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House Bill 4833 (Substitute H-1 as passed by the House)
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Sponsor: Representative Jim Ellison (H.B. 4833)
Representative Mark Tisdell (H.B. 4834)
House Committee: Local Government and Municipal Finance
Senate Committee: Local Government

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CONTENT

House Bill 4834 (H-1) would amend the General Property Tax Act to do the following:

- Specify that, beginning December 31, 2022, 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.
- Require a qualified renter claiming the exemption to file a statement by February 20 of the calendar year immediately preceding the calendar year for which the exemption was being claimed.
- Prescribe the information that would have to be included in the statement.
- Specify that a person who fraudulently claimed an exemption would be guilty of a misdemeanor and prescribe a penalty for a violation.

House Bill 4833 (H-1) would enact the "Qualified Heavy Equipment Rental Personal Property Specific Tax Act" to do the following:

- Levy a QHERPP specific tax of 2% of the rental price of the eligible personal property (i.e., QHERPP exempt from taxation under the General Property Tax Act as prescribed in House Bill 4834 (H-1)).
- Require the Department of Treasury to collect and administer the tax as specified in the bill.
- Specify that, if a qualified renter failed to submit payment in full after the issuance of the Department's notice to do so or after an audit assessment, or if the Department discovered that the property was not eligible for an exemption, the Department would have to rescind the exemption and the treasurer of the local tax collecting unit would have to issue amended tax bills for taxes not billed and that were owed as a result of the rescission.
- 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.

House Bill 4834 (H-1)

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 would be mobile if it were not intended to be permanently affixed to real property for its intended use and could be moved among worksites. The term would include any of 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 all 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; b) maintains in the State a qualified renter business location; and c) receives more than 50% of its annual gross receipts from the rental of QHERPP to the public or has an affiliate that receives more than 50% of the affiliate's annual gross receipts from the rental of QHERPP to the public.

"Qualified renter business location" would mean the location within a local assessing unit where qualified heavy equipment rental personal property for which an exemption is claimed under the bill is kept when it is not rented to a customer.

"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.

"Attachments or ancillary equipment" would mean items that can be attached to, or used in conjunction with, heavy equipment, including fittings, hoses, cablings, ducts, wiring, chains, hoists, portable power or air equipment, monitoring equipment, fluid containers, buckets, demolition hammers, grapple forks, trenchers, planers, and augers.

Exemption Under General Property Tax Act

Under the bill, beginning December 31, 2022, and each year thereafter, QHERPP for which an exemption had been properly claimed would be exempt from the collection of taxes under the General Property Tax Act. A qualified renter would have to claim the exemption by filing with the local assessing unit in which is located the qualified renter business location a statement. The statement would have to include the form to claim the exemption and a statement of all QHERPP for which the exemption was claimed for that tax year. All of the following would apply to a claim of the exemption:

- The statement would have to be filed in a form and manner prescribed by the Department of Treasury.
- The statement would have to list the address of the qualified renter and would have to identify each item of qualified heavy equipment rental personal property for which the exemption was claimed for that tax year.

- The statement filed for 2023, or filed for 2024 by a qualified renter that did not claim an exemption for 2023, would have to include the amount of ad valorem property tax levied in Michigan in 2020, 2021, and 2022 on QHERPP owned by the qualified renter and, for the QHERPP either for which ad valorem property tax was paid for 2020, 2021, or 2022 or that was acquired or brought into Michigan during 2020, 2021, or 2022 by a qualified renter and rented from a qualified renter business location, the qualified renter's liability under the tax levied under the QHERPP specific tax act for 2020, 2021, and 2022 if that tax had been in effect for those years; a qualified renter would have to provide documentation of both amounts as required by the Department of Treasury and the Department could audit the documentation.
- All information regarding the claim for the exemption would have to be considered taxpayer confidential information whether in the possession of the Department or the local assessing unit and would not be subject to disclosure under the Freedom of Information Act; this provision would not prohibit the Department from sharing, as needed, information regarding a claim for the exemption with local assessors.

By February 20, the statement would have to be completed and delivered to the assessor of the applicable township or city. However, if February 20 of a year is a Saturday, Sunday, or legal holiday, the delivery deadline for that year would be the next day that is not a Saturday, Sunday, or legal holiday. For purposes of a statement delivered by the US Postal Service, the delivery would be timely if the postmark date were on or before the delivery deadline. If the statement were not timely delivered to the appropriate assessor, a late application could be filed directly with the March board of review before its final adjournment by submitting the statement. The board of review could not accept a filing after adjournment of its March meeting. An appeal of a denial by the March board of review could be made by filing a petition with the Michigan Tax Tribunal within 35 days of the denial notice.

By April 1, the assessor would have to transmit to the Department the information contained in the filed statement and other parcel information required by the Department.

An exemption would apply only to the tax year in which the statement was filed. There would be no requirement for the owner to file a subsequent notice or rescission for QHERPP that was no longer in Michigan or at the qualified rental business location to the assessor or Department. Qualified heavy equipment rental personal property listed as exempt on an assessment roll for a given tax year could not be listed as exempt on the assessment roll automatically for the next tax year.

The QHERPP would be exempt under the General Property Tax Act from the collection of taxes only if it were located in Michigan on tax day and one of the following conditions was satisfied:

- The QHERPP was permanently labeled with the name of the qualified renter and the qualified rental business location; this requirement would not apply to attachments or ancillary equipment otherwise labeled in a way that identifies its owner, including attachments or ancillary equipment labeled with a unique identification number.
- The QHERPP was permanently labeled with the name of the qualified renter, and the qualified renter's annual claim of exemption identified the physical location of the QHERPP on tax day; this labeling requirement would not apply to attachments or ancillary equipment otherwise labeled in a way that identifies its owner, including attachments or ancillary equipment labeled with a unique identification number.

If the assessor of the township or city believed that personal property for which the form claiming an exemption was filed was not QHERPP or the form was incomplete, the assessor could deny that claim by notifying the filer of the reason for the denial and advising the filer that the denial would have to be appealed to the board of review by filing a statement. If the

denial were issued after the first meeting of the March board of review that followed the organizational meeting, the appeal of the denial would be either to the March board of review or the Michigan Tax Tribunal by filing a petition and a statement within 35 days after the denial notice. If the assessor denied a claim for exemption, the assessor would have to remove the exemption of that personal property and amend the tax roll to reflect the denial and the local treasurer, within 30 days of the date of the denial, would issue a corrected tax bill for any additional taxes.

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.

All QHERPP located at a qualified renter business location that had claimed an exemption in any given year under the bill would not be eligible for an exemption from the collection of taxes under the qualified new personal property exemption, the qualified previously existing personal property exemption, or the eligible personal property exemption.

Penalty for a Fraudulent Claim

Under the bill, 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.

House Bill 4833 (H-1)

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 House Bill 4834 (H-1) would add).

Qualified Heavy Equipment Rental Personal Property Tax

Beginning January 1, 2023, in addition to all other taxes, the proposed Act would levy a QHERPP tax on each transaction of a qualified renter for renting QHERPP. The tax would be a State specific tax paid by the customer renting the eligible personal property in an amount equal to 2.0% of the rental price of the property 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 and would have to remit the tax to the Department 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.

The tax would not apply to the rental of eligible personal property to the US or any agency, department, administration, or political subdivision of the US, to any Federally recognized Native American tribes, to the State of Michigan, to any local governmental entity in Michigan, or to any other public body corporate in Michigan.

Before October 1, 2024, the Department would have to divide the total 2021, 2022, and 2023, property tax by the total 2020, 2021, and 2022 calculated specific tax as reported by the taxpayer under the General Property Tax Act (as specified in House Bill 4834 (H-2)). If the result were less than 0.95 or greater than 1.05, the specific tax rate under the bill for 2025

and subsequent years would have to equal the result multiplied by 2.0%, rounded to the nearest hundredth of a percent.

Collection of Tax

By March 31, 2023, and every March 31 after that, the Department would have to make available a statement, to be submitted in a form and manner prescribed by Department, for calculating the tax collected by the qualified renter during the previous calendar year.

No later than April 30, July 31, October 31, and January 31 of each year, each qualified renter would have to submit to the Department the completed statement and full payment of the tax for the previous reporting period. The statement would have to include the total rental price of all rental transactions for the property for the immediately preceding reporting period, a listing of exempt sales, and the total tax collected on or otherwise due with respect to all rental transactions for the property used in Michigan during the immediately preceding reporting period. The amounts reported would have to be reported separately for each qualified renter business location. The statement would not be subject to disclosure under the Freedom of Information Act.

Failure to Submit Information or Pay Timely; Penalties

If a qualified renter did not submit a completed statement and full payment of the tax by the applicable deadline, the Department would have to issue a notice to the qualified renter within 30 days after that deadline. 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 would have to submit payment in full within 90 days after the notice was issued with a penalty of 3.0% per month calculated from the applicable deadline on the unpaid balance for each month payment that was not made in full. In calculating the penalty, a partial month would be considered a whole month and the penalty could not be prorated based on the day of the month the late payment was received. For a qualified renter's first assessment year, the penalty would have to be waived if the renter submitted a completed statement along with full payment of the tax within 30 days after the issuance of the Department's notice. A qualified renter could amend a submitted statement for any of the three reporting periods that immediately preceded the reporting period in which the amendment was submitted. Payments made because of an amended statement would be subject to the penalties described above. The total penalty on each late payment could not exceed 21%. The Department would have to issue refunds for overpayments because of an amended statement. A refund issued as a result of overpayment would have to be remitted without interest.

If a qualified renter did not submit payment in full and any penalty due within 90 days after the issuance of the Department's notice, a qualified renter did not submit payment in full and any penalty due within 90 days after an audit assessment, or the Department discovered that the property was not eligible for an exemption, all of the following would apply:

- The Department would have to rescind, by no later than the first Monday in June, 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 discovered that the personal property was not eligible for an exemption.
- The person whose exemption was rescinded would have to file with the assessor of the township or city within 30 days after the date of the rescission for all property for which the exemption had been rescinded.
- Within 60 days after a rescission, the treasurer of the local tax collecting unit or village would have to 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 because of the rescission.

Audits

A qualified renter would have to provide the Department access to all books and records relevant to the Department's collection and enforcement of the tax for the current calendar year and the immediately preceding three calendar years. The Department would have to develop and implement an audit program that included the audit of statements and amended statements submitted for the current calendar year and the three calendar years immediately preceding the commencement of an audit. An assessment because of an audit would have to be paid in full within 90 days after the date of issuance and would have to include any penalties. Refunds because of an audit would have to be without interest. The exemption for personal property for which an assessment had been issued because 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.

A qualified renter could appeal the tax or a penalty or rescission to the Michigan Tax Tribunal by filing a petition no later than December 31 in that tax year. A qualified renter could appeal an assessment issued, including penalties or rescission, because of an audit by filing a petition with the tax tribunal within 60 days after the date of that assessment's issuance. The Department could appeal to the Michigan Tax Tribunal by filing a petition for the current calendar year and three immediately preceding calendar years.

QHERPP 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 and in the order of priority prescribed below.

Starting for fiscal year (FY) 2022-23, \$400,000 would have to be distributed to the Department for administrative costs associated with administering the proposed Act. For each fiscal year after FY 2022-23, that amount would be adjusted for inflation, as measured by the Detroit Consumer Price Index.

After the distribution to the Department, the remaining balance would have to be distributed as prescribed below.

By September 30, 2023, and each September 30 thereafter, 90% of the revenue deposited into the Fund in the preceding January through June, less any amount distributed to the Department during the preceding January through June, would have to be distributed to eligible local tax collecting units. By March 31, 2024, and each March 31 thereafter, 90% of the revenue deposited into the Fund in the preceding July through December, less any amount distributed to the Department during the preceding July through December, would have to be distributed to eligible local tax collecting units. (For these purposes, "eligible local tax collecting unit" would mean a local tax collecting unit in which is located a qualified renter business location that was reported for the two immediately preceding quarterly reporting periods.)

The distribution described above would have to be allocated to each eligible local tax collecting unit based on the proportion that the total tax collected in the two immediately preceding quarterly reporting periods from each qualified renter business located in the eligible local tax collecting unit bears to the total tax collected in the two immediately preceding quarterly reporting periods from all qualified renter business locations. When the Department made this distribution, the Department would have to provide each eligible local tax collecting unit information regarding quarterly reporting periods from each qualified renter business location in the eligible local tax collecting unit. Within 35 days after an eligible local tax collecting unit received an allocation, the tax collecting unit would have distribute its allocation to the taxing units as prescribed in the bill

The amount otherwise would be disbursed to a local school district for school operating purposes would have to be paid instead to the State Treasury and credited to the State School Aid Fund (SAF). Of the amount that would otherwise be disbursed to an intermediate school district receiving State Aid, all or a portion, to be determined based on the tax rates being used to compute the amount of State Aid, would have to be paid to the State Treasury to the credit of the SAF.

By July 31, 2024, and each July 31 thereafter, 10% of the revenue deposited into the Qualified Heavy Equipment Rental Personal Property Exemption Reimbursement Fund in the previous calendar year, less any amount distributed to the Department during the previous calendar year, would have to be distributed to those cities, villages, townships, and counties that did not directly or indirectly receive a distribution. The distribution would have to be allocated as prescribed in the bill.

Tax Not Subject to Capture

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 allocation.

Proposed MCL 211.9p (H.B. 4834)

Legislative Analyst: Dana Adams

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 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. A portion of the new QHERPP tax would be distributed to the SAF, but there is not enough information to determine whether the distribution would be greater or less than the reduced revenue and increased costs to the SAF.

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 from the proposed 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 where at least one qualified rental business location was reported for the two immediately preceding quarterly reporting periods. The revenue would be distributed to those local units according their share of total tax collected in the qualifying local units in those two quarters. The remaining 10% would be distributed to cities, villages, townships, and counties, according to their proportional share of Local Community Stabilization Authority 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, the bill would not allow cities, villages, townships, or counties that previously collected property tax from QHERPP, but do not have a qualified rental business location within their borders, to receive distributions from the 90% share. Those local units would be included in the remaining 10% distribution. (Other entities, such as community colleges, schools, libraries, and authorities that previously collected property tax from QHERPP, but do not have a qualified rental business location within their borders, would receive no distributions from the new tax.) Depending on the characteristics of a particular local unit, that could lead to reduced revenue for those units. Any cities, villages, townships, or counties that did not receive any property tax from QHERPP in previous years would collect more revenue as a result of the distributions.

The bills would add one-time costs to the Department of Treasury to process exemptions of taxes on the QHERPP and process new taxes imposed on the rental of newly eligible personal property. The overall costs could be greater than current appropriations. After the transition to the new tax system, costs for the Department would decrease and could be absorbed into ongoing appropriations.

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.

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