.”⁹ That is equivalent to fair market value under Michigan law.¹⁰ In short, the new exemption generally applies to equipment, machinery, and furniture a taxpayer and its related entities possess in a city or township as long as that property has a market value less than \$80,000.

The \$80,000 value limit

As for the cap, perhaps the easiest way to determine whether personal property has a market value less than \$80,000 may be analyzing it using a personal property statement form. These forms provide categories for personal property and depreciation tables for each category.¹¹ To determine the property’s value, its cost in the year it was purchased new is multiplied by the applicable depreciation factor. This calculation is not required, as a party may obtain an independent estimate of value, but using a personal property statement form to estimate value

can provide a cost-effective and widely accepted means of valuing personal property.

Claiming the exemption

Just because a business’s personal property qualifies as eligible personal property does not automatically result in an exemption. The taxpayer must file an affidavit claiming the exemption with the taxing jurisdiction by February 10 each year.¹² This deadline is before personal property statements are due, so the taxpayer must analyze the property’s value using the form or by some other means earlier than it might otherwise do so. Likewise, the affidavit deadline comes before many taxing jurisdictions issue notices of assessment for real property that identify the real property’s classification, which can affect the personal property’s classification. So if there is some question about classification, it may be necessary to inquire with the taxing jurisdiction.

Although MCL 211.9o provides that the taxpayer must file an affidavit claiming the exemption by February 10 each year, in 2014—the first year the exemption is available—the legislature is allowing taxpayers to miss the deadline and still seek the exemption. For 2014 only, if a taxpayer does not timely file the affidavit, it may seek the exemption at the taxing jurisdiction’s Board of Review in March.

If the taxing jurisdiction denies the taxpayer’s claim for an exemption, the taxpayer can appeal to the March, July, or December Board of Review.¹³ A taxpayer can appeal to the Michigan Tax Tribunal from any such board’s decision.¹⁴

One time only?

This new exemption will allow many small businesses, including many law firms, to forego paying personal property taxes beginning in 2014. But the exemption may be

for a limited time only. Along with the rest of Michigan’s personal property tax phase-out legislation, the small-business exemption is subject to popular approval. The compiler’s notes to MCL 211.9o provide that the section “is repealed if House Bill No. 6026 of the 96th Legislature is not approved by a majority of qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014.” HB 6026 was adopted as 2012 PA 408 and provides for a use tax to replace some revenue that taxing jurisdictions will lose to the personal property tax phase-out. If the use tax is not approved, the personal property tax phase-out will be repealed and the small-business exemption will be for 2014 only. ■

Jason C. Long is a shareholder with Steinhardt Pesick & Cohen, P.C., in Birmingham. A former judicial clerk to the Hon. Michael F. Cavanagh at the Michigan Supreme Court, he practices in eminent domain, property taxation, and other real estate litigation. He attended Oakland University, the University of Michigan, and the University of Detroit Mercy School of Law and chairs the Real Property Law Section’s State and Local Tax Committee.

ENDNOTES

1. MCL 211.9o(8)(c).
2. See 2013 PA 153.
3. MCL 211.8.
4. See, e.g., *Continental Cablevision of Mich, Inc v City of Roseville*, 430 Mich 727, 735–736; 425 NW2d 53 (1988).
5. See MCL 211.34c(3).
6. See Long, *This time it’s personal (?) property classification and recent amendments to Michigan’s property tax laws*, 25 Cooley L R 303, 322 (2008).
7. MCL 211.9o(8)(f).
8. See MCL 211.9o(8)(b).
9. MCL 211.27(1).
10. *WPW Acquisition Co v City of Troy*, 466 Mich 117, 122; 643 NW2d 564 (2002).
11. Many cities and townships provide this form to taxpayers, and it is available on the State Tax Commission’s website. See MCL 211.19 (requiring the State Tax Commission to prepare a personal property form).
12. MCL 211.9o(2). The new legislation required the State Tax Commission to prepare an affidavit, which will be available on the STC’s website.
13. See MCL 211.9o(5).
14. See MCL 205.735a.