



**House
Legislative
Analysis
Section**

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APPEALS TO TAX TRIBUNAL

House Bill 4380 with committee amendments
First Analysis (3-31-87)

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Sponsor: Rep. Maxine Berman
Committee: Taxation

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THE APPARENT PROBLEM:

- In property assessment appeal proceedings before the Michigan Tax Tribunal, both the taxpayer and the assessor must submit written valuation reports or appraisals as a condition of using expert testimony. The tribunal requires that the opposing parties exchange such reports simultaneously. According to representatives of assessing units and a representative of the tax tribunal, the taxpayer generally has the advantage in tribunal proceedings concerning the assessment of large industrial property. Assessing units must spend large sums to defend an assessment of large industrial property, including obtaining a complex appraisal and data necessary to evaluate a taxpayer's claim of value, which is often based on market comparisons in geographically distant locations or a hypothetical replacement cost model. Much of the necessary information is controlled by the taxpayer, who may find it advantageous to withhold information. Thus, the assessing unit must go to considerable expense to independently generate information that will be contained in the taxpayer's report, and which the assessing unit would accept as fact for purposes of the appeal. Further, from the assessor's perspective, the tribunal's rules for discovery are largely ineffective unless the taxpayer is cooperative and voluntarily provides information.
- Sometimes when an industrial taxpayer argues for a lower real property assessment by using a model to demonstrate the obsolescence of existing property and processes, the model on which its argument is based involves a reduction in the value of real property but a corresponding increase in the value of personal property. If, however, the appeal is only concerned with real property, the local governmental unit is not able to protect its tax base by arguing for the personal property increase that corresponds to the alleged decrease in value of real property.
- It is up to the Tax Tribunal whether a governmental unit, such as a school district, that receives tax funds from a taxpayer petitioning the tribunal can intervene in the proceedings. Critics say that the tribunal has treated requests for interventions unevenly and advocate more uniform treatment.

THE CONTENT OF THE BILL:

- The bill would amend the Tax Tribunal Act to require all parties in a proceeding regarding the assessed value of industrial or commercial property to provide the tribunal and the other parties with copies of the appraisals, valuation reports or other documents to be used at the hearing within the time established by tribunal rules. A local unit of government could elect to receive the taxpayer's information up to six months earlier than it provided information to the taxpayer. However, if a local unit chose the option of non-simultaneous exchange of information, the tribunal could not determine a taxable value higher than the value being appealed. The taxing unit could accept any portion of the information provided

by the taxpayer and that stipulation would be binding on the tribunal. The bill would specify that, in addition to discovery permitted by rule or order, the tribunal would allow discovery by all parties after the exchange of information between the parties.

- The bill would add a new section to the Tax Tribunal Act to have the tribunal, at the request of the local unit of government, determine the true cash value of personal property associated with the real property subject to appeal in cases where the taxpayer intends to rely on a model or similar type replacement facility for calculating functional obsolescence. (This means the issue of the value of a taxpayer's personal property would be addressed when the taxpayer was protesting its real property assessment.) The jurisdiction of the tribunal would include personal property determined to be erroneously included as real property or otherwise omitted from the personal property assessed to the taxpayer in conjunction with the real property subject to appeal. In determining the true cash value of the associated personal property under this section, the tribunal would be required to give equal consideration to the cost of acquiring, installing, and making operative the personal property in the model facility needed to replace the personal property in the subject facility to bring the model to actual operating completion. Taxpayers would have to notify the taxing unit in writing of its intent to use the model method within 60 days after filing its petition with the tribunal. The local unit would then have 45 days to invoke the tribunal's jurisdiction over associated personal property.
- A governmental unit receiving tax funds from a petitioning taxpayer could intervene before the tribunal as a matter of right within 45 days after proper service of the petition. Beginning on the 46th day the tribunal would have the discretion to permit or deny interventions as now.

FISCAL IMPLICATIONS:

There is no fiscal information at present (3-30-87).

BACKGROUND INFORMATION:

House Bill 4380 is part of a package of bills, including House Bills 4375 and 4379, that is very similar to a package of bills developed in the last session by a subcommittee of the House Taxation Committee (House Bills 5269, 5268, and 5266, respectively) and passed by the House. The bills are not tie-barred but all deal with problems associated with the assessing of large industrial property.

ARGUMENTS:

For:

The bill would allow an assessing unit to opt to receive the taxpayer's valuation report up to six months before the assessing unit provided its reports, letting the assessing unit stipulate to those parts of the taxpayer's claim that the assessor believed to be correct, without the expense

H.B. 4380 (3-31-87)

of generating the information independently. In turn, the assessing unit would be precluded from receiving a tribunal decision setting a larger value than the original assessment. Further, the bill would allow either party the right of additional discovery after the exchange of appraisals. These changes, along with the requirements for information exchange proposed in House Bill 4379 and the assessment guidelines contained in House Bill 4375, would help even the balance between the corporate taxpayer and local units of government in property tax disputes.

Against:

The provision to allow non-simultaneous exchange of valuation reports would eliminate any incentive for responsible assessment of commercial and industrial property. An assessor could place an arbitrary assessment on a property, and the taxpayer would either have to pay the unfairly high tax or pay for an appraisal to justify the reduction. If the assessor could stipulate to the taxpayer's appraisal without having to pay for one independently, he or she would have no incentive to assess property correctly in the first place. Further, an assessor could stipulate to those parts of a taxpayer's appraisal that were advantageous to the assessing unit, while disputing other parts with his or her own appraisal. The provision would impair the integrity of the system of mutual appraisals, and create a serious imbalance in the appeal process. The tribunal has the authority to allow non-simultaneous exchange of appraisals when appropriate, and has recently done so in one case. The tribunal should be left to make the determination on the merits of each individual proceeding.

For:

The bill would allow local units to combine the issue of personal property with that of real property in cases where a taxpayer's argument for a lower real property assessment involves an associated increase in the value of personal property.

Against:

Using models to determine the value of personal property in the way this bill does is a sufficiently new concept to require considerably further study and debate than it has been given. It is yet another procedural roadblock thrown up to discourage industrial taxpayers from protesting unfair assessments.

For:

Granting school districts the automatic right to intervene in tax tribunal cases in which they have a financial stake will end the uneven treatment by the tribunal of school district intervention requests.

POSITIONS:

The Michigan Assessors Association supports the bill (3-23-87).

The Michigan Townships Association supports the bill (3-23-87).

The Michigan Association of School Boards supports the bill (3-23-87).

The Michigan Education Association supports the bill (3-23-87).

The Michigan Municipal League supports the bill (3-25-87).

The Michigan Federation of Teachers supports the bill (3-23-87).

The Michigan Out-of-Formula School Districts Association supports the bill (3-23-87).

The Middle Cities Education Association supports the bill (3-23-87).

The Department of Treasury has no position on the bill (3-25-87).

The Michigan State Chamber of Commerce opposes the bill (3-27-87).

The Michigan Manufacturer's Association opposes the bill (3-27-87).

The Michigan Association of Realtors opposes the bill (3-30-87).

The Michigan Merchants Council opposes the bill (3-27-87).

The Greater Detroit Chamber of Commerce opposes the bill (3-27-87).

The Grand Rapids Area Chamber of Commerce opposes the bill (3-27-87).

The Michigan Association of Homebuilders opposes the bill (3-27-87).

The National Federation of Independent Business, Michigan Chapter, opposes the bill (3-27-87).