

The article below was written by local attorney Scott Smith of Dickinson Wright and gives an excellent explanation of the new PPT Reform Law. It was published this week in *The National Law Review*. Scott was a critical member and legal advisor to our PPT Reform Team. A special thanks to Lt. Governor Calley and everyone else that participated in this important effort.

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Michigan Personal Property Tax Reform



An Article by Scott G. Smith
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Personal Property Tax Reform Background

Grand Rapids city leaders in cooperation with leaders from Ottawa and Kent Counties, Wyoming, and the **Grand Valley Metropolitan Council** worked with the Lieutenant Governor's office early in 2012 to help address personal property tax reform. They offered suggestions for replacement revenues, reviewed draft bills and offered suggestions for improvements. Simultaneously, Dearborn's Mayor, in collaboration with Ford Motor Company, was also working with the Lieutenant Governor's office to address personal property tax reform.

When the initial personal property tax reform bills were enacted near the end of the 2012 lame duck session, follow-up legislation was required because those statutes did not provide many of the procedures needed for claiming, denying, and appealing the exemptions; did not provide consequences for improper exemption claims; did not provide many of the needed details for replacement revenues; and did not address tax increment

revenue issues at all. In January 2013, the Lieutenant Governor assembled a group of stakeholders representing local governments, assessors, business groups, the Department of Treasury and the Legislative Service Bureau to draft the needed follow-up bills. Led by the Lieutenant Governor's chief of staff, a smaller drafting group began meeting almost weekly. The result is the significantly modified and improved bills that have now been enacted. As the legal adviser to the West Michigan group, Scott Smith was privileged to serve on the drafting group.

Personal Property Tax Reform Explained

With last fall's enactment of 2013 PA 153 and 154, and this spring's enactment of Public Acts 80, 81, and 86 – 93, the Legislature has put the final touches on personal property tax reform. The final bills were signed by Lt. Governor Calley on Monday, March 31, 2014 (while Governor Snyder was out of the country on a trade mission). All of the statutes are tie-barred to approval of the related ballot proposal at the August 2014 state primary election.

Beginning this year, the owners of personal property with a total true cash value of \$80,000 or less could file an affidavit claiming the exemption. To be eligible for the exemption, all of the commercial or industrial personal property within a city or township that is owned by, leased to, or controlled by the claimant has to have an accumulated true cash value of \$80,000 or less. Eligibility for the exemption looks beyond ownership and to focus on possession or use. However, personal property taxes remain the responsibility of the owner of the personal property. While the affidavits for the small taxpayer exemption are due February 10 of each year, for 2014, a claimant who failed to meet the deadline can remedy that failure with an appeal to the local board of review.

Beginning in 2016, owners of eligible manufacturing personal property that was acquired after December 31, 2012, or that is at least 10 years old, may claim an exemption. The affidavit claiming the exemption for any particular item of eligible manufacturing personal property only needs to be filed once. However, anyone who has manufacturing personal property that will become eligible for the exemption must indicate on the personal property tax statement filed in February 2015 when that personal property will become eligible for exemption. Very generally (the involved definitions are lengthy and detailed), "eligible manufacturing personal property" is personal property predominantly used in "industrial processing" as defined in the sales and use tax statutes (but not for the generation of electricity for sale) or "direct integrated support" defined to include research and development, testing and quality control, engineering related to industrial processing, receiving and storing materials, storing of finished goods, functions related to just-in-time inventory management and materials handling.

The 2013 statutes also address record keeping requirements for those claiming the exemptions and for assessors. They provide for denying claims of exemption and related appeal procedures. Finally, they provide consequences for wrongly claiming exemptions, including interest and criminal penalties.

The 2014 legislation addresses replacement revenues. Critically, beginning in 2016, all local government will be eligible for 100% reimbursement for personal property tax losses which are very generally determined to be the difference between what a local government would have collected if its lowest millage rate was applied to its 2013 personal property taxable value and what it actually would collect in the then current year if it applied its lowest millage rate to the then taxable value of non-exempt personal property. The formula makes a variety of adjustments to address tax exemptions and abatements and other factors. The 2014 legislation also addresses tax increment capturing entities, providing for reimbursements for their personal property tax losses. The source of the replacement revenues is a "local community stabilization share" of the use tax, which will, if the ballot proposal passes, be automatically turned over to the "local community stabilization authority" for distribution according to a statutory formula. Those funds will therefore be wholly outside the annual appropriations process. The amounts of those funds is fixed in the legislation in increased amounts for each year through 2028 and will increase after that at the rate of 1% per year.

Distributions will be made on a priority basis with replacement of debt loss, essential services operating funds, the small taxpayer loss and tax increment capturing entity losses being paid as a first priority. From 2016 to 2019, remaining funds will be distribut-

ed to reimburse non-essential service losses. Beginning in 2020, 5% of the remaining pool will be paid to local governments based on the portion of the acquisition values of exempt eligible manufacturing personal property in their jurisdiction of the total acquisition values of exempt eligible manufacturing personal property in the entire state. That amount will increase by 5% each year for 19 years until all of the funds to be distributed after the priority payments are distributed based on the acquisition values of exempt manufacturing personal property. Generally, local stabilization share distributions to replace summer tax levies will be made by October 20 and distributions to replace winter taxes will be made by February 20.

Because some of the state's portion of use taxes will now comprise the local community stabilization share, the state will need replacement revenues. Those will come from two sources. One source will be the expiration of various tax credits. The second source will be a state essential services assessment to be levied on the acquisition value of exempt eligible manufacturing personal property. Differing millage rates will be applied depending on the number of years since it was acquired by the tax payer. Property acquired 5 or fewer years earlier will be assessed 2.4 mills, that between 5 and 10 years of its acquisition date at 1.25 mills, and after 10 years since its acquisition date at 0.9 mills. This should result in at least an 80% tax reduction for affected businesses. To address special situations, the Michigan Strategic Fund will be able to grant abatements or exemptions from the state essential services assessment. The legislation will require a single return and a single payment for all exempted eligible manu-

facturing personal property a business owns in the state.

Importantly, this legislation eliminates the local essential services assessments that were part of the original package of personal property tax reform bills enacted in December 2012. Those local assessments were to be levied by each local government or authority providing police, fire, ambulance or jail services so a business with exempt eligible manufacturing personal property could be faced with essential services assessments at any location levied by a village, a township, an ambulance authority and a county. Businesses with multiple locations could have dozens of local assessments. Those local assessments would be subject to individual business and community-wide caps. That system promised to be very complicated for local governments and businesses.

The revised legislation provides a simplified exemption process while minimizing creative tax avoidance and ensuring better accountability. It eliminates personal property taxes for very small businesses. It provides an 80% or more decrease in manufacturing personal property taxes while ensuring 100% replacement revenues for local governments. It is therefore an improvement over the bills enacted in late 2012.

The bills were and the ballot proposal is enthusiastically supported by business groups such as chambers of commerce and the Michigan Manufacturing Association, by local government groups such as the Michigan Municipal League, the Michigan Township Association and the Michigan Association of Counties, and by law enforcement and fire fighting associations.