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BILL



ANALYSIS

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Senate Bill 618 (as introduced 11-10-15)
Sponsor: Senator Dave Hildenbrand
Committee: Michigan Competitiveness

Date Completed: 12-2-15

CONTENT

The bill would amend the General Property Tax Act to provide a tax exemption for eligible data center property, beginning December 31, 2015.

Claim of Exemption

The bill would add Section 9p to the Act to provide that eligible data center property for which an exemption had been properly claimed would be exempt from the collection of taxes under the Act.

An owner of eligible data center property would have to claim the exemption by filing an affidavit with the local tax collecting unit in which the property was located not later than December 31 in each tax year. The affidavit would have to be in a form prescribed by the State Tax Commission and would have to include any address where any property owned by, leased to, or in the possession of that owner and any affiliated colocated business was located within that local tax collecting unit.

If an affidavit were filed under Section 9p, the owner of the eligible data center property would not be required to file a statement under Section 19 in that tax year. (Under that section, if an assessing officer believes that a person possesses personal property, the officer must require that person to submit a statement of all such property each year.)

The assessor of the local tax collecting unit could deny the claim for exemption if he or she believed that the property in question was not eligible data center property. The assessor could deny the claim by giving written notice to the person that filed the affidavit of the reason for the denial and advising the person that the denial could be appealed to the board of review during that tax year. The assessor could deny a claim for the current year only. If he or she denied a claim, the assessor would have to remove the exemption of the property and amend the tax roll to reflect the denial. Within 30 days of the date of the denial, the local treasurer would have to issue a corrected tax bill for any additional taxes.

A person who fraudulently claimed an exemption under Section 9p would be subject to the penalties provided for in Section 21(2). (That section makes it a misdemeanor to fraudulently claim an exemption for personal property under other sections of the Act. The offense is punishable by imprisonment in the county jail for not less than 30 days or more than six months, or a fine of not less than \$500 or more than \$2,500, or both.)

The assessor of a local tax collecting unit would have to preserve all affidavits claiming an exemption for personal property filed under Section 9p for at least four years after completion of the assessment roll for which the affidavits were filed.

Books & Records

A person who filed an affidavit claiming an exemption under proposed Section 9p would have to maintain adequate books and records relating to the description, the date of purchase, lease, or acquisition, and the purchase price, lease amount, or value of all property owned by, leased by, or in the possession of that person for four years after filing the affidavit.

The person also would have to provide access to those books and records if requested by the assessor of the local tax collecting unit, county equalization department, or Department of Treasury for four years immediately following the year in which the person filed the affidavit.

Definitions

The bill would define "eligible data center property" as property that meets both of the following conditions:

- Is industrial personal property or commercial personal property, or is a fixture on or appurtenance to land.
- Is directly used to operate, maintain, manage, or support the business of a data center or a colocated business.

"Commercial personal property" and "industrial personal property" would refer to personal property that is classified as commercial personal property or as industrial personal property under the Act, as applicable, or would be classified in that manner if not exempt from the collection of taxes under Section 9p.

"Data center" would mean one or more buildings located at one or more physical locations in this State that are owned or operated by an entity whose primary business is owning, operating, managing, or maintaining a group of networked computers for the purpose of centralizing the storage, processing, management, or dissemination of data or information pertaining to one or more businesses. The term would include any modular or preassembled components, associated telecommunications and storage systems, and, if the data center included more than one building or physical location, any network or connection between those buildings or locations.

"Colocated business" would mean a person that enters into a contract with a data center to use or occupy all or part of the data center for the purpose described above.

MCL 211.19 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would reduce State School Aid Fund revenue and local property tax revenue, and increase School Aid Fund expenditures by an unknown, although potentially significant, amount that would depend on the number of affected taxpayers, their specific characteristics (including the taxable value of any exempt property and the relevant millage rate), and the interpretation of certain terms in the bill. Based on a variety of assumptions and relevant average statewide values, the revenue loss could total at least \$13.9 million per year but would be even greater if the bill resulted in additional business activity taking place in Michigan. Of that total, approximately \$2.0 million would represent reduced State Education Tax revenue to the School Aid Fund and \$9.3 million of lost local property tax revenue. Another \$2.6 million would reflect reduced school operating revenue, which would presumably be offset by increased School Aid Fund expenditures.

The bill would apply to existing taxpayers, of which at least 331 firms with employees are expected to qualify. Another 1,253 smaller nonemployer businesses would potentially qualify

under the bill, although there is insufficient information regarding these firms to include them in the fiscal impact and many may already qualify under the small parcel exemption adopted as part of Michigan's personal property tax reforms.

To the extent that the bill would attract additional firms to the State, the revenue loss under the bill would be greater. One firm identified in the media as considering expansion into Michigan could increase the revenue loss under the bill by a significant amount depending on the specific characteristics of the firm. Several media reports have indicated that the expansion could total \$5.0 billion, but would take approximately a decade to complete. However, any revenue loss would depend on whether the investment would occur absent the bill. To the extent the investment would not occur without the bill, the revenue loss would represent the revenue foregone as a result of the bill's exemption. If this expansion involved \$100.0 million of investment each year during the 10-year construction period, 75% of which would be personal property affected by the bill, the additional revenue loss under the bill would increase from approximately \$1.6 million in the first year, to more than \$20.2 million at the end of the construction period. If the eventual project actually were to total \$5.0 billion, with 75% of the investment being personal property exempt from property taxes under the bill, the additional revenue loss would total \$78.3 million per year, including \$11.6 million in State Education Tax revenue, \$54.3 million in local property tax revenue, and \$12.4 million in school operating revenue that would be replaced by increased School Aid Fund expenditures.

The fiscal impact assumes that firms generally categorized under the North American Industrial Classification System (NAICS) code 51820 (data processing, hosting and related services) would qualify under the bill. However, the bill only would require that an eligible taxpayer's "primary business is owning, operating, managing, or maintaining a group of networked computers for the purposes of centralizing the storage, management, and dissemination of data or information pertaining to one or more businesses". It is unclear to what extent the bill could apply to other businesses, such as payroll processing firms, corporate research centers or information centers, or consulting firms that provide technical or scientific services; or give firms an incentive to restructure in order to put data operations under a subsidiary firm that could qualify for an exemption.

The bill would exempt property that is a "fixture on or appurtenance to land" and specifies that the phrase means those terms as defined in Section 2. However, Section 2 does not define or use those terms and no relevant definition exists in Michigan statute. As a result, it is unclear to what extent certain real property could be included within the exemption. To the extent that the phrase is interpreted more broadly, the revenue loss associated with the bill would be greater than under a narrower interpretation.

In addition, the misdemeanor penalty for fraudulently claiming an exemption would have an impact on local units of government, which would incur costs of prosecution and incarceration, to the extent that people were prosecuted, convicted, and sentenced to imprisonment. Penal fine revenue would benefit public libraries.

Fiscal Analyst: David Zin

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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.