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PROPERTY TAX EXEMPTION FOR LPG TANKS

**House Bill 4276 with committee amendments
First Analysis (5-7-90)**

**Sponsor: Rep. Lloyd F. Weeks
Committee: Taxation**

THE APPARENT PROBLEM:

Representatives of companies that sell liquefied propane gas have asked the legislature for an exemption from business personal property taxes for the gas storage tanks on the property of residential customers. The product is used for heating and cooking where natural gas lines are not available. Typically, companies that sell propane gas retain ownership of the tanks on customers' property, for safety reasons, and are responsible for their maintenance. (Tax specialists say that sometimes lease agreements require the customer to pay any property taxes or fees on the tanks). Because of this, courts have said the tanks are subject to the personal property tax, which means LPG companies must report the value of the tanks to the appropriate local taxing authorities and pay the taxes owed. This tax would not be due if, as is the case with fuel oil tanks, the customers bought the tanks in which they stored fuel. (In that case, the fuel tank would be considered part of the real property of the homeowner.)

Advocates of the property tax exemption say the current tax treatment of LPG tanks is unfair to customers, who are predominantly rural people who must pay higher fuel costs and who already pay property taxes on the heating systems in their homes; is unfair to propane gas companies, who must pay a tax their competitors do not pay and a tax, moreover, that requires filing complicated reports; and is not economically sensible, since the revenue collected is hardly worth the effort it takes to collect it. Industry representatives claim that the industry has grown up since the tax code was drafted and legislators never intended these tanks to be considered personal property. They also say that to refuse to grant an exemption constitutes creating a new tax on rural people since many localities are only beginning to aggressively collect taxes on propane gas tanks.

Tax specialists, however, say that the proper comparison to use in judging the tax status of LPG tanks is to the personal property of other kinds of utilities, such as the gas lines and meters of natural gas companies and the various lines and leads of electric companies and cable television companies. Those are all considered personal property of the companies, and the companies pay taxes on their value. The LPG industry has failed over the past ten years or more to convince the tax tribunal and state courts (including the state supreme court) that LPG tanks should be exempt from property taxes, and it has turned to the legislature as a "court of last resort."

THE CONTENT OF THE BILL:

The bill would amend the General Property Tax Act to provide an exemption from personal property taxes for liquefied petroleum gas (LPG) tanks located on residential and agricultural property for residential and agricultural use. The bill would take effect January 1, 1990.

MCL 211.9

FISCAL IMPLICATIONS:

The exemption would mean lost revenue to local units of government, although estimates of the amount of tax currently owed on LPG tanks vary. Industry representatives told the House Taxation Committee that the \$410,000 paid in taxes in 1987 is a fraction of the total amount due (which, they say, could be \$3 million). The state tax commission has said (in a letter to the chair of the House Taxation Committee dated 5-2-90) that its sampling of company statements filed with the commission suggests the total tax bill would be slightly over \$1 million.

ARGUMENTS:

For:

The advocates of a personal property tax exemption for LPG gas tanks make the following points.

- This tax is unfair to the mostly rural homeowners who must bear the burden. These homeowners must already pay property taxes on the heating systems that are part of their homes and then face higher costs for their fuel because of the nature of the storage tank. Further, the failure to provide an exemption means the imposition essentially of a new tax, because this tax is not being collected now in many jurisdictions. Some people point out that this is often a tax on poor, rural people for a basic necessity of life.
- The tax is unfair to the propane gas companies. These companies are not public utilities. They have no franchise, no regulated rates, and should not be compared with companies that do. Their customers are price-sensitive, and the industry must compete for their business. Once this tax becomes fully assessed, it could amount to an additional \$3 million for the 90 or so companies delivering propane gas in the state. This is a tax that does not have to be paid by the fuel oil companies (to whom LPG companies should be compared), because oil fuel tanks are owned by the customer and considered part of the customer's real property. The propane companies do not typically sell their tanks to the homeowner for safety reasons. The tanks need to be maintained by people who know what they are doing. Selling the tanks invites customer abuse of the tanks and can create liability insurance difficulties. But if the tanks were sold to the customer, then they would not be subject to this cumbersome tax.
- The tax makes no economic sense because it is so difficult to administer for both LPG companies and local assessors, particularly small companies and rural assessing units. The tax requires complicated reporting procedures that cost companies and local units time and money. There are, further, bound to be inconsistent practices from one jurisdiction to another.
- The issue should not be whether the legislature by granting an exemption is reversing court decisions, but whether the tax is fair to consumers and to businesses. The arguments used by the industry for the exemption

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are not those on which the court cases were based. Nor should there be concern about establishing precedents for other utilities to follow. The examples provided by tax officials concern regulated utilities, which are monopolies. Their monopoly status would make their request for personal property tax exemptions an entirely different matter.

Against:

Opponents of the exemption say the following.

- Exempting LPG tanks would amount to pulling the rug out from under the local officials (assessors, treasurers, etc.) who have faithfully carried out their responsibilities in the face of serious resistance from the propane gas industry. Local officials have won at great expense in the courts. For the legislature to intervene now to reverse decisions rendered in years of court battles would send the wrong message to the local officials who are expected to vigorously and honorably enforce the property tax laws.
- The exemption would be a bad precedent in other ways, as well. Other industries pay this tax on similar kinds of property. Natural gas companies pay taxes on meters and gas lines. Electric utilities, which some tax officials argue are the true competitor for LP gas companies, pay taxes on leads and meters. Cable television companies pay taxes on house drops. Telephone companies and others pay taxes on property they own but lease to people for use in their homes. Tax specialists at the courts have consistently ruled that property of this sort is personal property and that companies are liable for the tax. (The cable television case was decided just this year by the state supreme court and the cases dealing with natural gas companies date back over 20 years.) To exempt LPG tanks would be to violate principles of uniformity and consistency. It would also mean that other industries would appeal to the legislature for exemptions of their personal property. On what grounds would the legislature refuse?
- There is no inconsistency between the treatment of oil heating systems and propane gas heating systems. Oil tanks are to be treated as part of the homeowner's real property, and assessing manuals require that the tanks and the oil heating system be assessed to the homeowner. There is a specific cost addition to assessments for an oil tank. (Tax experts say oil heating systems produce higher assessments than other systems.) LPG tanks are not assessed as part of the homeowner's real property when, as is usually the case, the propane gas company retains ownership of the tank. The LPG customer does not in that case pay property taxes based on the LPG tank directly as the owner of an oil tank does. If the homeowner owned the LPG tank, then it would be part of the real property. The ownership of the tank is the determining factor. But there is no discrimination against LPG companies or their customers.
- There is no demonstrated social benefit to granting the exemption. The only beneficiaries will be the state's propane gas industry, which is dominated by large national companies. Tax officials say the six largest companies are based out of Michigan and own 54 percent of the 240 bulk plants in the state. The exemption would be special treatment for one industry and, in a sense, would mean a tax increase on every one else who ultimately must make up the lost revenue.
- It is disingenuous for the industry to argue that the tax is difficult to administer since many companies have not properly carried out their reporting responsibilities and have intimidated local assessing units by going to court

and filing appeals. The state tax commission says that, as a result of recent efforts, "the property in question either is, or soon will be fully assessed." Other kinds of industries, including natural gas companies and electric utilities, comply with the reporting requirements demanded by the personal property tax system and file accurate statements of property and breakdowns by city, township, and school district.

POSITIONS:

A representative of the Michigan LP Gas Association has testified in support of the bill. (5-2-90)

The Department of Treasury opposes the bill. (5-2-90)

The State Tax Commission opposes the bill. (5-2-90)

The Michigan Assessors Association opposes the bill. (5-2-90)

The Michigan Townships Association opposes the bill. (5-2-90)

The Michigan Municipal League opposes the bill. (5-2-90)