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ALERT
KPMG LLP (U.S.)

SALT Alert! 2015-29: Michigan: New Industrial Personal Property Tax Exemption Effective January 1, 2016

In 2012, legislation was enacted that, subject to voter approval, revised Mich. Comp. Laws Ann. § 211.9m and Mich. Comp. Laws. Ann. § 211.9n to provide for the future personal property tax exemption of what is termed "Eligible Manufacturing Personal Property." In 2014, Michigan voters approved Proposal 1, which activated the previously-enacted exemption for Eligible Manufacturing Personal Property (EMPP) effective January 1, 2016. Many taxayers may not be aware of this exemption and may need assistance identifying exempt property and filing the required forms to claim the personal property tax exemption.

Background and Analysis

The exemption for EMPP is actually segregated into two exemptions – one for "qualified new personal property" (codified in Mich. Comp. Laws Ann. § 211.9m) and one for "qualified previously existing personal property" (codified in Mich. Comp. Laws Ann. § 211.9n). "Qualified new personal property" is EMPP that is new personal property, which is defined as property that was initially placed in service inside or outside Michigan after December 31, 2012 or that was construction in progress on or after December 31, 2012 that had not been placed in service within or without Michigan before 2013. **All qualified new personal property initially placed in service after 2012 is exempt from property tax beginning in 2016.**

Property that meets the definition of "qualified previously existing personal property" is not exempt immediately, but is instead subject to a phased-in exemption. "Qualified previously existing personal property" means personal property that meets both of the following conditions: (1) is EMPP, and (2) was first placed in service inside or outside Michigan more than ten years before the current calendar year. So, property placed in service before 2006 will become qualified previously existing personal property, and therefore exempt, in 2016. Property placed in service in 2006 will become exempt qualified previously existing personal property in 2017. All qualified previously existing personal property will be exempt by 2023, as illustrated by the chart below.

Property Purchased by First Owner In	100% Exemption Goes Into Effect

Pre-2006	2016
2006	2017
2007	2018
2008	2019
2009	2020
2010	2021
2011	2022
2012	2023

“Eligible manufacturing personal property” or EMPP is defined as all personal property located on **occupied real property** if the personal property is predominantly used in industrial processing or direct integrated support. For personal property that is construction in progress and part of a new facility not yet in operation, EMPP means all personal property that is part of the new facility if that personal property will be predominantly used in industrial processing when the facility becomes operational.

“Occupied real property” means a parcel of real property entirely owned, leased, or otherwise occupied by the person claiming the exemption. It also includes contiguous parcels of real property entirely owned, leased, or otherwise occupied by the person claiming the exemption that host a single, integrated business operation engaged primarily in industrial processing, direct integrated support, or both. Finally, portions of parcels of real property owned, leased, or otherwise occupied by the person claiming exemption or an affiliate of that person are also considered “occupied real property.”

To qualify for the exemption, the personal property must be predominantly used in industrial processing or direct integrated support. The “predominant use test” will be met if the result of the following calculation exceeds 50 percent: (a) Multiply the original cost of each piece of personal property on the occupied real property by the percentage of its use in industrial processing or direct integrated support; (b) Sum the results of each individual calculation; and (3) Divide the result by the original cost of all personal property on the occupied real property. “Original cost" means the fair market value of

personal property at the time of acquisition by the first owner. The percentage of use in industrial processing or direct integrated support will be determined by the proportion of the cost of the property that is exempt as industrial processing equipment or direct integrated support equipment under the sales tax.

If the predominant use test is met, all personal property at that location (i.e., on that occupied real property) is exempt. If the predominant use test is not met, none of the property at that location qualifies for exemption. As such, it is an all-or-nothing test measured by the weighted average (based on original cost) of property used in industrial processing or direct integrated support at each occupied real property location.

“Industrial processing” is defined with reference to the definitions of “industrial processing” used in the sales and use tax code. However, for purposes of the personal property exemption, industrial processing does not include the generation, transmission, or distribution of electricity for sale and does not include utility personal property. “Direct integrated support” includes research and development, testing and quality control, and engineering related to goods produced in the course of industrial processing and conducted in furtherance of industrial processing. Direct integrated support also includes certain receiving and storing activities and sorting and distributing functions.

To claim the exemption for qualified new personal property or qualified previously existing personal property, the person claiming the exemption is required to file an affidavit with the assessor of the township or city in which the property is located. Note that property not qualifying as EMPP may continue to be exempt under certain other statutory property tax exemptions.

To recoup funds lost as a result of the new EMPP exemption, effective January 1, 2016, taxpayers are subject to a new State Essential Services Assessment (SESA). This is a new state-levied tax that will be used to fund essential local services. The SESA is imposed on “eligible personal property” owned by, leased to, or in possession of an “eligible claimant” on December 31 of the year immediately preceding the assessment year. Eligible personal property includes property exempt under Mich. Comp. Laws Ann. §§ 211.9m and 211.9n, as well as certain other types of property exempt under different statutory exemptions. Eligible claimant means a person that claims an exemption for eligible personal property. For eligible personal property acquired by the first owner one to five years prior to the assessment date, a rate of 2.4 mills applies. A rate of 1.25 mills applies to eligible property acquired by the first owner six to ten years prior to the assessment date. Finally, a rate of 0.9 mills applies to property acquired more than ten years prior to the assessment date. The Department of Treasury will, by May 1 of each year, provide each eligible claimant an electronic statement for calculation of the assessment. Payment of the assessment is due by August 15, except for the eligible claimant’s first year where no penalties will be applied until after September 15. If payment is not made by October 15, then the tax exemption will be revoked.

How KPMG Can Help?

Taxpayers claiming the exemption for qualified new personal property and/or qualified previously existing personal property must properly file Form 5278 – Affidavit and Statement for Eligible Manufacturing Personal Property and Essential Services Assessment with the assessor of the town or city where the EMPP is located. Form 5278 contains the affidavit to claim the exemption, the personal property statement for property that does not yet qualify for the exemption, and the required SESA filing. To qualify for the EMPP exemption, Form 5278 must be filed no later than February 20, 2016. A Form 5278 must be filed for each personal property parcel for which the exemption is being claimed, and Form 5278 must be received by the local jurisdiction by February 20 to be considered timely filed.

KPMG SALT professionals can assist taxpayers in determining what property qualifies as exempt EMPP. This will likely involve the following: (1) identifying the taxpayer's occupied real property, (2) identifying the taxpayer's personal property used on the occupied real property, (3) determining the cost and acquisition date of the personal property, (4) assessing whether the "predominantly used in industrial processing or direct integrated support" test is met, (4) assisting the taxpayer filing its Form 5278, and (5) assisting the taxpayer with any subsequent audits or exemption denials.

Please contact Mike Bozimowski at 313-230- 3183 or 248-756-5832, Josh Hennessey at 713-319-2881, or Chad Yutka at 312-665-1801 with questions.