Personal Property Tax Legislation Enacted

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By: Scott G. Smith

In its waning hours, the 96 th Legislature enacted a series of bills providing personal property tax relief for most industrial and some commercial personal property and providing for municipalities to receive funds partially making up for the lost revenues. Lieutenant Governor Calley was the principal architect and proponent of the enacted bills. He has committed to additional legislation in the next Legislature to address tax increment financing and other technical issues.

Because the legislation does not ensure the complete replacement of lost personal property tax revenues, municipal lobbying groups opposed the legislation. Late yesterday, Dec. 13, 2012, some legislators promoted an alternative plan to simply enact personal property tax relief without any assured source of replacement revenues. The Lieutenant Governor's plan prevailed when it was modified by tie-barring the newly created exemptions to passage of a statewide referendum allowing commitment of use tax revenues to replace 80 percent of the lost personal property tax revenues that are spent on non-essential services.

A working group of a few West Michigan municipal leaders, aided by a Clark Hill attorney, collaborated over the last several months with the Lieutenant Governor and other administration officials to address a number of concerns about the legislation. Their comments and suggestions were warmly received. Many of their suggestions were included in the final legislation and there is a commitment to incorporate others in the follow-up legislation to be introduced in the new year.

A key component of the legislation is the requirement under HB 6026 to hold a statewide referendum at the August 2014 primary election on creating a Metropolitan Areas Component (MAC) portion of the use tax (the MAC tax) which, pursuant to HB 6025, would be distributed by the Michigan Metropolitan Areas Metropolitan Authority (MAMA) pursuant to a statutory formula. All of the legislation is now tie-barred to the voters' approval of that proposal. Therefore, if the voters fail to approve the shift in use tax to dedicate a portion to the MAC, the personal property tax relief will be repealed and the other bills providing replacement funding (HB 6024 and 6025) will not go into effect.

Other highlights of the very detailed and somewhat complicated legislation are provided below. This explanation is applicable to counties, cities, villages, townships and authorities created by them. "Municipalities" as used in the legislation often includes schools, community colleges and ISDs. This summary does not address particular provisions for those educational entities.

SB 1065, SB 1066, SB 1067 and SB 1068 extend personal property tax exemptions provided under Act 198 and Act 328, as well as for technology parks and in enterprise zones, until the newly enacted personal property tax exemptions take effect. These acts will affect any such exemptions that were to expire at the end of 2012 or subsequent years.

SB 1069 creates a new exemption for "qualified new personal property" beginning Dec. 31, 2015, so it will affect tax collections in 2016 and following years. In over simplified terms, "qualified new personal property" is personal property used in industrial processing or in research and development, testing and quality control, engineering, or warehousing related to industrial processing that is put into service in Michigan after Dec. 31, 2012.

SB 1071 creates a similar exemption also beginning Dec. 31, 2015, for "qualified previously existing personal property." It addresses personal property used 50 percent or more for industrial processing, or in research and development, testing and quality control, engineering, or warehousing related to industrial processing that has been in use for 10 years or more.

SB 1070 creates an exemption beginning Dec. 31, 2013, for industrial and commercial real property with a taxable value of less than $40,000. Importantly, it provides the exemption only if the "combined taxable value of all the industrial personal property and commercial personal property owned by or under the control of that owner is less than $40,000 in that local tax collecting unit." The intention is to avoid creative tax planning aimed at qualifying for the exemption by dividing ownership among various persons or entities.

SB 1069, SB 1070 and SB 1071 all require affidavits to be filed to claim the exemption. As an example of response to stated concerns, the bills were amended yesterday, Dec. 14, 2012, to require the affidavits to be filed by Feb. 20, 2013, rather than May 1, 2013, to ensure they are filed prior to March boards of review.

As indicated above, if the ballot proposal is approved by the voters in the August 2014 primary election, HB 6026 would establish the MAC tax. The MAC tax is a specified sum that increases each year until FY 2023-24 when it will be adjusted each year based upon an "industrial and commercial personal property growth factor calculated by the Department of Treasury."

Beginning in FY 2015-16, the MAC tax will be distributed by the MAMA (governed by a five-member council comprised of state residents appointed by the Governor, at least three of whom must be residents of separate metropolitan areas and none of whom may be a state officer or employee) pursuant to a formula in HB 6025. In very basic terms, the concept is that most municipalities would be reimbursed from the MAC tax about 80 percent of their lost personal property taxes used to pay for non-essential services. To qualify, a municipality must have lost taxable value of at least 2.3 percent of its total taxable value due to the exemptions provided by SB 1069, SB 1070 and SB 1071, as calculated using a formula in the statute. The distributions are calculated so they will be net of any amounts the municipality is authorized to levy as an essential services special assessment under HB 6024.

Because the new personal property tax exemptions begin phasing in before the replacement revenues will be available, there is an "obligation" in HB 6025 for the Legislature in FY 2013-14 and FY 2014-15 to appropriate funds to pay to municipalities their "debt loss" (*i.e* ., the amount of ad valorem property taxes and tax increment revenues required to pay the principal and interest of obligations incurred before 2013 pledging the limited or unlimited taxing power of the municipality) due to the exemptions provided by SB 1069, SB 1070 and SB 1071. Funding is, of course, dependent upon a legislative appropriation.

HB 6024 provides for the levy of an essential services special assessment (ESSA) against real property on which there is located personal property that is exempt from personal property taxes under the exemptions for new and pre-existing personal property in SB 1069 or SB 1071 (but not the exemption for personal property of less than $40,000 in taxable value). Essential services include ambulance, police, fire and jail services (likely to be defined in follow-up legislation). It is intended to replace all of a municipality's personal property tax revenues that are lost due to those tax exemptions and that are used for essential services. After Jan. 1, 2016, a municipality can create a district that is comprised of the entire municipality following published notices and public hearings. Once created, no more public hearings are required unless the jurisdictional boundaries of the municipality change. The special assessment is calculated pursuant to a formula in the statute that sets out a rate applied against the taxable value of the industrial (and, in limited circumstances, commercial) real property on which the exempt personal property is located. HB 6024 also expressly provides that, any local charter provision notwithstanding, there can be no referendum on the exercise of any powers under the act.

This is a very brief summary of the highlights of these bills. As noted, they are complex and follow-up legislation will affect some of them. We will continue to monitor development in the next Legislature.

In the meantime, for more information, please contact Scott Smith at 616.608.1109 or sgsmith@clarkhill.com .