

INDUSTRIAL PROCESSING EXEMPTIONS FOR ACTIVITIES PERFORMED ON AGGREGATES

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House Bill 4054 (S-1) as passed by the Senate
Sponsor: Rep. Greg VanWoerkom
House Committee: Tax Policy
Senate Committee: [Referred to Committee of the Whole]

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 97 (S-2) as passed by the Senate
Sponsor: Sen. Joseph N. Bellino, Jr.
House Committee: Tax Policy [Discharged]
Senate Committee: Finance, Insurance, and Consumer Protection

Complete to 4-26-23

SUMMARY:

House Bill 4054 and Senate Bill 97 would amend the General Sales Tax Act and the Use Tax Act, respectively, to change the scope and applicability of the industrial processing exemptions under those acts to include certain industrial processing activities performed on aggregate products or materials.

[Note that Senate Bill 97 is similar to House Bill 4055, which was reported from the House Tax Policy committee and passed by the House along with House Bill 4054. The only difference between the bills is the language in Senate Bill 97 requiring the amount of revenue lost to the School Aid Fund as a result of the bill's exemptions to be deposited into the School Aid Fund from the general fund.]

Generally speaking, the General Sales Tax Act and the Use Tax Act exempt sales of tangible personal property that is to be used in industrial processing. Each act contains a list of activities that constitute industrial processing. Each act also lists the kinds of personal property that are eligible for an industrial processing sales tax exemption and those that are not eligible for the exemption.

The bills would provide that property that performs an industrial processing activity on an **aggregate** product or material that will be used as an ingredient or component part for the construction, maintenance, repair, or reconstruction of real property in Michigan is eligible for an industrial processing exemption as long as that aggregate product or material is subject to the use tax under the Use Tax Act. This provision would apply notwithstanding another that provides that industrial processing does not include design, engineering, construction, or maintenance of real property and nonprocessing equipment.

Aggregate would mean common variety building materials such as sand, gravel, crushed stone, slag, recycled concrete, recycled asphalt, and geosynthetic aggregates.

The bills also would add that "industrial processing" includes the production, manufacturing, or recycling of aggregate by the property described above, and for the purpose described above,

as long as that aggregate is subject to the use tax under the Use Tax Act. The bills would make complementary amendments to the definitions of “industrial processing” and “industrial processor” for purposes of the provisions governing the industrial processing exemption.

In addition, and notwithstanding anything to the contrary in the applicable act, the bills would require the Department of Treasury to cancel any outstanding balances on notices of intent to assess or final assessments that were issued before the applicable bill’s effective date that are related to the industrial processing activities and property that would be exempted under the bills. The department would be required to cancel those balances within 90 days of the bill’s effective date and would be prohibited from issuing any new assessments on those activities and property for any tax period before the bill took effect.

The bills also would provide that the amount of the revenue lost to the School Aid Fund as a result of the above exemptions must be deposited into the School Aid Fund from the general fund.

Finally, House Bill 4054 would add new language to the definitions of “industrial processing” and “industrial processor” in the General Sales Tax Act to include converting or conditioning tangible personal property for use in the manufacturing of a product to be affixed to and made a structural part of real estate located in another state. (The Use Tax Act already includes this language.)

Neither bill would take effect unless both bills were enacted.

House Bill 4054: MCL 205.54t

Senate Bill 97: MCL 205.94o

BRIEF DISCUSSION:

According to House committee testimony, recent audits have called into question whether the equipment used in aggregates production qualifies for the full industrial processing exemption depending on where the end product is used. The bills are intended to clarify that this equipment is eligible for the full exemption regardless of where the end product is used.

Supporters of the bills argue that the aggregate is subject to either sales or use tax regardless of where it is used and that providing the full exemption to the equipment avoids “tax pyramiding,” or taxing both the production of a good and the final product.

FISCAL IMPACT:

Based on information provided by the Michigan Department of Treasury, the bills would likely reduce sales and use tax revenue by roughly \$1.0 million or potentially less on an ongoing annual basis. The forgone revenue in the first year would be significantly higher than the annual impact due to the provisions of the bills requiring Treasury to cancel outstanding balances on notices of intent to assess or final assessments.

About one-third of use tax revenue is earmarked to the School Aid Fund (SAF), with the rest accruing to the general fund. Roughly 73% of sales tax revenue is earmarked to the SAF, with

an additional 10% constitutionally dedicated to local revenue sharing. The majority of the remainder accrues to the general fund.

However, the bills contain intent language that the general fund will reimburse the School Aid Fund so as to hold the SAF harmless.

POSITIONS:

[As noted above, Senate Bill 97 is nearly identical to House Bill 4055 except for the provisions in Senate Bill 97 that require the amount of revenue lost to the School Aid Fund as a result of the bill's exemptions to be deposited into the School Aid Fund from the general fund.]

Representatives of the Michigan Aggregates Association testified in support of House Bills 4054 and 4055. (3-15-23)

The following entities indicated support for House Bills 4054 and 4055 (3-15-23):

- Michigan Soft Drink Association
- Detroit Regional Chamber
- Michigan Chamber of Commerce

A representative of the Michigan Department of Treasury testified with a neutral position on House Bills 4054 and 4055. (3-15-23)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.