# STATE ESSENTIAL SERVICES ASSESSMENT ACT
# Act 92 of 2014

AN ACT to levy a specific tax on certain personal property; to provide for the administration, collection, and distribution of the specific tax; to provide for an exemption from that specific tax; to impose certain duties on persons and certain state departments; to impose penalties; and to repeal acts and parts of acts.

**History:** 2014, Act 92, Eff. Aug. 22, 2014.

**Compiler's note:** Enacting section 2 of Act 92 of 2014 provides:

"Enacting section 2. This act does not take effect unless Senate Bill No. 822 of the 97th Legislature is approved by a majority of the qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014."

Enacting section 3 of Act 92 of 2014 provides:

"Enacting section 3. The legislature declares that stable local government funding and a tax system that allows individuals, small businesses, and large businesses to thrive and create jobs in this state are priorities of state government. The legislature also declares that all state priorities should be considered in enacting any legislation that has a fiscal impact and that any costs should be managed in a fiscally responsible way. In furtherance of these objectives, the legislature has reduced the state use tax under section 3 of the use tax act, 1937 PA 94, MCL 205.93, and replaced the portion reduced with a use tax levied by the local community stabilization authority on behalf of local units of government throughout this state to provide more stable funding for local units of government than exists today. It is the intent of the legislature to offset the fiscal impact on the state general fund resulting from the reduction of the state use tax with new revenue generated by the assessment levied under this act and with new revenue resulting from the expiration of over $630,000,000.00 in expiring refundable tax credits that were awarded to individual businesses under tax laws enacted by past legislatures."

**Compiler's note:** Pursuant to section 34 of article IV of the state constitution of 1963, a legislative referendum on Act 80 of 2014 was presented to the electors as Proposal 14-1 at the August 5, 2014 primary election. The proposal read as follows:

"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS

The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.

2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.

3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]".

Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

*The People of the State of Michigan enact:*

## 211.1051 Short title.

Sec. 1. This act shall be known and may be cited as the "state essential services assessment act".

**History:** 2014, Act 92, Eff. Aug. 22, 2014.

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Should this law be approved?
YES [ ]
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**211.1053 Definitions.**

Sec. 3. As used in this act:

(a) "Acquisition cost" means the fair market value of personal property at the time of acquisition by the current owner, including the cost of freight, sales tax, and installation, and other capitalized costs, except capitalized interest. There is a rebuttable presumption that the acquisition price paid by the current owner for personal property, and any costs of freight, sales tax, and installation, and other capitalized costs, except capitalized interest, reflect the fair market value of the personal property. For property described in subdivision (e)(*i*) that would otherwise be exempt under section 7k of the general property tax act, 1893 PA 206, MCL 211.7k, and for property described in subdivision (e)(*iii*), acquisition cost means 1/2 of the fair market value of that personal property at the time of acquisition by the current owner. The acquisition cost for personal property exempt under the renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, is $0.00 except for the 3 years immediately preceding the expiration of the exemption of that personal property under the renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, during which period of time the acquisition cost for that personal property means the fair market value of that personal property at the time of acquisition by the current owner multiplied by the percentage reduction in the exemption as provided in section 9(3) of the renaissance zone act, 1996 PA 376, MCL 125.2689. The state tax commission may provide guidelines for circumstances in which the actual acquisition price is not determinative of fair market value and the basis of determining fair market value in those circumstances, including when that property is idle, obsolete, or surplus.

(b) "Assessment" means the state essential services assessment levied under section 5.

(c) "Assessment year" means the year in which the state essential services assessment levied under section 5 is due.

(d) "Eligible claimant" means a person that claims an exemption for eligible personal property.

(e) "Eligible personal property" means all of the following:

(*i*) Personal property exempt under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n.

(*ii*) Personal property exempt under section 9f of the general property tax act, 1893 PA 206, MCL 211.9f, which exemption was approved under section 9f of the general property tax act, 1893 PA 206, MCL 211.9f, after 2013, unless both of the following conditions are satisfied:

(A) The application for the exemption was filed with the eligible local assessing district or next Michigan development corporation before August 5, 2014.

(B) The resolution approving the exemption states that the project is expected to have total new personal property of over $25,000,000.00 within 5 years of the adoption of the resolution by the eligible local assessing district or next Michigan development corporation.

(*iii*) Personal property subject to an extended industrial facilities exemption certificate under section 11a of 1974 PA 198, MCL 207.561a.

(*iv*) Personal property subject to an extended exemption under section 9f(8) of the general property tax act, 1893 PA 206, MCL 211.9f.

(f) "Fund board" means the board of directors of the Michigan strategic fund created under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(g) "Michigan economic development corporation" means the Michigan economic development corporation, the public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, and subsequently amended, between local participating economic development corporations formed under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, and the Michigan strategic fund.

(h) "Michigan strategic fund" means the Michigan strategic fund created under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(i) "Next Michigan development corporation" means that term as defined under the next Michigan development act, 2010 PA 275, MCL 125.2951 to 125.2959.

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3. Increase portion of state use tax dedicated for aid to local school districts.

4. Prohibit Authority from increasing taxes.

5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]".

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## 211.1055 State essential services assessment; levy; calculation.

Sec. 5. (1) Beginning January 1, 2016, the state essential services assessment is levied on all eligible personal property as provided in this section.

(2) The assessment under this section is a state specific tax on the eligible personal property owned by, leased to, or in the possession of an eligible claimant on December 31 of the year immediately preceding the assessment year and shall be calculated as follows:

(a) For eligible personal property acquired by the eligible claimant in a year 1 to 5 years before the assessment year, multiply the acquisition cost of the eligible personal property by 2.4 mills.

(b) For eligible personal property acquired by the eligible claimant in a year 6 to 10 years before the assessment year, multiply the acquisition cost of the eligible personal property by 1.25 mills.

(c) For eligible personal property acquired by the eligible claimant in a year more than 10 years before the assessment year, multiply the acquisition cost of the eligible personal property by 0.9 mills.

**History:** 2014, Act 92, Eff. Aug. 22, 2014.

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Should this law be approved?

YES [ ]

NO [ ]”.

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**211.1057 Assessment; collection; administration; calculation; availability of electronic statement; submission of electronic statement and payment; waiver or delay; failure to submit statement and payment; notice; penalty; appeal.**

Sec. 7. (1) The department of treasury shall collect and administer the assessment as provided in this section.

(2) Not later than May 1 in each assessment year, the department of treasury shall make available in electronic form to each eligible claimant a statement for calculation of the assessment as provided in section 5.

(3) Not later than September 15 in each assessment year, each eligible claimant shall submit electronically to the department of treasury the completed statement and full payment of the assessment levied under section 5 for that assessment year as calculated in section 5(2). The department of treasury may waive or delay the electronic filing requirement at its discretion. A statement submitted by an eligible claimant shall include all of the eligible claimant's eligible personal property located in this state subject to the assessment levied under section 5 and, beginning in 2019, specify the location of that property on December 31 of the year immediately preceding the assessment year.

(4) If an eligible claimant does not submit the statement and full payment of the assessment levied under section 5 by September 15, the department of treasury shall issue a notice to the eligible claimant not later than October 15. The notice shall include a statement explaining the consequences of nonpayment as set forth in subsection (5) and instructing the eligible claimant of its potential responsibility under subsection (5)(e). An eligible claimant shall submit payment in full by November 1 of the assessment year along with a penalty of 1% per week on the unpaid balance for each week payment is not made in full up to a maximum of 5% of the total amount due and unpaid. For the eligible claimant's first assessment year, the penalty shall be waived if the eligible claimant submits the statement and full payment of the assessment levied under section 5 within 7 business days of September 15.

(5) If an eligible claimant does not submit payment in full and any penalty due under subsection (4) by November 1, all of the following shall apply:

(a) The state tax commission shall direct the assessor to rescind for the assessment year any exemption described in section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, granted for the eligible personal property.

(b) The state tax commission shall rescind for the assessment year any exemption under section 9f of the general property tax act, 1893 PA 206, MCL 211.9f, which exemption was approved under section 9f of the general property tax act, 1893 PA 206, MCL 211.9f, after 2013.

(c) The state tax commission shall rescind for the assessment year any exemption for eligible personal property subject to an extended industrial facilities exemption certificate under section 11a of 1974 PA 198, MCL 207.561a.

(d) The state tax commission shall rescind for the assessment year any extended exemption for eligible personal property under section 9f(8)(a) of the general property tax act, 1893 PA 206, MCL 211.9f.

(e) The claimant shall file not later than November 10 a statement under section 19 of the general property tax act, 1893 PA 206, MCL 211.19, for all property for which the exemption has been rescinded under this section.

(f) All taxes due as a result of a rescission by the department of treasury or by the state tax commission under subdivisions (a) to (d) that were not billed under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, or under 1974 PA 198, MCL 207.551 to 207.572, on the summer bill shall be billed under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, or under 1974 PA 198, MCL 207.551 to 207.572, on the winter tax bill.

(g) A person who files a statement under section 7 shall provide access to the books and records relating to the description; the date of purchase, lease, or acquisition; and the purchase price, lease amount, or value of all industrial personal property and commercial personal property owned by, leased by, or in the possession of that person or a related entity if requested by the assessor of the local tax collecting unit, county equalization department, or department of treasury for the year in which the statement is filed and the immediately preceding 3 years.

(6) An eligible claimant may appeal an assessment levied under section 5 or a penalty or rescission under this section to the state tax commission by filing a petition not later than December 31 in that tax year. The department of treasury may appeal to the state tax commission by filing a petition for the current calendar year and 3 immediately preceding calendar years. The state tax commission shall decide any appeal based on the written petition and the written recommendation of state tax commission staff and any other relevant information. The department of treasury or any eligible claimant may appeal the decision of the state tax commission to the Michigan tax tribunal.

**History:** 2014, Act 92, Eff. Aug. 22, 2014.

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Should this law be approved?

YES [ ]

NO [ ]".

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### 211.1059 Exemption from assessment; resolution; application, approval, and compliance process; approval of exemption; criteria; costs; fees.

Sec. 9. (1) The fund board may adopt a resolution to exempt from the assessment under this act eligible personal property designated in the resolution as provided in this section and described in subsection (3)(c) that is owned by, leased to, or in the possession of an eligible claimant. In the resolution, the fund board may determine that the eligible personal property designated in the resolution shall be subject to the alternative state essential services assessment under the alternative state essential services assessment act. The resolution shall not be approved if the state treasurer, or his or her designee to the fund board, votes against the resolution.

(2) An exemption under this section is effective in the assessment year immediately succeeding the year in which the fund board adopts the resolution under subsection (1) and shall continue in effect for a period specified in the resolution. A copy of the resolution shall be filed with the state tax commission.

(3) The fund board shall provide for a detailed application, approval, and compliance process published and available on the fund's website. The detailed application, approval, and compliance process shall, at a minimum, contain the following:

(a) An eligible claimant, or a next Michigan development corporation on behalf of an eligible claimant, may apply for an exemption to the assessment in a form and manner determined by the fund board.

(b) After receipt of an application, the fund may enter into an agreement with an eligible claimant if the eligible claimant agrees to make certain investments of eligible personal property in this state.

(c) An eligible claimant shall present a business plan or demonstrate that a minimum of $25,000,000.00 will be invested in additional eligible personal property in this state during the duration of the written agreement.

(d) The written agreement shall provide in a clear and concise manner all of the conditions imposed, including specific time frames, on the eligible claimant, to receive the exemption to the assessment under this section.

(e) The written agreement shall provide that the exemption under this section is revoked if the eligible claimant fails to comply with the provisions of the written agreement.

(f) The written agreement shall provide for a repayment provision on the exemption to the assessment if the eligible claimant fails to comply with the provisions of the written agreement.

(g) The written agreement shall provide for an audit provision that requires the fund to verify that the specific time frames for the investment have been met.

(4) The fund board shall consider the following criteria to the extent reasonably applicable to the type of investment proposed when approving an exemption to the assessment:

(a) Out-of-state competition.

(b) Net-positive return to this state.

(c) Level of investment made by the eligible claimant.

(d) Business diversification.

(e) Reuse of existing facilities.

(f) Near-term job creation or significant job retention as a result of the investment made in eligible personal property.

(g) Strong links to Michigan suppliers.

(h) Whether the project is in a local unit of government that contains an eligible distressed area as that term is defined in section 11 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1411.

(5) The fund board, or the Michigan economic development corporation, may charge actual and reasonable fees for costs associated with administering the activities authorized under this section.



**History:** 2014, Act 92, Eff. Aug. 22, 2014.

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### 211.1061 Credit to general fund; appropriation.

Sec. 11. (1) Proceeds of the assessment collected under section 7 shall be credited to the general fund.

(2) Beginning in fiscal year 2014-2015 and each fiscal year thereafter, the legislature shall appropriate funds in an amount equal to the necessary expenses incurred by the department of treasury in implementing this act.

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