Legislative Analysis

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QUALIFIED HEAVY EQUIPMENT RENTAL PERSONAL PROPERTY SPECIFIC TAX

House Bill 4833 (proposed substitute H-1)
Sponsor: Rep. Jim Ellison

House Bill 4834 (proposed substitute H-1)
Sponsor: Rep. Mark A. Tisdel

Committee: Local Government and Municipal Finance
Complete to 10-27-21

SUMMARY:

Taken together, House Bills 4833 and 4834 would exempt certain heavy equipment rental personal property from taxation under the General Property Tax Act and levy a specific tax of 2% on the rental of that equipment. The bills would apply to heavy construction, earthmoving, or industrial equipment that is rented and moved from project to project. After an allocation to the Department of Treasury for expenses, 90% of the revenues from the specific tax would be distributed to local tax collecting units where the renters of property subject to the tax have locations, and 10% would be distributed to other local units of government.

House Bill 4834 would amend the General Property Tax Act to exempt from taxation under that act, beginning December 31, 2022, ***qualified heavy equipment rental personal property*** for which an exemption was properly claimed as described below.

Qualified heavy equipment rental personal property would mean any construction, earthmoving, or industrial equipment that is ***mobile*** and rented to customers by a ***qualified renter*** for a term of less than a year or under an open-ended contract. It would include ***attachments or ancillary equipment*** for that equipment. It would not include handheld tools or equipment designed solely for industry-specific uses in oil and gas exploration, mining, or forestry. Examples would include:

- A self-propelled vehicle that is not designed to be driven on the highway.
- Industrial electrical generation equipment.
- Industrial lift equipment.
- Industrial material handling equipment.
- Industrial portable heating, ventilation, and air-conditioning equipment.
- Industrial compressors, generators, or pumps.
- Equipment used in shoring, shielding, and ground trenching.
- Equipment or vehicles that do not need a title under the Michigan Vehicle Code.
- Portable containers or office trailers.
- Equipment used to support a construction or industrial jobsite.

Mobile would mean that the equipment is not intended to be permanently affixed to real property for its use and that it can be moved among worksites.

Attachments or ancillary equipment would mean items that can be attached to, or used in conjunction with, heavy equipment, such as fittings, hoses, cabling, ducts, wiring, chains, hoists, portable power or air equipment, monitoring equipment, fluid containers, buckets, demolition hammers, grapple forks, trenchers, planers, and augers.

Qualified renter would mean a person engaged in a line of business described in code 532310 or 532412 of the North American Industry Classification System (NAICS)[1] that maintains a ***qualified renter business location*** in Michigan and that receives more than 50% of its annual gross receipts, or has an affiliate that receives more than 50% of its annual gross receipts, from the rental of qualified heavy equipment rental personal property to the public.

Qualified renter business location means the location within a local assessing unit where qualified heavy equipment rental personal property for which an exemption is claimed is kept when it is not rented to a customer.

Qualified heavy equipment rental personal property could be exempt under the bill only if the property is located in this state on tax day (December 31) and one of the following conditions is met:

- The property is permanently labeled with the name of the qualified renter and the qualified rental business location.
- The property is permanently labeled with the name of the qualified renter and the qualified renter's annual claim of exemption identifies the physical location of the property on tax day.

However, the above labeling requirements would not apply to attachments or ancillary equipment otherwise labeled in a way that identifies the owner, such as with a unique identification number.

To claim an exemption, a qualified renter would have to file an annual statement with the local assessing unit where the qualified renter business location is located. The statement would have to list the addresses of the qualified renter and identify each item of qualified heavy equipment rental personal property for which exemption is claimed for that tax year.

The statement filed for 2023 (or filed for 2024 by a qualified renter that did not claim an exemption for 2023) would have to include the amount of ad valorem property tax levied in Michigan in 2020, 2021, and 2022 on qualified heavy equipment rental personal property owned by the qualified renter and the qualified renter's liability under the tax proposed by HB 4834 (if that tax had been in effect for 2020, 2021, and 2022) for either that property of property that was acquired or brought into the state during 2020, 2021, or 2022 by a qualified renter and rented from a qualified renter business location. The qualified renter would have to provide documentation of both amounts as required by the Department of Treasury, and the department could audit the documentation submitted.

The completed statement would have to be delivered by February 20 to the assessor of the township or city where the qualified renter business location is located (or by the next business

[1] General rental centers and construction, mining, and forestry machinery and equipment rental businesses.

day if February 20 falls on a weekend or holiday). A late application could be filed directly with the March board of review before its adjournment. A denial by the March board of review could be appealed to the Michigan Tax Tribunal within 35 days after notice of the denial. Information regarding a claim for exemption would be taxpayer confidential information and exempt from disclosure under the Freedom of Information Act (FOIA). By April 1, the assessor would have to transmit to the Department of Treasury the information in the statement and other parcel information the department requires.

A township or city assessor could deny a claim for exemption if he or she believes the property does not qualify for the exemption or the exemption form is incomplete. The assessor would have to notify the filer in writing of the reason for the denial and advise the person that the denial could be appealed to the board of review or the Michigan Tax Tribunal as described in the bill. The assessor would have to remove the exemption of that personal property and amend the tax roll to reflect the denial. Within 30 days, the local treasurer would have to issue a corrected tax bill for any additional taxes.

An exemption would apply only to the tax year in which the statement was filed. Qualified heavy equipment rental personal property listed as exempt on a tax toll for a given tax year could not be automatically listed as exempt on the assessment roll for the next tax year. An owner would not have to file with the assessor or Department of Treasury any subsequent notice or rescission for qualified heavy equipment rental personal property no longer in Michigan or at the qualified rental business location.

A person claiming an exemption under the bill would have to maintain books and records and provide access to them as provided in section 22 of the General Property Tax Act.[2]

A person fraudulently claiming an exemption under the bill would be guilty of a misdemeanor punishable by imprisonment for at least 30 days but not more than six months or by a $500 to $2,500 fine, or both, as provided in section 21(2) of the General Property Tax Act.

Finally, the bill would provide that all qualified heavy equipment rental property located at a qualified renter business location that has claimed an exemption in any given year under the bill is not eligible to be exempt from the collection of taxes under section 9m, 9n, or 9o of the act (which provide exemptions for certain qualified personal property).

Proposed MCL 211.9p

House Bill 4833 would create a new act called the Qualified Heavy Equipment Rental Personal Property Specific Tax Act. The new act would levy, beginning January 1, 2023, a qualified heavy equipment rental personal property specific tax on each transaction of a qualified renter for renting ***eligible personal property*** as described below. The tax would be a state specific tax imposed directly on the customer of a qualified renter in an amount equal to 2% of the rental of the property price, net of any customer credits given at the end of the rental.

> ***Eligible personal property*** would mean personal property exempt under the provisions of House Bill 4834, as described above, and qualified heavy equipment rental personal

[2] http://legislature.mi.gov/doc.aspx?mcl-211-22

property acquired or brought into this state during the tax year by a qualified renter to a qualified renter business location.

A qualified renter would have to collect the tax as part of each rental payment made by the customer renting the property and remit the tax as described below. The tax would not apply to the rental of eligible personal property to the state, a local governmental entity in Michigan, a federally recognized Indian tribe, the United States, any agency, department, administration, or political subdivision of the United States, or to any other public body corporate in Michigan.

The Department of Treasury would have to collect and administer the tax as described below. By March 31 of each year, beginning in 2023, the department would have to make available a statement for calculating the tax. By April 30, July 31, October 31, and January 31 each year, a qualified renter would have to submit to the department a completed statement and full payment of the tax levied and collected for the immediately preceding ***reporting period***. The statement would have to include the total ***rental price*** of all rental transactions for the eligible personal property for the immediately preceding reporting period, a listing of exempt sales, and the total tax collected or otherwise due for that reporting period. The amounts would have to be reported separately for each qualified renter business location. This statement would be exempt from disclosure under FOIA.

Reporting periods would mean the quarterly periods ending on March 31, June 30, September 30, and December 31 for which a qualified renter must report and remit the tax collected under the act.

Rental price would mean the total amount of the consideration for renting qualified heavy equipment rental personal property, excluding any separately stated charges, fees, and costs, such as delivery and pickup fees, damage waivers, environmental mitigation fees, sales or use taxes, or insurance.

If a qualified renter does not submit a completed statement and full payment of the tax by the applicable deadline, the Department of Treasury would have to issue a notice within 30 days that includes a statement explaining the consequences of nonpayment. A qualified renter would have to submit payment in full within 90 days after the notice is issued, with a penalty of 3% per month on the unpaid balance for each month or part of a month payment is not made in full. However, the total penalty on each late payment could not exceed 21%. In addition, for the qualified renter's first assessment year, the penalty would have to be waived if the renter submits a completed statement and full payment of the tax within 30 days after the notice is issued. A qualified renter could amend a submitted statement for any of the three previous reporting periods. Payments made due to an amended statement would be subject to the penalties described above. The Department of Treasury would have to issue refunds, without interest, for overpayments due to an amended statement.

If a qualified renter does not submit payment in full and any penalty due within 90 days after the notice is issued as described above or within 90 days after an audit assessment as described below, or if the Department of Treasury discovers that the property is not eligible for exemption under the General Property Tax Act under House Bill 4834, all of the following would apply:

- No later than the first Monday in June, the department would have to rescind any exemption granted under House Bill 4834 for any property for which payment in full

and penalty due have not been received or for which the department discovers that the property is not eligible for exemption under House Bill 4834.

- Within 30 days after the rescission, the person whose exemption was rescinded would have to file with the township or city assessor a statement under section 19 of the General Property Tax Act for all property for which the exemption has been rescinded.[3]
- Within 60 days after the rescission, the treasurer of the local tax collecting unit or village would have to issue amended tax bills for any taxes, including penalty and interest, that were not billed and are owed as a result of the rescission.

A qualified renter would have to provide the Department of Treasury access to all books and records relevant to the collection and enforcement of the tax for the current and three immediately preceding calendar years. The department would have to implement an audit program, including at least the audit of statements and amended statements for the current and three immediately preceding calendar years. Assessments resulting from an audit could include the penalties described above. Refunds resulting from an audit would be paid without interest. Failure to fully and timely pay an assessment resulting from an audit would be subject to the exemption rescission provisions described above.

A qualified renter could appeal the tax levied or a penalty or rescission to the Michigan Tax Tribunal by filing a petition by December 31 in that tax year and could appeal an assessment issued as a result of an audit by filing a petition with the Michigan Tax Tribunal within 60 days after the date of the assessment. The department could appeal to the Michigan Tax Tribunal by filing a petition for the current calendar year and three immediately preceding calendar years.

The act would create the Qualified Heavy Equipment Rental Personal Property Exemption Reimbursement Fund, into which all proceeds from the tax levied under the act would be deposited. The state treasurer would direct the investment of the fund, crediting to it any interest or earnings from those investments, and the Department of Treasury would be the administrator of the fund for auditing purposes. Money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund.

Starting for fiscal year 2022-23, upon appropriation, $400,000 of the money in the fund would be distributed to the department for administrative costs associated with administering the act. (This amount would later be adjusted for inflation as described in the bill.)

After the above distribution, the Department of Treasury would have to distribute the remaining money from the fund, upon appropriation, only for the following purposes and in the following order of priority:

- By September 30, 2023, and each September 30 thereafter, 90% of the revenues deposited into the fund in the preceding January through June, would be distributed to eligible local tax collecting units (local tax collecting units where a qualified renter business location is located that was reported for the two immediately preceding quarterly reporting periods). By March 31, 2024, and each March 31 thereafter, 90% of the revenues deposited into the fund in the preceding July through December would be distributed to eligible local tax collecting units. These distributions would have to be allocated to each eligible local tax collecting unit based on the proportion that the total tax collected in the two immediately preceding quarterly reporting periods from

[3] http://legislature.mi.gov/doc.aspx?mcl-211-19

each qualified renter business location in the eligible local tax collecting unit bears to the total tax collected in the two immediately preceding quarterly reporting periods from all qualified renter business locations. At the time the department makes these distributions, it would have to provide to each eligible local tax collecting unit information regarding the amount of tax collected in the two immediately preceding quarterly reporting periods from each qualified renter business location in the eligible local tax collecting unit. Within 35 days after receiving an allocation under this provision, the eligible local tax collecting unit would have to distribute its allocation to the taxing units in accordance with the following:

  - For each qualified renter business location in the eligible tax collecting unit, apportion the allocation received by the eligible local tax collecting unit by multiplying it by a fraction, the numerator of which is the tax levied and paid from the qualified renter business location in the eligible local tax collecting unit and the denominator of which is the total tax levied and paid from all qualified renter business locations in the eligible local tax collecting unit.
  - For each taxing unit that levied millage at the qualified renter business location in the eligible local tax collecting unit, multiply the amount calculated under the above step for the associated qualified renter business location by a fraction, the numerator of which is the sum of the millage rates levied on commercial personal property for the associated taxing unit in the prior calendar year and the denominator of which is the total of all millage rates levied on commercial personal property by all taxing units that levied millage at the qualified renter business location in the proper calendar year.
  - For each taxing unit that levied millage at a qualified renter business location in the eligible local tax collecting unit, distribute to the taxing unit the sum of all amounts calculated under the above step for that taxing unit.
  - However, the amount that would otherwise be disbursed under this provision to a local school district for school operating purposes would have to be paid instead to the state treasury and credited to the School Aid Fund. Of the amount that would otherwise be disbursed to an intermediate school district receiving state aid under section 56 or 62 of the State School Aid Act, all or a portion, to be determined on the basis of the tax rates being used to compute the amount of state aid, would have to be paid to the state treasury to the credit of the School Aid Fund.

- By July 31, 2024, and each July 31 thereafter, distribute 10% of the revenues deposited into the fund in the previous calendar year would be distributed to those cities, villages, townships, and counties that do not directly or indirectly receive money distributed to eligible local tax collecting units as described above. This distribution would be proportionally allocated based on distributions made under the Local Community Stabilization Authority Act.

Taxes under the act would not be subject to capture by any tax increment finance authority, although such an entity could share in the distribution of an allocation to a local tax collecting unit where business contributing to the tax was conducted, as described above.

The Department of Treasury could promulgate rules as necessary to administer the act.

The bills are tie-barred to one another, which means that neither could take effect unless both were enacted.

FISCAL IMPACT:

The bills would exempt qualified heavy equipment rental personal property from the property tax act and replace the lost revenue with a 2% levy on the rental price each time the equipment is rented. Given the lack of information, it cannot be determined whether the 2% levy will generate more or less revenue than the existing property tax.

It is also likely that the distribution of revenue collected under the 2% levy will differ from collections under the existing property tax, especially since the 10% share would be distributed to only cities, villages, townships, and counties, and would exclude such taxing entities as community colleges, libraries, authorities, and schools.

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