



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 946 and 947 (as introduced 6-2-20)
Sponsor: Senator Peter MacGregor
Committee: Finance

Date Completed: 6-10-20

CONTENT

Senate Bill 947 would amend the General Property Tax Act to specify that, beginning December 31, 2020, and each year thereafter, qualified heavy equipment rental personal property (QHERPP) for which an exemption was properly claimed under the Qualified Heavy Equipment Rental Personal Property Specific Tax Act would be exempt from the collection of tax under the General Property Tax Act.

Senate Bill 946 would create the "Qualified Heavy Equipment Rental Personal Property Specific Tax Act" to do the following:

- Specify that, beginning December 31, 2020, and each year thereafter, QHERPP for which an exemption had been properly claimed under the bill would be exempt from the collection of taxes under the General Property Tax Act.
- Require a qualified renter claiming the exemption to file a statement by December 1 of the calendar year immediately preceding the calendar year for which the exemption was being claimed.
- Specify that a person who fraudulently claimed an exemption would be guilty of a misdemeanor, and prescribe a penalty for a violation.
- Beginning January 1, 2021, levy a QHERPP tax of 2.0% of the rental price on each transaction of a qualified renter for renting QHERPP that was exempt from the collection of ad valorem property taxes. as described above.
- Require the Department of Treasury to issue a notice to a qualified renter in a manner consistent with the assessment of delinquent sales taxes, if the qualified renter did not timely submit the reporting statement with full payment of the tax.
- Allow a qualified renter who failed to submit timely payment of the tax to be assessed a penalty of 1.0% per week on the unpaid balance for each week up to a maximum of 5.0% of the total amount due and unpaid.
- Require the Department to develop and implement an audit program.
- Create the "Qualified Heavy Equipment Rental Personal Property Exemption Reimbursement Fund", and provide for the disposition of money from the Fund.

The bills are tie-barred.

Senate Bill 947

Definitions

"Qualified heavy equipment rental personal property" would mean any construction, earthmoving, or industrial equipment that is mobile and rented to customers by a qualified

renter, including attachments for that equipment or other ancillary equipment or tools designed and used primarily for construction or industrial purposes. The term would not include handheld tools or equipment solely designed for industry-specific uses in oil and gas exploration, mining, or forestry. For these purposes, equipment is mobile if it is not intended to be permanently affixed to real property for its intended use and can be moved among worksites. The term would include the equipment listed in the bill.

"Rent" or "rental" would mean entering into an agreement for the use of property in exchange for consideration for a term of less than 365 consecutive days, or under an open-ended contract.

"Qualified renter" would mean a person that meets both of the following: a) is engaged in a line of business described in Code 532412 or 532310 of the North American Industry Classification System (NAICS) published by the United States Census Bureau, 2017 edition; and b) primarily rents qualified heavy equipment rental personal property to the public and not primarily to an affiliate for use directly by that affiliate. For these purposes, an affiliate is not considered directly to use qualified heavy equipment rental personal property if it in turn rents the property to the public. (The NAICS Code 532412 includes establishments that are engaged primarily in renting or leasing heavy equipment for applications in construction, mining, or forestry. Code 532310 comprises establishments primarily engaged in renting consumer, commercial, and industrial equipment.)

"Affiliate" would mean a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. "Control" would mean direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Exemption

The bill would amend the General Property Tax Act to specify that, beginning December 31, 2020, and each year thereafter, QHERPP for which an exemption had been properly claimed under the proposed Qualified Heavy Equipment Rental Personal Property Specific Tax Act would exempt from the collection of taxes under the General Property Tax Act.

Senate Bill 946

Definitions

"Qualified heavy equipment rental personal property", "qualified renter", and "rent" or "rental" would mean those terms as defined in Section 9p of the General Property Tax Act (which Senate Bill 947 would add).

Exemption Under General Property Tax Act

Under the bill, beginning December 31, 2020, and each year thereafter, QHERPP for which an exemption had been properly claimed under the bill would be exempt from the collection of taxes under the General Property Tax Act. A qualified renter would have to claim the exemption under the Act by filing each year a statement with the Department of Treasury, in a form and manner prescribed by the Department, by December 1 of the calendar year immediately preceding the calendar year for which the exemption is being claimed. All of the following would apply to the statement:

- The statement would have to list the addresses of all locations in the State at which the qualified renter rented QHERPP, and identify by location each item of property for which the exemption was claimed for the first time; information in the statement would be considered taxpayer confidential information and would not be subject to the Freedom of Information Act (FOIA).
- By December 15 of each year, the Department would have to post a listing of all property reported on the statement or the information in the statement, and any other information as determined by the Department, to be made available to each local tax collecting unit identified in the statement as a place in Michigan from which a qualified renter rented or would rent QHERPP.
- A qualified renter claiming an exemption would have to rescind the claim of exemption by December 1 of the calendar year immediately preceding the calendar year in which exempted property was no longer eligible for the exemption by filing with the Department, which could authorize electronic signatures, as well as electronic or facsimile submission.

The assessor of each local tax collecting unit would have to review the Department's listing each year and remove any QHERPP from the local unit's tax rolls.

The Department would have to transmit rescissions statement filed, or the information contained in them, to the local tax collecting unit by December 15.

If the Department had reason to believe or was informed by the local tax collecting unit that personal property for which a statement claiming an exemption was filed was not QHERPP or the person filing the statement was not a qualified renter, the Department could deny that claim by notifying the person who filed it of the reason for the denial and advising the person that the denial could be appealed as provided below. The Department could deny a claim for exemption for the current year only. If the Department denied a claim for exemption, it would have to notify the local tax collecting unit and the local unit would have to remove the exemption of that personal property and amend the tax roll to reflect the denial. The treasurer of the local unit, within 30 days of the date of the denial, would have to issue a corrected tax bill for any additional taxes. If a person prevailed on an appeal, all taxes previously paid on that exempt property would have to be refunded with interest at the rates and in the manner applicable to refunds of sales taxes.

A qualified renter who filed a statement claiming an exemption for personal property under would have to maintain adequate books and records describing the property and the customary use for that property. A qualified renter who filed a statement claiming an exemption for personal property would have to retain copies of all contracts or other similar documents for renting that personal property for four calendar years. A qualified renter who claimed an exemption for personal property would have to provide access to those books and records upon the Department's request.

The Department and the assessor of a local tax collecting unit would have to preserve all statements claiming an exemption for personal property for at least four years after the initial filing date. At the discretion of the Department, those statements could be kept electronically or in paper form.

Penalty for a Fraudulent Claim

Under the proposed Act, if a person fraudulently claimed an exemption for personal property, that person would be guilty of a misdemeanor punishable by imprisonment in the county jail for not less than 30 days or more than six months or by a fine of at least \$500 but not more than \$2,500, or both. If the Department were satisfied that a person was liable, it would have

to report the matter to the prosecuting attorney of any county in which the personal property was located.

Qualified Heavy Equipment Rental Personal Property Tax

Beginning January 1, 2021, the proposed Act would levy a QHERPP tax on each transaction of a qualified renter for renting QHERPP that was exempt from the collection of ad valorem property taxes, as described above. The tax would have to be paid by the customer renting the personal property in an amount equal to 2.0% of the rental price on each rental in Michigan of any QHERPP of the qualified renter net of any customer credits given at the end of the rental. A qualified renter would have to collect the tax as a part of each rental payment the customer made renting the property. The Department would have to collect the tax as provided below. ("Rental price" would mean the total amount of the consideration for renting QHERPP, excluding any separately stated charges, fees, and costs, such as delivery and pickup fees, damage waivers, environmental mitigation fees, use or sales taxes, or insurance.)

By February 1, 2022, and every February 1 after that, the Department would have to make available in electronic form to qualified renters a reporting statement form for calculating, reporting, and filing the tax collected by the qualified renter during the previous calendar year.

On a quarterly basis, each qualified renter would have to submit electronically to the Department the completed reporting statement and full payment of the tax for the previous reporting period. The Department could waive or delay the electronic filing requirement. The Department could accept a timely filed statement using reporting software that it approved, subject to audit. The reporting statement would have to include the total rental price of all rental transactions in Michigan for the property, and the total tax collected on or otherwise due with respect to all of the rental transactions for the qualified renter's property used in Michigan during the reporting period. Any credits or overpayments to which the qualified renter could be entitled could be netted against any liability reflected on the statement in a manner similar to that used for reporting sales or use taxes. The completed statements would not be subject to FOIA.

Failure to Submit Information or Pay Timely; Penalties

If a qualified renter did not timely submit the reporting statement with full payment of the tax, the Department would have to issue a notice to the qualified renter in a manner consistent with the assessment of delinquent sales taxes. The notice would have to include a statement explaining the consequences of nonpayment and would have to instruct the qualified renter of its potential responsibility. A qualified renter that failed to timely submit payment of the tax could be assessed a penalty of 1.0% per week on the unpaid balance for each week or portion of any week that payment was not made in full up to a maximum of 5.0% of the total amount due and unpaid. A qualified renter could amend a filed statement within the same time periods permitted for filing amended sales tax returns. Payments made because of an amended statement would be subject to the penalties described above. The Department would have to issue refunds for overpayments because of an amended statement. Refunds due to overpayment would have to be remitted in the manner applicable to sales tax refunds.

For any reporting period in which a qualified renter did not timely submit payment in full and any penalty due, or if the Department discovered that the property was not eligible for an exemption, both of the following would apply:

- The Department would have to issue an order to rescind any exemption from personal property taxes granted for any personal property for which payment in full and any penalty due had not been received or for which the Department determined that the personal property was not eligible for an exemption.
- Within 30 days of the Department's order of rescission, the treasurer of the local tax collecting unit would issue amended tax bills for any taxes, including penalty and interest, that were not billed under the General Property Tax Act, and that were owed as a result of the order of rescission.

If a person prevailed on an appeal of the denial or rescission of the claim for exemption, all taxes previously paid on that exempt property would have to be refunded in the manner applicable to refunds of sales taxes.

Audits

The Department would have to develop and implement an audit program that included the audit of reporting statements and amended statements submitted for the current calendar year and the three calendar years immediately preceding the commencement of an audit. An assessment as a result of an audit could be appealed, and could include a penalty of 1.0% per week on the unpaid balance for each week or portion of any week that payment was not made in full up to a maximum of 5.0% of the total amount due and unpaid plus interest at the rate of 1.5% per month or portion of a month that the tax was unpaid. Refunds as a result of an audit would have to be paid with interest at the rates and in the manner applicable to refunds of sales taxes, and any overpayments or credits to which a qualified renter was entitled would have to reduce the amount of any interest or penalties due upon any net deficiency for any reporting period. The exemption for personal property for which an assessment had been issued as a result of an audit would be subject to the rescission provisions described above for the years of the assessment if full payment were not timely made.

The owner of personal property could appeal the results of an audit the Department conducted, including any assessment of additional taxes, denial of any refund, imposition of any penalty or interest, denial of refund interest, or denial or rescission of any exemption, within those time frames and in a manner consistent with all laws and regulations governing appeals of sales or use tax assessments or refund denials.

If a qualified renter acquired or opened a new location not previously subject to the tax, or closed or sold an existing location previously subject to the tax, the qualified renter would have to begin or cease collecting and remitting the tax, as appropriate, in a manner and at such times as was consistent with its collection and remittance of sales tax.

Qualified Heavy Equipment Rental Personal Property Exemption Reimbursement Fund

The bill would create the Qualified Heavy Equipment Rental Personal Property Exemption Reimbursement Fund within the State Treasury. All proceeds from the tax levied under the proposed Act would be dedicated to the Fund. The State Treasurer would have to direct the investment of the Fund and credit to it interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund. The Department would have to distribute the money from the Qualified Heavy Equipment Rental Personal Property Exemption Reimbursement Fund, upon appropriation, only for the purposes prescribed below.

From the amount of tax proceeds deposited into the Fund for rentals that occurred in each calendar year, the Department, by May 20 of the following year, would have to distribute

those proceeds to the Department, an amount equal to the lesser of a) its administrative costs incurred in administering the distribution of tax proceeds in the calendar year immediately preceding the calendar year in question; or b) \$250,000.

After the distribution to the Department, the remaining balance as follows:

- 90% to those local tax collecting units in which, during the calendar year in question, there was located one or more offices for renting, or one or more storage yards or facilities for storing, QHERPP from which one or more qualified renters conducted the business that generated the taxes subject to distribution.
- 10% to those cities, villages, townships, and counties that did not receive money distributed as described above.

The 90% distribution would have to be allocated to each local tax collecting unit based on the proportion that the average annual taxable value of all QHERPP subject to property taxes in calendar years 2017, 2018, and 2019 in the local tax collecting unit bore to the average annual taxable value of all QHERPP subject to property taxes in calendar years 2017, 2018, and 2019 in all local tax collecting units receiving an allocation. Within 35 days after its receipt of an allocation, a local tax collecting unit would have to distribute it to the taxing units for which it collected property taxes in the same proportions as it distributed property taxes collected under the General Property Tax Act. A local tax collecting unit that claimed a right to this money would have to report to the Department all of the information prescribed in the bill.

The 10% distribution would have to be allocated to each city, village, township, or county based on the proportion that its distribution of local community stabilization share revenue Local Community Stabilization Authority Act bore to the total amount of local community stabilization share revenue distributed that Act to all cities, villages, townships, and counties not receiving money distributed in the 90% distribution.

Tax Not Subject to Capture; Inapplicability of Tax

The taxes described above would not subject to capture by any tax increment finance authority. This provision would not prohibit a tax increment finance authority from sharing in the distribution of a local tax collecting unit's 10% allocation.

The QHERPP tax levied under the proposed Act would not apply to either of the following:

- The rental of QHERPP to the United States or any agency, department, administration, or political subdivision of the United States, to any federally recognized Indian tribes, to the State, to a local governmental entity in Michigan, or to any other public body corporate in Michigan.
- The rental of QHERPP from a location outside Michigan to a customer that physically took possession of it within the State, or from a location within the State to a customer that physically took possession of the property outside the State.

MCL 211.9p (S.B. 947)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Together, the bills would have a negative fiscal impact on the State and an indeterminate fiscal impact on local government. Several factors would determine whether individual local governments would experience a positive or negative fiscal impact, as explained below. Exempting QHERPP from property taxes would reduce revenue to local governments as well

as reduce revenue and increase costs to the School Aid Fund (SAF). The exemption would reduce revenue for the State Education Tax, and since school operating mills also would be reduced, costs to the SAF would increase if the foundation allowance were maintained.

It is unknown whether, in total, the new QHERPP tax would bring in more or less revenue than property taxes currently. Property tax rates vary around the State and they are based on the current depreciated value of the equipment. The QHERPP tax, on the other hand, would be assessed as 2.0% of the rental price of the equipment. Over the life of any given piece of equipment, it is not known which method of valuation would generate more revenue.

Even if the total amount of revenue generated were the same, there would be large distributional effects of the change. Currently, QHERPP is taxed by local units of government based on where the equipment is sitting on December 31 of each year. Under the bill, 90% of the QHERPP tax would be distributed to local units that have at least one rental office, storage yard, or storage facility for QHERPP that generates the QHERPP tax, and that collected property taxes from QHERPP in 2017, 2018, or 2019. The revenue would be distributed to those local units basically according to their share of total taxable value of all QHERPP in the qualifying local units in those years. The remaining 10% would be distributed to all of the other local units basically according to their proportional share of Local Community Stabilization Act payments. This distribution formula would not take into account differences in tax rates of different local governments, so generally, local units with higher tax rates would get less revenue from the QHERPP tax and local units with lower tax rates would get more. Also, as written, the bill does not appear to allow local units that collected property tax from QHERPP in 2017, 2018, or 2019, but did not have a rental or storage facility within their borders, to receive distributions from the 90% share. Those local units would be included in the remaining distribution. Depending on the characteristics of a particular local unit, that could lead to reduced revenue for those units. Any local units of government that did not receive any property tax from QHERPP in those years would collect more revenue as a result of the distributions.

The bills would have a fiscal impact on the Department of Treasury. The Department would experience additional administrative costs to process and list all qualified heavy equipment rental personal property exemptions, follow up on false claims of exemption, process quarterly reports, and administer the Qualified Heavy Equipment Rental Personal Property Exemption Reimbursement Fund. The bill does allow up to \$250,000 annually from the Fund to be used for Department administration of the bill, which could support two to three additional staff. If administrative costs were greater than \$250,000, then the department would need to cover those costs within current appropriations. At this time, the administration costs should be less than \$250,000.

New misdemeanor arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people would be prosecuted under the bill's provisions. Any additional revenue from imposed fines would go to local libraries.

Fiscal Analyst: Ryan Bergan
Joe Carrasco
Cory Savino

SAS\S1920\s946sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.