

**BUILDINGS ON LEASED LAND:
TREAT AS REAL PROPERTY**

House Bill 4373 as enrolled
Public Act 415 of 2000
Second Analysis (1-17-01)

Sponsor: Rep. Nancy Cassis
House Committee: Tax Policy
Senate Committee: Finance

THE APPARENT PROBLEM:

Buildings are typically considered to be real property under the General Property Tax Act. However, the act says that buildings and improvements located upon leased land are to be treated as personal property, except where the value of the real property (the land) is also assessed to the lessee or owner of those buildings and improvements. (However, tax specialists say that courts consistently treat such buildings as real property and deny them personal property tax exemptions, and that assessors as a practical matter treat such buildings as real property.) The question of whether this statutory treatment of buildings on leased land is sound public policy has been raised in recent years in the ongoing discussions over reforming, reducing, or eliminating taxes on personal property, and particularly in discussions over the awarding of special exemptions for personal property located in certain special economic development areas. Legislation has been introduced that would make the General Property Tax Act treat buildings on leased land as real property for tax purposes.

THE CONTENT OF THE BILL:

The bill would amend the General Property Tax Act to specify that, generally speaking, for taxes levied after December 31, 2002, buildings and improvements located upon leased real property would be taxed as real property to their owner if the value of the buildings or improvements was not otherwise included in the assessment of real property. Further, a building on leased land would bear the same classification as the parcel on which it was located.

The bill specifies, however, that buildings and improvements located on leased real property would not be treated as real property unless they would be treated as real property if they were located on real property owned by the taxpayer.

The bill's provisions would not apply to buildings and improvements exempt under Section 9f of the act. That section allows an exemption for the new personal property of certain eligible businesses in certain localities (such as enterprise zones, industrial development zones, brownfield zones, etc.) at the discretion of the local unit of government. If an exemption under Section 9f had been approved by the State Tax Commission on or before April 30, 1999 (regardless of the effective date of the exemption), then that exemption would be continued for the term authorized and could not be impaired or restricted with respect to buildings and improvements constructed on leased land during the term of the exemption if the value of the real property was not assessed to the owner of the buildings and improvements.

Currently, the act says that buildings and improvements located upon leased real property are to be treated as personal property except where the value of the real property is also assessed to the lessee or owner of those buildings and improvements. This provision would now apply only for taxes levied before January 1, 2003.

MCL 211.2 et al.

BACKGROUND INFORMATION:

Section 9f of the General Property Tax Act, granting exemptions to new personal property for certain eligible businesses in certain localities, was created by Public Act 328 of 1998. That act was said to apply to the personal property of Compuware, which was newly locating in Detroit (among other companies). Subsequently, Public Act 20 of 1999 amended the section in a way that would allow the personal property tax exemption to apply to a new General Motors facility in Lansing. However, that legislation specifically said that personal property located on real property owned by another, including a building on

leased land, was not eligible for an exemption as new personal property under Section 9f. Public Act 20 took effect April 30, 1999. House Bill 4373, which otherwise classifies buildings on leased land as real and not personal property, contains a provision that would allow an exemption approved by the State Tax Commission on or before April 30, 1999 to continue for its authorized term without impairment or restriction with respect to buildings and improvements constructed on leased land. Presumably, this protects an already granted personal property tax exemption for buildings and improvements on leased land.

mobile home it did not own (mobile homes are not subject to the property tax) and on land it did not own.

FISCAL IMPLICATIONS:

The bill has no fiscal implications, according to the House Fiscal Agency. (11-7-00)

ARGUMENTS:

For:

Treating buildings on leased land as real property is a sensible reform. It makes sense to treat buildings alike regardless of the ownership of the land on which they sit. (Indeed, tax specialists say the courts typically do so.) This issue of classification is of little consequence when real and personal property are treated alike for tax purposes. However, if proposals to treat personal property differently from real property were enacted, the re-classification would be important. For example, if new personal property was exempted from taxation, and the current treatment of buildings on leased land stayed in place, there would be an incentive for businesses to put buildings on leased land to escape property taxes.

Response:

County treasurers have expressed concerns about how the bill will affect the treatment of delinquent taxes. While they agree with the notion of treating buildings on leased land as real property for purposes of assessment and levying of taxes, they would like to see such property treated as personal property for the purpose of delinquent taxes. When taxes are delinquent on real property, there is a foreclosure process that allows the governmental unit an interest in the property. Complications arise when the building and the land have different owners and taxes on a building are delinquent but not taxes on the land. Similar problems could arise in other cases. For example, under the bill a deck attached to a mobile home on leased property in a mobile home park would be real property, and if taxes were not paid on it, a local unit could take possession of a deck attached to a

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