

SENATE BILL NO. 946

June 02, 2020, Introduced by Senator MACGREGOR and referred to the Committee on Finance.

A bill to provide for the exemption of certain property from certain taxes; to levy and collect a specific tax upon the owners of certain property; to provide for the disposition of that specific tax; to provide for the powers and duties of certain state and local governmental officers and entities; and to provide penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "qualified heavy equipment rental personal property specific tax
3 act".

1 Sec. 2. The legislature finds that tracking and properly
2 accounting for certain heavy equipment that moves among local tax
3 collecting units and even out of state is unduly complex, making it
4 difficult to properly report, to properly assess, to collect
5 personal property taxes assessed against it, and to seize for a
6 failure to pay taxes. Consequently, it is also difficult for taxing
7 units to fully estimate from year to year the personal property
8 taxes that they will receive from that heavy equipment because it
9 depends on the volume and types of construction it is used for
10 within their jurisdictions and whether the user owns or rents the
11 equipment. The legislature also determines that the value for
12 taxation purposes of that heavy equipment is better determined
13 based on the income generated from its rental.

14 Sec. 3. As used in this act:

15 (a) "Department" means the department of treasury.

16 (b) "Local tax collecting unit" means a township or city that
17 assesses and collects property taxes pursuant to the general
18 property tax act, 1893 PA 206, MCL 211.1 to 211.155.

19 (c) "Person" means an individual, corporation, limited
20 liability company, partnership, association, or any other legal
21 entity.

22 (d) "Qualified heavy equipment rental personal property" means
23 that term as defined in section 9p of the general property tax act,
24 1893 PA 206, MCL 211.9p.

25 (e) "Qualified heavy equipment rental personal property tax"
26 means the specific tax levied under this act.

27 (f) "Qualified renter" means that term as defined in section
28 9p of the general property tax act, 1893 PA 206, MCL 211.9p.

29 (g) "Rent" or "rental" means those terms as defined in section

1 9p of the general property tax act, 1893 PA 206, MCL 211.9p.

2 (h) "Rental price" means the total amount of the consideration
3 for renting qualified heavy equipment rental personal property,
4 excluding any separately stated charges, fees, and costs, such as
5 delivery and pickup fees, damage waivers, environmental mitigation
6 fees, use or sales taxes, or insurance.

7 (i) "Tax increment finance authority" means an authority
8 created under 1 or more of the following or any successor authority
9 that may be provided by any subsequent act of the legislature:

10 (i) The recodified tax increment financing act, 2018 PA 57, MCL
11 125.4101 to 125.4915.

12 (ii) The brownfield redevelopment financing act, 1996 PA 381,
13 MCL 125.2651 to 125.2670.

14 Sec. 4. (1) Beginning December 31, 2020 and each year
15 thereafter, qualified heavy equipment rental personal property for
16 which an exemption has been properly claimed under subsection (2)
17 is exempt from the collection of taxes under the general property
18 tax act, 1893 PA 206, MCL 211.1 to 211.155, as provided under
19 section 9p of the general property tax act, 1893 PA 206, MCL
20 211.9p.

21 (2) A qualified renter shall claim the exemption under section
22 9p of the general property tax act, 1893 PA 206, MCL 211.9p, by
23 filing each year a statement with the department, in a form and
24 manner prescribed by the department, which may authorize electronic
25 signatures, as well as electronic or facsimile submission, not
26 later than December 1 of the calendar year immediately preceding
27 the calendar year for which the exemption is being claimed. All of
28 the following apply to a statement filed under this section:

29 (a) The statement must list the addresses of all locations in

1 this state at which the qualified renter rents qualified heavy
2 equipment rental personal property, and it must identify by
3 location each item of heavy equipment rental personal property for
4 which the exemption is claimed for the first time. A statement need
5 not identify any item of heavy equipment rental personal property
6 that was included in a previously filed statement claiming the
7 exemption for the same location. All information contained in a
8 statement filed under this section must be considered taxpayer
9 confidential information whether in the possession of the
10 department or a local tax collecting unit, and neither the
11 statement nor the information in it is subject to disclosure under
12 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

13 (b) Not later than December 15 of each year, the department
14 shall post a listing of all qualified heavy equipment rental
15 personal property reported on a statement filed under this section
16 or the information in the statement, and any other information as
17 determined by the department, to be made available to each local
18 tax collecting unit identified in the statement as a place in this
19 state from which a qualified renter rents or will rent qualified
20 heavy equipment rental personal property. The assessor of each
21 local tax collecting unit shall review this listing annually and
22 shall remove any exempt qualified heavy equipment rental personal
23 property from the local tax collecting unit's tax roll.

24 (c) A qualified renter claiming an exemption under this
25 section shall rescind the claim of exemption by December 1 of the
26 calendar year immediately preceding the calendar year in which
27 exempted property is no longer eligible for the exemption by filing
28 with the department a statement in a form and manner prescribed by
29 the department, which may authorize electronic signatures, as well

1 as electronic or facsimile submission. The department shall
2 annually transmit the rescission statements filed, or the
3 information contained in the rescission statements filed, under
4 this section to the local tax collecting unit not later than
5 December 15.

6 (3) If the department has reason to believe or is informed by
7 the local tax collecting unit that personal property for which a
8 statement claiming an exemption is filed under this section is not
9 qualified heavy equipment rental personal property or the person
10 filing the statement is not a qualified renter, the department may
11 deny that claim for exemption by notifying the person that filed
12 the statement in writing of the reason for the denial and advising
13 the person that the denial may be appealed as provided in this act.
14 The department may deny a claim for exemption under this subsection
15 for the current year only. If the department denies a claim for
16 exemption, the department shall notify the local tax collecting
17 unit and the local tax collecting unit shall remove the exemption
18 of that personal property and amend the tax roll to reflect the
19 denial and the treasurer of the local tax collecting unit shall
20 within 30 days of the date of the denial issue a corrected tax bill
21 for any additional taxes. If a person prevails on an appeal of the
22 denial of the claim for exemption, all taxes previously paid on
23 that exempt property shall be refunded with interest at the rates
24 and in the manner applicable to refunds of sales taxes.

25 (4) A qualified renter that files a statement claiming an
26 exemption for personal property under this section shall maintain
27 adequate books and records, electronically or in paper form,
28 describing the personal property and describing the customary use
29 for that personal property. A qualified renter that files a

1 statement claiming an exemption for personal property under this
2 section shall retain copies of all contracts or other similar
3 documents for renting that personal property for 4 calendar years.
4 A qualified renter that claims an exemption for personal property
5 under this section shall provide access to those books and records
6 if requested by the department.

7 (5) The department and the assessor of a local tax collecting
8 unit shall preserve all statements claiming an exemption for
9 personal property filed under this section for not less than 4
10 years after the initial filing date. At the discretion of the
11 department, those statements may be kept electronically or in paper
12 form.

13 (6) If a person fraudulently claims an exemption for personal
14 property under this section, that person is guilty of a misdemeanor
15 punishable by imprisonment in the county jail for not less than 30
16 days or more than 6 months or by a fine of not less than \$500.00 or
17 more than \$2,500.00, or both. If the department is satisfied that a
18 person is liable under this subsection, the department shall report
19 the matter to the prosecuting attorney of any county in which the
20 personal property is or was located.

21 Sec. 5. (1) Beginning January 1, 2021, there is levied a
22 qualified heavy equipment rental personal property tax upon each
23 transaction of a qualified renter for renting qualified heavy
24 equipment rental personal property that, under section 4, is exempt
25 from the collection of ad valorem property taxes. The qualified
26 heavy equipment rental personal property tax shall be paid by the
27 customer renting the qualified heavy equipment rental personal
28 property in an amount equal to 2% of the rental price on each
29 rental in this state of any qualified heavy equipment rental

1 personal property of the qualified renter net of any customer
2 credits given at the end of the rental. A qualified renter shall
3 collect the qualified heavy equipment rental personal property tax
4 as a part of each rental payment made by the customer renting the
5 qualified heavy equipment rental personal property. The department
6 shall collect the qualified heavy equipment rental personal
7 property tax as provided in this section.

8 (2) Not later than February 1, 2022, and every February 1
9 thereafter, the department shall make available in electronic form
10 to qualified renters a reporting statement form for calculating,
11 reporting, and filing the qualified heavy equipment rental personal
12 property tax collected by the qualified renter during the previous
13 calendar year.

14 (3) On a quarterly basis, each qualified renter shall submit
15 electronically to the department the completed reporting statement,
16 in a form and manner prescribed by the department, and full payment
17 of the qualified heavy equipment rental personal property tax for
18 the previous reporting period as calculated pursuant to subsection
19 (1) and the department's instructions. The department may waive or
20 delay the electronic filing requirement. The department may accept
21 a timely filed statement using reporting software approved by the
22 department, subject to audit under subsection (6). A statement
23 submitted by a qualified renter must include the total rental price
24 of all rental transactions in this state for the qualified renter's
25 qualified heavy equipment rental personal property, and the total
26 qualified heavy equipment rental personal property tax collected on
27 or otherwise due with respect to all of the rental transactions for
28 the qualified renter's qualified heavy equipment rental personal
29 property used in this state during the reporting period. Any

1 credits or overpayments to which the qualified renter might be
2 entitled may be netted against any liability reflected on the
3 statement in a manner similar to that used for reporting sales or
4 use taxes. The completed statements required under this subsection
5 are not subject to disclosure under the freedom of information act,
6 1976 PA 442, MCL 15.231 to 15.246.

7 (4) If a qualified renter does not timely submit the reporting
8 statement with full payment of the qualified heavy equipment rental
9 personal property tax, the department shall issue a notice to the
10 qualified renter in a manner consistent with the assessment of
11 delinquent sales taxes. The notice must include a statement
12 explaining the consequences of nonpayment as set forth in
13 subsection (5) and instructing the qualified renter of its
14 potential responsibility under subsection (6). A qualified renter
15 failing to timely submit payment of the qualified heavy equipment
16 rental personal property tax may be assessed a penalty of 1% per
17 week on the unpaid balance for each week or portion of any week
18 that payment is not made in full up to a maximum of 5% of the total
19 amount due and unpaid. A qualified renter may amend a filed
20 statement within the same time periods permitted for filing amended
21 sales tax returns. Payments made due to an amended statement are
22 subject to the penalties as described in this subsection. The
23 department shall issue refunds for overpayments due to an amended
24 statement. Refunds due to overpayment shall be remitted in the
25 manner applicable to sales tax refunds.

26 (5) For any reporting period in which a qualified renter does
27 not timely submit payment in full and any penalty due under
28 subsection (4) or (6), or if the department discovers that the
29 property is not eligible under section 4, both of the following

1 apply:

2 (a) The department shall issue an order to rescind any
3 exemption from personal property taxes described in section 4,
4 granted for any personal property for which payment in full and any
5 penalty due have not been received or for which the department
6 determines that the personal property is not eligible under section
7 4.

8 (b) Within 30 days of an order of rescission by the department
9 under subdivision (a), the treasurer of the local tax collecting
10 unit shall issue amended tax bills for any taxes, including penalty
11 and interest, that were not billed under the general property tax
12 act, 1893 PA 206, MCL 211.1 to 211.155, and that are owed as a
13 result of the order of rescission. If a person prevails on an
14 appeal of the denial or rescission of the claim for exemption, all
15 taxes previously paid on that exempt property shall be refunded in
16 the manner applicable to refunds of sales taxes.

17 (6) The department shall develop and implement an audit
18 program that includes, but is not limited to, the audit of
19 reporting statements submitted under subsection (3) and amended
20 statements submitted under subsection (4) for the current calendar
21 year and the 3 calendar years immediately preceding the
22 commencement of an audit. An assessment as a result of an audit may
23 be appealed under subsection (7), and may include a penalty of 1%
24 per week on the unpaid balance for each week or portion of any week
25 that payment is not made in full up to a maximum of 5% of the total
26 amount due and unpaid plus interest at the rate of 1.5% per month
27 or portion of a month that the tax was unpaid. Refunds as a result
28 of an audit under this subsection shall be paid with interest at
29 the rates and in the manner applicable to refunds of sales taxes,

1 and any overpayments or credits to which a qualified renter is
2 entitled shall reduce the amount of any interest or penalties due
3 upon any net deficiency for any reporting period. The exemption for
4 personal property for which an assessment has been issued as a
5 result of an audit under this subsection is subject to the
6 rescission provisions of subsection (5) for the years of the
7 assessment if full payment is not timely made as required by this
8 subsection.

9 (7) The owner of personal property may appeal the results of
10 any audit conducted by the department, including any assessment of
11 additional taxes, denial of any refund, imposition of any penalty
12 or interest, denial of refund interest, or denial or rescission of
13 any exemption under this section, within those time frames and in a
14 manner consistent with all laws and regulations governing appeals
15 of sales or use tax assessments or refund denials.

16 (8) If a qualified renter acquires or opens a new location not
17 previously subject to the qualified heavy equipment rental personal
18 property tax under this act, or closes or sells an existing
19 location previously subject to the tax, the qualified renter shall
20 begin or cease collecting and remitting the tax, as appropriate, in
21 a manner and at such times as is consistent with its collection and
22 remittance of sales tax.

23 Sec. 6. (1) The qualified heavy equipment rental personal
24 property exemption reimbursement fund is created within the state
25 treasury. All proceeds from the qualified heavy equipment rental
26 personal property tax levied under this act shall be dedicated to
27 this fund.

28 (2) The state treasurer shall direct the investment of the
29 fund. The state treasurer shall credit to the fund interest and

1 earnings from fund investments.

2 (3) Money in the fund at the close of the fiscal year shall
3 remain in the fund and shall not lapse to the general fund.

4 (4) The department shall be the administrator of the fund for
5 auditing purposes.

6 (5) The department shall distribute money from the fund, upon
7 appropriation, only for the purposes described in subsection (6).

8 (6) From the amount of qualified heavy equipment rental
9 personal property tax proceeds deposited into the fund for rentals
10 that occur in each calendar year, the department shall, by no later
11 than May 20 of the following calendar year, distribute those
12 proceeds as follows:

13 (a) To the department, an amount equal to the lesser of the
14 following:

15 (i) Administrative costs incurred by the department in
16 administering the distribution of qualified heavy equipment rental
17 personal property tax proceeds under this section in the calendar
18 year immediately preceding the calendar year in question.

19 (ii) \$250,000.00.

20 (b) After the distribution in subdivision (a), the remaining
21 balance as follows:

22 (i) Ninety percent to those local tax collecting units in
23 which, during the calendar year in question, there was located 1 or
24 more offices for renting, or 1 or more storage yards or facilities
25 for storing, qualified heavy equipment rental personal property
26 from which 1 or more qualified renters conducted the business that
27 generated the qualified heavy equipment rental personal property
28 taxes subject to distribution. The distribution under this
29 subparagraph must be allocated to each local tax collecting unit

1 based on the proportion that the average annual taxable value of
2 all qualified heavy equipment rental personal property subject to
3 property taxes in calendar years 2017, 2018, and 2019 in the local
4 tax collecting unit bears to the average annual taxable value of
5 all qualified heavy equipment rental personal property subject to
6 property taxes in calendar years 2017, 2018, and 2019 in all local
7 tax collecting units receiving an allocation under this
8 subparagraph. Within 35 days after its receipt of an allocation
9 under this subparagraph, a local tax collecting unit shall
10 distribute its allocation to the taxing units for which it collects
11 property taxes in the same proportions as it distributes property
12 taxes collected under the general property tax act, 1893 PA 206,
13 MCL 211.1 to 211.155.

14 (ii) Ten percent to those cities, villages, townships, and
15 counties that do not receive money distributed under subparagraph
16 (i). The distribution under this subparagraph must be allocated to
17 each city, village, township, or county based on the proportion
18 that its distribution of local community stabilization share
19 revenue under section 17(4) of the local community stabilization
20 authority act, 2014 PA 86, MCL 123.1357, bears to the total amount
21 of local community stabilization share revenue distributed under
22 section 17(4) of the local community stabilization authority act,
23 2014 PA 86, MCL 123.1357, to all cities, villages, townships, and
24 counties not receiving money distributed under subparagraph (i).

25 (7) A local tax collecting unit that claims a right to money
26 distributed under subsection (6)(b)(i) shall report to the
27 department all of the following information in the time and in a
28 manner prescribed by the department:

29 (a) The address of each office for renting, and each storage

1 yard or facility for storing, qualified heavy equipment rental
2 personal property in the local tax collecting unit from which 1 or
3 more qualified renters conducted the business that generated
4 qualified heavy equipment rental personal property taxes subject to
5 distribution under subsection (6); the amount of the tax remitted
6 by each rental office and storage yard or facility in the local tax
7 collecting unit; and the total amount of the tax remitted by all
8 rental offices and storage yards and facilities in the local tax
9 collecting unit.

10 (b) The address of each office for renting, and each storage
11 yard or facility for storing, qualified heavy equipment rental
12 personal property in the local tax collecting unit that was subject
13 to property taxes in each of calendar years 2017, 2018, and 2019;
14 the taxable value of that qualified heavy equipment rental personal
15 property for each rental office and storage yard or facility in the
16 local tax collecting unit in each of those calendar years; and the
17 total taxable value of that qualified heavy equipment rental
18 personal property for all rental offices and storage yards and
19 facilities in the local tax collecting unit for each of those
20 years.

21 Sec. 7. Qualified heavy equipment rental personal property
22 taxes are not subject to capture by any tax increment finance
23 authority. This section does not prohibit a tax increment finance
24 authority from sharing in the distribution of a local tax
25 collecting unit's allocation described in section 6(6) (b) (i).

26 Sec. 8. The qualified heavy equipment rental personal property
27 tax levied pursuant to this act does not apply to either of the
28 following:

29 (a) The rental of qualified heavy equipment rental personal

1 property to the United States or any agency, department,
2 administration, or political subdivision of the United States, to
3 any federally recognized Indian tribes, to this state, to any local
4 governmental entity in this state, or to any other public body
5 corporate in this state.

6 (b) The rental of qualified heavy equipment rental personal
7 property from a location outside of this state to a customer that
8 physically takes possession of the property within this state, or
9 from a location within this state to a customer that physically
10 takes possession of the qualified heavy equipment rental personal
11 property outside this state.

12 Sec. 9. The department may promulgate rules as necessary for
13 the administration of this act pursuant to the administrative
14 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

15 Enacting section 1. This act does not take effect unless
16 Senate Bill No. 947 of the 100th Legislature is enacted into law.

17