

## ALTERNATIVE STATE ESSENTIAL SERVICES ASSESSMENT ACT

### Act 93 of 2014

AN ACT to levy a tax on certain personal property; to provide for the administration, collection, and distribution of the tax; to impose certain duties on persons and certain state departments; to impose penalties; and to repeal acts and parts of acts.

**History:** 2014, Act 93, Eff. Aug. 22, 2014.

**Compiler's note:** Enacting section 1 of Act 93 of 2014 provides:

"Enacting section 1. This act does not take effect unless Senate Bill No. 822 of the 97th Legislature is approved by a majority of the qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014."

Enacting section 2 of Act 93 of 2014 provides:

"Enacting section 2. The legislature declares that stable local government funding and a tax system that allows individuals, small businesses, and large businesses to thrive and create jobs in this state are priorities of state government. The legislature also declares that all state priorities should be considered in enacting any legislation that has a fiscal impact and that any costs should be managed in a fiscally responsible way. In furtherance of these objectives, the legislature has reduced the state use tax under section 3 of the use tax act, 1937 PA 94, MCL 205.93, and replaced the portion reduced with a use tax levied by the local community stabilization authority on behalf of local units of government throughout this state to provide more stable funding for local units of government than exists today. It is the intent of the legislature to offset the fiscal impact on the state general fund resulting from the reduction of the state use tax with new revenue generated by the assessment levied under this act and with new revenue resulting from the expiration of over \$630,000,000.00 in expiring refundable tax credits that were awarded to individual businesses under tax laws enacted by past legislatures."

**Compiler's note:** Pursuant to section 34 of article IV of the state constitution of 1963, a legislative referendum on Act 80 of 2014 was presented to the electors as Proposal 14-1 at the August 5, 2014 primary election. The proposal read as follows:

"APPROVAL OR DISAPPROVAL OF AMENDATORY ACT TO REDUCE STATE USE TAX AND REPLACE WITH A LOCAL COMMUNITY STABILIZATION SHARE TO MODERNIZE THE TAX SYSTEM TO HELP SMALL BUSINESSES GROW AND CREATE JOBS

The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.
2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.
3. Increase portion of state use tax dedicated for aid to local school districts.
4. Prohibit Authority from increasing taxes.
5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES [ ]

NO [ ]".

Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

*The People of the State of Michigan enact:*

### 211.1071 Short title.

Sec. 1. This act shall be known and may be cited as the "alternative state essential services assessment act".

**History:** 2014, Act 93, Eff. Aug. 22, 2014.

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## **211.1073 Definitions.**

Sec. 3. As used in this act:

(a) Except as otherwise provided in subparagraph (ii), "acquisition cost" means that term as defined in subparagraph (i), as follows:

(i) "Acquisition cost" means the fair market value of personal property at the time of acquisition by the first owner, including the cost of freight, sales tax, and installation, and other capitalized costs, except capitalized interest. There is a rebuttable presumption that the acquisition price paid by the first owner for personal property, and any costs of freight, sales tax, and installation, and other capitalized costs, except capitalized interest, reflect the acquisition cost. For personal property exempt under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, that prior to the current tax year was exempt under section 7k of the general property tax act, 1893 PA 206, MCL 211.7k, under an industrial facilities exemption certificate issued under 1974 PA 198, MCL 207.551 to 207.572, and effective before January 1, 2013, which either has been extended for property not yet exempt under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, or had an expiration date after the date the tax levied under this act is due, and for personal property subject to an extended industrial facilities exemption certificate under section 11a of 1974 PA 198, MCL 207.561a, that is exempt under an industrial facilities exemption certificate issued under 1974 PA 198, MCL 207.551 to 207.572, and effective before January 1, 2013, acquisition cost means 1/2 of the fair market value of that personal property at the time of acquisition by the first owner, including the cost of freight, sales tax, and installation, and other capitalized costs, except capitalized interest. The acquisition cost for personal property exempt under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, is \$0.00 except for the 3 years immediately preceding the expiration of the exemption of that personal property under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, during which period of time the acquisition cost for that personal property means the fair market value of that personal property at the time of acquisition by the first owner, including the cost of freight, sales tax, and installation, and other capitalized costs, except capitalized interest, multiplied by the percentage reduction in the exemption as provided in section 9(3) of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2689. The department may provide guidelines for circumstances in which the actual acquisition price is not determinative of acquisition cost and the basis of determining acquisition cost in those circumstances. When the acquisition cost, year of acquisition by the first owner, or both are unknown, the department may provide guidelines for estimating the acquisition cost and year of acquisition by the first owner. The department may issue guidelines that allow for the reduction of acquisition cost for property that is idle, is obsolete or has material obsolescence, or is surplus.

(ii) Beginning with the 2017 assessment year, for property that is construction in progress only, "acquisition cost" means 1/2 of the fair market value at the time acquired by the first owner, including the cost of freight, sales tax, and installation. For property that is construction in progress, "acquired by" means the year the property is first reported on the combined form as prescribed in section 7(8) in the report of the fair market value and year of acquisition by the first owner of qualified new personal property or qualified previously existing personal property.

(b) "Assessment" means the alternative state essential services assessment levied under section 5.

(c) "Assessment year" means the year in which the alternative state essential services assessment levied under section 5 is due.

(d) "Eligible claimant" means a person that owns, leases, or is in the possession of eligible personal property.

(e) "Eligible personal property" means personal property exempt from the tax levied under the state essential services assessment act, 2014 PA 92, MCL 211.1051 to 211.1061, and determined to be subject to the alternative state essential services assessment as provided in section 9 of the state essential services assessment act, 2014 PA 92, MCL 211.1059.

(f) "Department" means the department of treasury.

**History:** 2014, Act 93, Eff. Aug. 22, 2014;—Am. 2015, Act 121, Imd. Eff. July 10, 2015;—Am. 2016, Act 109, Imd. Eff. May 6, 2016.

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## **211.1075 Alternative state essential services assessment; levy beginning January 1, 2016; calculation.**

Sec. 5. (1) Beginning January 1, 2016, the alternative state essential services assessment is levied on all eligible personal property as provided in this section.

(2) The assessment under this section is a state tax on the eligible personal property owned by, leased to, or in the possession of an eligible claimant on December 31 of the year immediately preceding the assessment year and shall be calculated as follows:

(a) For eligible personal property acquired by the first owner in a year 1 to 5 years before the assessment year, multiply the acquisition cost of the eligible personal property by 50% of the mills levied under section 5(2)(a) of the state essential services assessment act, 2014 PA 92, MCL 211.1055.

(b) For eligible personal property acquired by the first owner in a year 6 to 10 years before the assessment year, multiply the acquisition cost of the eligible personal property by 50% of the mills levied under section 5(2)(b) of the state essential services assessment act, 2014 PA 92, MCL 211.1055.

(c) For eligible personal property acquired by the first owner in a year more than 10 years before the assessment year, multiply the acquisition cost of the eligible personal property by 50% of the mills levied under section 5(2)(c) of the state essential services assessment act, 2014 PA 92, MCL 211.1055.

**History:** 2014, Act 93, Eff. Aug. 22, 2014;—Am. 2015, Act 121, Imd. Eff. July 10, 2015.

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YES [ ]

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**211.1077 Alternative state essential services assessment; collection; administration; calculation; availability of electronic statement; revision and certification; payment; waiver or delay; disclosure; failure to certify statement and payment; notice; amendment of certified statement; failure to make full payment; ineligibility of property under MCL 211.9m and 211.9n; access to books and records; assessment as result of audit; appeal; filing combined document; availability of total acquisition costs.**

Sec. 7. (1) The department shall collect and administer the alternative state essential services assessment as provided in this section.

(2) Not later than May 1 in each assessment year, the department shall make available in electronic form to each eligible claimant a statement for calculation of the assessment as provided in section 5. That statement must be developed from 1 or both of the following, as applicable:

(a) The information submitted by the eligible claimant on the combined document as required by sections 9m and 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n.

(b) Beginning in 2024, the information on the statement submitted under subsection (3) for the immediately preceding assessment year if no rescission was requested under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n. A rescission issued under subsection (5) for failure to submit payment in full and any penalty due under subsection (4) in the immediately preceding year must not result in omission of the parcel on the statement for the current year.

(3) Not later than August 15 in each assessment year, each eligible claimant shall electronically revise as necessary and certify the completed statement and make full payment of the assessment levied under section 5 for that assessment year as calculated in section 5(2). The department may waive or delay the electronic certification requirement at its discretion. The department may accept a timely filed statement that calculates the tax under this act that is transmitted and certified using reporting software approved by the department, subject to audit under subsection (6). A statement certified by an eligible claimant must include all of the eligible claimant's eligible personal property located in this state subject to the assessment levied under section 5. The statement required under this subsection is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) If an eligible claimant does not certify the statement and make full payment of the assessment levied under section 5 by August 15, the department shall issue a notice to the eligible claimant not later than September 15. The notice must include a statement explaining the consequences of nonpayment as set forth in subsection (5) and instructing the eligible claimant of its potential responsibility under subsection (5)(e). An eligible claimant shall submit payment in full by April 15 of the year following the assessment year along with a penalty of 3% per month on the unpaid balance for each month payment is not made in full up to a maximum of 27% of the total amount due and unpaid. In calculating the penalty, a partial month is considered a whole month and the penalty is not to be prorated based on the day of the month the late payment is received. For the eligible claimant's first assessment year, the penalty must be waived if the eligible claimant certifies the statement and makes full payment of the assessment levied under section 5 by September 15. An eligible claimant may amend a certified statement for the current year up to September 15. Payments made due to an amended statement are subject to the penalties as described in this subsection. The department shall issue refunds for overpayments due to an amended statement. All refunds due to overpayment must be remitted without interest except as provided by section 37 of the tax tribunal act, 1973 PA 186, MCL 205.737.

(5) For any assessment year in which an eligible claimant does not submit payment in full and any penalty due under subsection (4) by April 15 of the year following the assessment year, or if the department discovers that the property is not eligible under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, all of the following apply:

(a) The department shall rescind no later than the first Monday in June for the immediately preceding assessment year any exemption described in section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, granted for any parcel for which payment in full and any penalty due have not been received or for which the department discovers that the property is not eligible under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n.

(b) Upon request of the department, the state tax commission shall issue an order to rescind no later than the first Monday in June for the immediately preceding assessment year any exemption under section 9f of the general property tax act, 1893 PA 206, MCL 211.9f, which exemption was approved under section 9f of the general property tax act, 1893 PA 206, MCL 211.9f, after 2013 for any parcel for which payment in full and any penalty due have not been received or for which the state tax commission discovers that the property is not eligible personal property.

(c) Upon request of the department, the state tax commission shall issue an order to rescind no later than the first Monday in June for the immediately preceding assessment year any exemption for eligible personal property subject to an extended industrial facilities exemption certificate under section 11a of 1974 PA 198, MCL 207.561a, for any parcel for which payment in full and any penalty due have not been received or for which the department discovers that the property is not eligible personal property.

(d) Upon request of the department, the state tax commission shall issue an order to rescind no later than the first Monday in June for the immediately preceding assessment year any extended exemption for eligible personal property under section 9f(8)(a) of the general property tax act, 1893 PA 206, MCL 211.9f, for any parcel for which payment in full and any penalty due have not been received or for which the department discovers that the property is not eligible personal property.

(e) The eligible claimant shall file with the assessor of the township or city within 30 days of the date of the rescission issued under subdivisions (a) to (d) a statement under section 19 of the general property tax act, 1893 PA 206, MCL 211.19, for all property for which the exemption has been rescinded under this section.

(f) Within 60 days of a rescission under subdivisions (a) to (d), the treasurer of the local tax collecting unit shall issue amended tax bills for any taxes, including penalty and interest, that were not billed under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, or under 1974 PA 198, MCL 207.551 to 207.572, and that are owed as a result of the rescission.

(6) An eligible claimant shall provide access to the books and records, for audit purposes, relating to the location and description; the date of purchase, lease, or acquisition; and the purchase price, lease amount, or value of all personal property owned by, leased by, or in the possession of that person or a related entity if requested by the assessor of the township or city, county equalization department, or department for the year in which the statement is filed and the immediately preceding 3 years. The department shall develop and implement an audit program that includes, but is not limited to, the audit of exemptions claimed under sections 9m and 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, to determine eligibility, the audit of statements submitted under subsection (3), and amended statements submitted under subsection (4) for the current calendar year and the 3 calendar years immediately preceding the commencement of an audit. An assessment as a result of an audit must be paid in full within 35 days of issuance and must include penalties and interest as described in section 154(3) of the general property tax act, 1893 PA 206, MCL 211.154. Refunds as a result of an audit under this subsection must be without interest. Upon completion of the audit conducted under this subsection, the department shall rescind any exemption on personal property for which full payment of an assessment, including any penalty and interest, is not received within 35 days of issuance of the audit determination or for personal property the department discovers is not eligible under section 9m or 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n.

(7) An eligible claimant may appeal an assessment levied under section 5 or a penalty or rescission under this section to the Michigan tax tribunal by filing a petition not later than December 31 in that tax year. An eligible claimant may appeal an assessment issued, including penalties, interest, or rescission, as a result of an audit conducted under subsection (6) by filing a petition with the Michigan tax tribunal within 35 days of the date of that assessment's issuance. The department may appeal to the Michigan tax tribunal by filing a petition for the current calendar year and 3 immediately preceding calendar years.

(8) The department may require eligible claimants to file by the dates required under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, a combined document that includes the form to claim the exemption under sections 9f(9), 9m, and 9n of the general property tax act, 1893 PA 206, MCL 211.9f, 211.9m, and 211.9n, and under section 11a of 1974 PA 198, MCL 207.561a, a report of the fair market value and year of acquisition by the first owner of eligible personal property, and for any year before 2023, a statement under section 19 of the general property tax act, 1893 PA 206, MCL 211.19. All of the following apply to the filing of a combined document under this subsection:

(a) The combined document must be in a form prescribed by the department.

(b) As provided in sections 9m and 9n of the general property tax act, 1893 PA 206, MCL 211.9m and 211.9n, leasing companies are not eligible to receive the exemption for qualified new personal property and qualified previously existing personal property and may not use the combined document prescribed in this section. With respect to personal property that is the subject of a lease agreement, regardless of whether the agreement constitutes a lease for financial or tax purposes, all of the following apply:

(i) If the personal property is eligible manufacturing personal property, the lessee and lessor may elect that the lessee report the leased personal property on the combined document.

(ii) An election made by the lessor and the lessee under this subdivision must be made in a form and manner approved by the department.

(iii) Absent an election, the personal property must be reported by the lessor on the personal property statement unless the exemption for eligible manufacturing personal property is claimed by the lessee on the combined document.

(c) For eligible personal property exempt under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, an eligible claimant shall report the fair market value of that personal property at the time of acquisition by the first owner, including the cost of freight, sales tax, installation, and other capitalized costs, except capitalized interest.

(d) The combined document must be filed with the assessor of the township or city in which the eligible personal property is located.

(e) The assessor shall transmit any new information contained in the combined document filed under this subsection, and other parcel information required by the department, to the department in the form and in the manner prescribed by the department no later than April 1.

(9) Concurrent with the internet publication of the department's annual distribution calculations under section 18(3) of the local community stabilization authority act, 2014 PA 86, MCL 123.1358, the department shall make available on the internet the calculated total acquisition cost of all eligible personal property for each municipality as determined in section 17(4)(b)(i) of the local community stabilization authority act, 2014 PA 86, MCL 123.1357. Upon request, the department shall make available to a requesting municipality the details of the calculation of the total acquisition cost of all eligible personal property and other information, as needed, regarding the calculation of the distribution under section 17(4)(b) of the local community stabilization authority act, 2014 PA 86, MCL 123.1357. As used in this subsection, "municipality" means that term as defined in section 5(s) of the local community stabilization authority act, 2014 PA 86, MCL 123.1345.

**History:** 2014, Act 93, Eff. Aug. 22, 2014;—Am. 2015, Act 121, Imd. Eff. July 10, 2015;—Am. 2016, Act 109, Imd. Eff. May 6, 2016;—Am. 2017, Act 263, Eff. Dec. 31, 2017;—Am. 2018, Act 505, Eff. Mar. 29, 2019;—Am. 2021, Act 156, Imd. Eff. Dec. 27, 2021.

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### **211.1079 Credit to general fund; appropriation.**

Sec. 9. (1) Proceeds of the assessment collected under section 7 shall be credited to the general fund.

(2) Beginning in fiscal year 2014-2015 and each fiscal year thereafter, the legislature shall appropriate funds in an amount equal to the necessary expenses incurred by the department in implementing this act.

**History:** 2014, Act 93, Eff. Aug. 22, 2014;—Am. 2016, Act 109, Imd. Eff. May 6, 2016.

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The amendatory act adopted by the Legislature would:

1. Reduce the state use tax and replace with a local community stabilization share of the tax for the purpose of modernizing the tax system to help small businesses grow and create jobs in Michigan.
2. Require Local Community Stabilization Authority to provide revenue to local governments dedicated for local purposes, including police safety, fire protection, and ambulance emergency services.
3. Increase portion of state use tax dedicated for aid to local school districts.
4. Prohibit Authority from increasing taxes.
5. Prohibit total use tax rate from exceeding existing constitutional 6% limitation.

Should this law be approved?

YES ☐

NO ☐

Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.