



Echelbarger, Himebaugh, Tamm & Co., P.C. STATE AND LOCAL TAX NEWSLETTER

Business Strategists & Certified Public Accountants

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Leased Property and the Personal Property Tax Exemptions and Michigan Business Tax Credits

GRAND RAPIDS, MI – Monday, November 19, 2007 – Last week I discussed potential problems with the classification of personal property for purposes of the personal property tax exemptions and the Michigan Business Tax credits. This week I will focus on the unusual situation created by leased property. The State Tax Commission has advised assessors that all leased personal property is classified as "commercial". I do not believe they are technically correct.

Public Act 36 of 2007, the Michigan Business Tax Act, was part of a package of five bills, all tie barred, which provided significant relief from the Michigan Personal Property Tax. Together the five bills exempted property classified as "commercial" from 12 of the 18 school operating mills. [2007 PA 37] Property classified as "industrial" is exempt from all 18 school operating mills and "industrial" property is also exempt from the 6 mill state education tax. [2007 PA 38]

In addition to the exemptions from the Personal Property Tax, the Michigan Business Tax Act also provides tax credits for property classified as industrial and for telephone property and natural gas pipeline property. [MCL 208.1413(1)(a-c)] The Michigan Business Tax Act provides a refundable credit for personal property taxes paid on certain classified property levied after December 31, 2007. [MCL 208.1413(3)]

"Property taxes" qualifying for the credit include any of the following:
[MCL 208.1413(4)(d)]

- (i) Taxes collected under the general property tax act, 1893 PA 206, [MCL 211.1 to 211.157].
- (ii) Taxes levied under 1974 PA 198, [MCL 207.551 to 207.572].
- (iii) Taxes levied under the obsolete property rehabilitation act, 2000 PA 146, [MCL 125.2781 to 125.2797].

The Industrial Personal Property Tax Credit is 35% of the amount paid for property taxes on eligible personal property in the tax year. [MCL 208.1413(1)(a)] "Eligible personal property" means personal property that is classified as industrial personal property under Section 34c of the general property tax act, or in the case of personal property that is subject to 1974 PA 198, is situated on land classified as industrial real property under Section 34c of the general property tax act. [MCL 208.1413(4)(b)] The taxpayer shall file within the time prescribed the statement of assessable personal property prepared pursuant to Section 19 of the general property tax act, identifying the eligible personal property. [MCL 208.1413(2)(a)] The assessment or bill issued to and paid by the taxpayer for the eligible personal property for which the credit is claimed must be filed. [MCL 208.1413(2)(c)]

Personal property classified as "industrial" has a significant advantage over personal property classified as "commercial".

| | Industrial | Commercial |
|------------------------|------------|------------|
| Exemption | | |
| School Operating Mills | 18 Mills | 12 Mills |
| State Education Tax | 6 Mills | None |

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MBT PPT Credit

35%

None

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The State Tax Commission in Bulletin No. 7, October 2, 2007 [Michigan Business Tax](#) advised assessors that the personal property of a leasing company is always classified "commercial".

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"Assessors are advised that the personal property of a leasing company is Commercial personal and the classification is not related to the classification of the real property where the leased equipment is located."

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"The leasing company is properly classified as a commercial business. The classification of property owned by the leasing company is not determined by the lessees of the property using the equipment. Property owned by a leasing company shall not be classified as industrial in whole, or in part."

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The State Tax Commission is not absolutely correct. The General Property Tax Act [1893 PA 206] in Section 8a provides in certain circumstances where the personal property can be assessed and taxable to the user who acquires or possesses qualified personal property. [MCL 211.8a(107)]

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(1) Qualified personal property made available by a person that is a qualified business for use by another person shall not be assessed to the qualified business and instead is assessable and taxable to the user who acquires or possesses the qualified personal property to the extent provided for in this section. Property assessed under this section shall not be required to be assessed separately from other personal property assessed to the user.

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(2) A person who is a qualified business that makes available qualified personal property shall file the statement required by section 18 not later than February 1. A person to whom qualified personal property is taxable as provided in this section shall file the statement required by section 18 by February 20 and shall include the qualified personal property on that statement. The statement filed by the qualified business shall include, itemized for each user, all of the following for all qualified personal property:

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(a) The name of the qualified business.

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(b) The user responsible for payment of the tax.

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(c) The type of property.

(d) The location of the property, as indicated in the records of the qualified business.

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(e) The purchase price including sales tax, freight, and installation.

(f) The year the property was purchased.

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(g) If the qualified business is the manufacturer of the property, the original selling price, and if there is no original selling price, then the original cost.

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(h) The amount and frequency of periodic payments required of the user.

(i) An affirmation that the person making the statement is a qualified business and that property included in the statement is qualified personal property as defined in this section.

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(3) A user of qualified personal property may request from the assessor, and the assessor shall provide, a copy of that portion of the statement filed by the qualified business by February 1 that includes qualified personal property for that user. If a good faith statement is not filed by February 1, or if property is not included in the statement required to be filed by February 1, then that property omitted or not reported is assessable and taxable to the person who makes the property available regardless of whether the person is a qualified business or the property is qualified personal property.

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(4) A designee of the local tax collecting unit who is a certified assessor may examine the books

and records of a person who files the statement required by section 18 that are necessary to determine if property included in the statement required by section 18 is qualified personal property. A person is not required to be a certified personal property examiner to examine books and records pursuant to this subsection.

(5) The state tax commission shall develop additions to the statement required by section 18 necessary to assure that property reported pursuant to subsection (2) is certified under oath to be qualified personal property reported by a person to whom qualified personal property is taxable.

(6) As used in this section:

(a) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied.

(b) "Qualified business" means a for-profit business that obtains services relating to that business from 30 or fewer employees or employees of independent contractors performing services substantially similar to employees during a random week in the year ending on the tax day. If a person is an entity under common control or is a member of an affiliated group as those terms are used in section 36(7) of the single business tax act, 1975 PA 228, MCL 208.36, the number of employees from whom services are obtained includes all employees of the group and employees of independent contractors of the group rendering services to the qualified business.

(c) "Qualified personal property" means property on which a retail sales tax has been paid or liability accrued contemporaneous with the user acquiring possession of the property, or on which sales tax would be payable if the property was not exempt, and that is subject to an agreement entered into after December 31, 1993 to which all of the following apply:

(i) A party engaged in a for-profit business obtains the right to use or possess personal property in exchange for making periodic payments for a noncancelable term of 12 months or more.

(ii) The party making periodic payments can obtain legal title to the property by making all the periodic payments or all of the periodic payments and a final payment that is less than the true cash value of the property determined using state tax commission cost multipliers for personal property.

(iii) The written agreement between the qualified business and the party making periodic payments requires that party to report the property as qualified personal property pursuant to section 18 and to pay taxes assessed against the property.

(d) "Random week" means a 7-day period during a calendar year beginning on a Monday and ending on a Sunday that is selected at random. Not later than January 15 each year, the state tax commission shall establish the random week for the immediately preceding year.

(7) This section does not affect the requirements for reporting or assessing personal property acquired or possessed by a nonprofit organization.

Please stay tuned for more news and follow the [MichiganStateAndLocalTax Blog](#) for information as it becomes available. December 1 is less than a month away.

If you have questions please feel free to contact me. I would be happy to be of assistance.

Sincerely,

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