



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 97 (as enacted)
Sponsor: Senator Joseph Bellino, Jr.
Senate Committee: Finance, Insurance, and Consumer Protection
House Committee: Tax Policy

PUBLIC ACT 27 of 2023

Date Completed: 5-9-23

RATIONALE

Generally, an industrial processing tax exemption is allowed for property that is used to change the form or composition of tangible personal property for sale at retail or sale to another processor for further processing. An individual seeking this exemption must submit a Michigan Sales and Use Tax Certificate of Exemption (Form 3372) through the Department of Treasury. According to testimony, certain interpretations through Departmental audits found that equipment used for the production, manufacturing, or recycling of aggregate were not exempt. It was suggested that the standards for exemptions on this equipment be modified to allow a tax exemption for property used to process aggregate that will ultimately be subject to the sales or use tax.

CONTENT

The bill amended the Use Tax Act to exempt from taxation the sale of property, used for production, manufacturing, or recycling of aggregate by the property if the aggregate will be used as an ingredient or component part for construction, maintenance, repair, or reconstruction of real property in Michigan.

The bill is tie-barred to House Bill 4054, which amended the Sales Tax Act to the same effect as Senate Bill 97. The bill specifies that, "[i]t is the intent of the Legislature to annually appropriate sufficient funds from the State General Fund to the State School Aid Fund created in Section 11 of Article IX of the State Constitution of 1963 to fully compensate for any loss of revenue to the State School Aid Fund resulting from the enactment of this amendatory Act."

The bill took effect May 8, 2023.

The Act generally exempts from taxation property sold or used for industrial processing purposes. The bill also exempts from taxation under the Act the sale of tangible property or property, as applicable, used for production, manufacturing, or recycling of aggregate by the property, and for the purpose, described below, if that aggregate is subject to the use tax. "Aggregate" means common variety building material like sand, gravel, crushed stone, slag, recycled concrete, recycled asphalt, and geosynthetic aggregates.

The Act lists property that is eligible for an industrial processing exemption. Previously, it included property that became an ingredient or component part of the finished product to be sold ultimately at retail. Instead, the bill includes property that will be used as an ingredient or component part of the finished product to be sold ultimately at retail *or affixed to and made a structural part of real estate located in another state.*

Also, the bill specifies that property is eligible for an industrial processing exemption under the Act if it performs an industrial processing activity upon 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 if that aggregate product or material is subject to the use tax.

Notwithstanding anything to the contrary, the bill specifies that the following applies only to industrial processing activities and property described above:

- Within 90 days of May 8, 2023, the Department of Treasury must cancel all outstanding balances related to those industrial processing activities and property on notices of intent to assess for the use tax and that were issued before May 8, 2023.
- Within 90 days of May 8, 2023, the Department must cancel all outstanding balances related to those industrial processing activities and property on final assessments that were issued for the use tax and that were issued before May 8, 2023.
- After May 8, 2023, the Department cannot issue any new assessments for the use tax on those industrial processing activities and property for any tax period before May 8, 2023, that were open under the Act's statutes of limitations.

MCL 205.94o

BACKGROUND

Generally, aggregates are materials such as a sand, gravel, or crushed stone that account for 60 to 70% of the total volume of concrete. Crushed natural aggregate is produced by crushing quarry rock, boulders, cobbles, or large-size gravel. When concrete or asphalt roads are removed from service, they are often recycled as a viable source of aggregate used in granular subbases, soil-cement, and new concrete. This recycling involves crushing and processing the material into smaller pieces through an array of construction equipment¹.

PREVIOUS LEGISLATION

(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Senate Bill 97 is a reintroduction of House Bill 5255 of the 2021-2022 Legislative Session. House Bill 5255 was reported from the House Committee on Tax Policy but received no further action. Additionally, Senate Bill 97 is a companion bill of House Bill 4055 from the current Legislative Session.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

An intermediate good is a product used to produce a final product. Typically, intermediate goods are exempt from certain taxes when the State will collect the tax on the final product. According to testimony before the House Committee on Tax Policy, property sold or used for industrial processing purposes of aggregates should be exempt from the sales and use tax as it is part of this intermediate process; however, there were no clear and consistent standards for aggregate industrial processing equipment exemptions for reasons related to where the aggregate product ended up.

¹ "Aggregates" <https://www.cement.org/cement-concrete/concrete-materials/aggregates>. Retrieved on 5-3-2023.

Generally, the exemption for industrial processors depends on whether the property is consumed in the production process and whether the end product is ultimately sold. There should be clear and consistent standards for industrial processing equipment exemptions for aggregate production. Previously, when an individual who sought an exemption was audited, the individual who purchased the equipment had to attempt to ascertain whether the aggregate was an intermediate good to justify that the equipment was actually used in transforming the aggregate. In many cases this information was impossible to find. The inconsistencies in accepting an exemption certificate on aggregate products created a hardship for businesses and the bill resolved this concern.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

Based on estimates from the Michigan Department of Treasury, the combined impact of Senate Bill 97 and House Bill 4054, which amended the General Sales Tax Act to exempt the property described above from the State sales tax, will reduce State General Fund revenue and local unit revenue by approximately \$1.0 million per year. The revenue loss during the first year of the bills may be greater because of the bills' provisions requiring that outstanding assessments be canceled.

Normally, approximately 73% of sales tax revenue is constitutionally earmarked to the School Aid Fund, 10% is constitutionally earmarked to local revenue sharing, and the remainder is deposited into the General Fund. Of the State's share of use tax revenue (after the local use tax enacted as personal property tax reform), revenue at a rate of 2% is constitutionally directed to the School Aid Fund, while the General Fund receives any remaining State use tax revenue. However, the bill requires the General Fund to compensate the School Aid Fund for any revenue loss resulting from the bill. As a result, the bills' impact on the General Fund and local unit revenue will depend on the relative impact of the exemption between the sales tax and the use tax.

Fiscal Analyst: David Zin

SAS\S2324\s97ea

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.