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BILL ANALYSIS

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Senate Bill 222 (as enrolled)
Sponsor: Senator Nick Smith
Senate Committee: Finance
House Committee: Taxation

PUBLIC ACT 519 of 1988

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RATIONALEGrain Bins, Tile, Fishing

Under the General Sales Tax Act, certain tangible personal property sold to farmers for agricultural purposes is exempt from taxation. Specifically, the exemption from sales tax applies to property "sold to a person engaged in a business enterprise" who uses or consumes the property in the "tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural property". The exemption does not apply to property "permanently affixed and becoming a structural part of real estate".

Over the last several years, there has been substantial disagreement as to whether bins purchased by farmers for storing and aerating grain are subject to sales taxes. The disagreement stems largely from the fact that these bins can be regarded as either "permanent" or "movable" structures. Typically, these bins, consisting mainly of metal sheets bolted together to make a container structure, are erected on and bolted to a poured concrete foundation. Bins vary in size and capacity: one business, reportedly, markets bins ranging from 15 to 100 feet in diameter and 15 to 75 feet in height. Other apparatus, such as grain drying equipment, are generally sold and installed along with the bins as part of a grain drying system.

It has been the Department of Treasury's contention that the bins are permanent structures that as such fall outside the agricultural property sales tax exemption. Farmers and those who market and install the bins, on the other hand, have insisted that the bins are portable, and that though they may be sold along with "permanent" farm property, such as barns or land, they do not have to be, since they can be unbolted from their foundation, disassembled, and moved. These people believe that the agricultural property sales tax exemption should be amended to clarify that the exemptions include portable grain bins. In addition, it has been suggested that agricultural land tile, installed on farms to improve the drainage of water from fields, also be exempted.

It also has been argued that the sales tax exemption should apply to commercial fishing since such businesses are food producers and, industry representatives claim, commercial fishers consider themselves in the business of agriculture. Some people feel that the Act should include an exemption for commercial fishers to treat those who "farm" the water in the same way as those who farm the land.

Broadcasting

It has been pointed out that there is currently some dispute over the applicability of the sales tax to tangible personal property sold to commercial radio and television stations. Presently, under the Act, sales of tangible personal property to commercial radio or television stations are exempt from taxation when the property is used, "as a component part of a completed film, tape, or recording produced for resale or transmission purposes". This language was adopted in 1970, before new broadcasting technology allowed broadcasts to originate from the mobile units that are in use today, and thus generally applies to equipment in a studio. Some people feel that new equipment, and possible future developments in technology, have made it and could make it difficult to determine what property the current language applies to, and that the Act should be amended in order to avoid disputes over the applicability of the tax.

Cultural Arts

Currently, the Act exempts from taxation sales of tangible personal property to nonprofit schools, hospitals, or other health, welfare, charitable, or benevolent institutions or agencies when the activities of the entity are conducted exclusively for the benefit of the public at large. Some people feel that sales of property to cultural arts institutions should be included in the list of sales exempt from taxation.

CONTENT

The bill would amend the General Sales Tax Act to exempt from sales taxes agricultural land tile and portable grain bins sold to farmers; certain personal property sold to radio and television stations; property sold to commercial fishers; and property sold to nonprofit cultural arts institutions.

"Agricultural land tile" would be defined as fired clay or perforated plastic tubing used as part of a subsurface drainage system for land use in the production of agricultural products as a business enterprise. "Portable grain bin" would be defined as a structure that was used or was to be used to shelter grain and that was designed to be disassembled without significant damage to its component parts.

The bill also would exempt from the sales tax sales of tangible personal property to commercial radio and television stations when the property was used, "in the origination or integration of the various sources of program material for commercial radio or television transmission". The exemption

would not apply to vehicles licensed and titled for use on the public highways, or property used in transmission to or receipt from an artificial satellite. This language would replace the current exemption for component parts of a film, tape, or recording.

In addition, the bill would exempt from the sales tax sales of tangible personal property to persons engaged in the direct gathering of fish by an owner-operator of a fishing business, not including a charter fishing business.

Finally, the bill would exempt from the sales tax sales of tangible personal property to a nonprofit cultural arts institution or agency. The institution would have to be operated by a governmental entity, church, religious or fraternal organization, veterans' organization, or corporation incorporated in Michigan, the benefit from the operation of the cultural arts institution could not go to an individual or stockholder, and the institution's operation would have to be carried on exclusively for the benefit of the public at large.

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BACKGROUND

(The following information applies only to provisions in the bill that address grain bins.)

In a 1981 hearing before the Michigan State Board of Tax Appeals, Max Wayland Fricke v Department of Treasury, Revenue Division, the appellant, Fricke, claimed the agricultural exemption from sales and use taxes for sales of grain bins and drying systems. Though the Treasury Department had allowed exemptions for certain components of the system--the dryer, elevator, auger, screen and duct work components--it had denied exemptions for the corrugated bins or tanks in which the grain was placed. The board stated that the "process of aerating and drying grain, beans and corn is within the purview of the exemption", and that bins were an "integral part of the process". The board argued that it was difficult to distinguish the components of the drying system that had been exempted from assessment from those that had not. The board added that "although the larger bins are clearly sizable enough to rank as structures on land, the fact remains that not only can they be easily disassembled and moved upon sale[,] they usually are". The board concluded that the appellant was entitled to the exemption.

In a similar case decided by the Michigan Court of Appeals in 1983, Miedema Metal Building Systems, Inc. v Michigan Department of Treasury, the Court reached a different conclusion in interpreting language under the Use Tax Act that specifies that an agricultural exemption does not include "tangible personal property permanently affixed and becoming a structural part of real estate". Miedema, a corporation engaged in selling and installing grain storage bins with drying systems, had appealed an assessment for use tax on the bins. (Other components of the drying

systems had not been assessed for taxation.) The Department had successfully argued before the Tax Tribunal that the use tax could be assessed since the appellant was considered a "contractor that affixed items to realty". The Court ruled that the fact that the "grain bins may be part of a system used in agricultural production does not exempt it [sic] from use tax...because the plain language of the statute states that the exemption does not apply to tangible personal property 'permanently affixed and becoming a structural part of real estate'", and affirmed the tribunal's finding that Miedema was a contractor for purposes of the use tax.

FISCAL IMPACT

The bill would result in an indeterminate reduction of General Fund/General Purpose revenues.

ARGUMENTS

Supporting Argument

The bill would make it clear once and for all that portable grain storage bins, essential components of many farmers' businesses, are exempt from sales taxes. To fabricate a distinction for taxation purposes between the bins themselves and the other parts of the grain drying systems attached to them, as has been done in the past, is highly questionable, since all the components of the grain drying systems are detachable and portable. The process of storing and drying grain in the bins is part and parcel of the whole agricultural process, just as feeding livestock, plowing, or harvesting crops are, and the equipment required for this process should be exempt as that for other agricultural processes already is.

The bill also would exempt land drainage from the sales tax. Farmers' installation and maintenance of drainage tile are, in many instances, essential to agricultural processes and should explicitly be included in the exemptions.

Supporting Argument

Changes in broadcasting technology have left some question as to exactly what the current language applies to regarding the sales exemption for personal property used in broadcasting. The bill would amend the sales tax exemption to take into account changes in broadcasting technology so that equipment used in mobile studio units would be exempt as well as equipment used in the main studio.

Supporting Argument

The bill would grant the State's beleaguered 53 active commercial fishing enterprises the same tax treatment provided to agricultural enterprises. Commercial fishers harvest fish from the waters, producing food for sale, just as farmers harvest the land. The bill's exemption applies only to property used in the direct gathering of fish by commercial fishing businesses, and not to charter operators.

Opposing Argument

Farmers and grain bin marketers have testified that bins are portable and that they can be sold and moved. That may be true, but while the bins are in place on a farm they are as close to "permanent" as they conceivably can be. Reportedly, their erection requires pouring a concrete foundation and bolting the bins to anchor brackets imbedded about 10 inches into the concrete, and the size of some of the larger bins would certainly discourage moving them: they may be as large as small barns or houses. Indeed, bins reportedly often are sold as part of a farm. To that extent, at least, they should be treated like other personal agricultural property that becomes a structural part of real estate, and not exempted from sales taxes.

Opposing Argument

The contention that land tile is not permanently affixed to the property is a fallacious argument. Once it is installed as part of a subsurface drainage system, moving the tile would demand a great deal of effort. Thus, claiming that it is "detachable and portable", as is argued for grain bins, is akin to claiming that a house or a barn is not permanently affixed. While the installation of land tile may be a good idea because it reduces pollution, improves production, and aids soil conservation, encouraging its use by allowing tax advantages is an issue that should be considered separately from whether portable grain bins should be exempted from the sales tax.

Opposing Argument

While there may be any number of worthy causes that seek a sales tax exemption, each exemption causes a reduction in tax revenue and erodes the sales tax base. Some people question whether the sales tax base should be narrowed, particularly when there are numerous proposals to use an increase in the sales tax to provide property tax relief or bolster revenues dedicated to education.

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