



## Essential Services Assessment Frequently Asked Questions

### General Information and Definitions

#### Are all personal property taxes being phased out?

No. While significant changes to Business Personal Property Taxes begin in 2016, not all personal property tax is being eliminated.

In December of 2012, initial legislation was passed that significantly changed the taxation of personal property. The Acts, as amended, exempt about half (½) of personal property from taxation through two main provisions: 1) Small Business Taxpayer Exemption (MCL 211.9o) and 2) Eligible Manufacturing Personal Property Exemption (MCL 211.9m and MCL 211.9n). The Acts also established a replacement specific tax on exempt personal property (Essential Services Assessment) and reimbursement for local unit's lost revenue.

#### What is ESA?

The Essential Services Assessment (ESA) is a state-specific tax on eligible personal property owned by, leased to, or in the possession of an eligible claimant on December 31 of the year immediately preceding the assessment year. MCL 211.1055(2).

#### What is eligible personal property?

Eligible personal property means all of the following:

- Personal property exempt under MCL 211.9m or MCL 211.9n.
- Personal property exempt under MCL 211.9f (328 Exemption) approved after 2013 unless both of the following conditions are satisfied:  
The application for the 328 exemption under MCL 211.9f was filed before August 5, 2014, and  
The resolution approving the exemption states that the project is expected to have total new personal property of over \$25 million within 5 years of the adoption of the resolution by the local assessing district or the Next Michigan Development Corporation.
- Personal property subject to an extended Industrial Facilities Exemption Certificate under MCL 207.561a (IFT Exemption).
- Personal property subject to an extended exemption under MCL 211.9f(8)(a) (328 Exemption).

#### What personal property is exempt under MCL 211.9m or MCL 211.9n?

MCL 211.9m and MCL 211.9n provide that beginning December 31, 2015, Qualified New Personal Property and Qualified Previously Existing Personal property is exempt from taxation.

#### What is qualified new personal property?

Qualified New Personal Property is defined as personal property that was initially placed in service in this state or outside of this state *after* December 31, 2012 or that was

construction in progress on or after December 31, 2012 (that had not been placed in service in this state or outside of this state before 2013) **and** is eligible manufacturing personal property (EMPP).

**What is qualified previously existing personal property?**

Qualified Previously Existing Personal Property is defined as personal property that was first placed in service within this state or outside of this state more than 10 years before the current calendar year **and** is eligible manufacturing personal property (EMPP).

**What is eligible manufacturing personal property (EMPP)?**

EMPP means all personal property located on occupied real property if that personal property is predominantly used in industrial processing or direct integrated support.

EMPP also includes personal property that is construction in progress or part of a new facility not in operation, if the personal property will be predominantly used in industrial processing when the facility becomes operational. Until the personal property is placed in service, it is “construction in progress.” Construction in progress does qualify as EMPP if the property will qualify as EMPP when it is placed in service.

**What is occupied real property?**

Occupied real property includes all of the following:

- 1) A parcel of real property that is entirely owned, leased, or otherwise occupied by a person claiming an exemption under MCL 211.9m or 211.9n.
- 2) Contiguous parcels of real property that are entirely owned, leased, or otherwise occupied by a person claiming an exemption under MCL 211.9m or 211.9n and that host a single, integrated business operation engaged primarily in industrial processing, direct integrated support, or both. A business operation is not engaged primarily in industrial processing, direct integrated support, or both if it engages in significant business activities that are not directly related to industrial processing or direct integrated support.
- 3) The portion of a parcel of real property that is owned, leased, or otherwise occupied by a person claiming the exemption under MCL 211.9m or 211.9n or by an affiliated person.

**What is industrial processing?**

Industrial processing is defined in MCL 205.54t of the General Sales Tax Act and MCL 205.94o of the Use Tax Act.

- a) Production or assembly.
- b) Research or experimental activities.
- c) Engineering related to industrial processing.
- d) Inspection, quality control, or testing to determine whether particular units of material or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage.
- e) Planning, scheduling, supervision, or control of production or other exempt activities.

- f) Design, construction, or maintenance of production or other exempt machinery, equipment, and tooling.
- g) Remanufacturing.
- h) Processing of production scrap and waste up to the point it is stored for removal from the plant of origin.
- i) Recycling of used materials for ultimate sale at retail or reuse.
- j) Production material handling.
- k) Storage of in-process materials.

**What is direct integrated support?**

Direct integrated support means any of the following:

- 1) Research and development related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
- 2) Testing and quality control functions related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
- 3) Engineering related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
- 4) Receiving or storing equipment, materials, supplies, parts, or components for industrial processing, or scrap materials or waste resulting from industrial processing, at the industrial processing site or at another site owned or leased by the owner or lessee of the industrial processing site.
- 5) Storing of finished goods inventory if the inventory was produced by a business engaged primarily in industrial processing and if the inventory is stored either at the site where it was produced or at another site owned or leased by the owner or lessee of the industrial processing site.
- 6) Sorting, distributing, or sequencing functions that optimize transportation and just-in-time inventory management and material handling for inputs to industrial processing.

**Are there any charts that explain the personal property tax “phase out” by tax year?**

	Exempt and Subject to ESA	Pays Ad Valorem or IFT
Tax Year 2016	2015	
	2014	
	2013	
		2012
		2011
		2010
		2009
		2008
		2007
		2006
	2005 and Earlier	

	Exempt and Subject to ESA	Pays Ad Valorem or IFT
<b>Tax Year 2017</b>	2016	
	2015	
	2014	
	2013	
		2012
		2011
		2010
		2009
		2008
		2007
	2006 and Earlier	

	Exempt and Subject to ESA	Pays Ad Valorem or IFT
<b>Tax Year 2018</b>	2017	
	2016	
	2015	
	2014	
	2013	
		2012
		2011
		2010
		2009
		2008
	2007 and Earlier	

	Exempt and Subject to ESA	Pays Ad Valorem or IFT
<b>Tax Year 2019</b>	2018	
	2017	
	2016	
	2015	
	2014	
	2013	
		2012
		2011
		2010
		2009
	2008 and Earlier	

	Exempt and Subject to ESA	Pays Ad Valorem or IFT
<b>Tax Year 2020</b>	2019	
	2018	
	2017	
	2016	
	2015	
	2014	
	2013	
		2012
		2011
		2010
	2009 and Earlier	

	Exempt and Subject to ESA	Pays Ad Valorem or IFT
<b>Tax Year 2021</b>	2020	
	2019	
	2018	
	2017	
	2016	
	2015	
	2014	
	2013	
		2012
		2011
	2010 and Earlier	

	Exempt and Subject to ESA	Pays Ad Valorem or IFT
<b>Tax Year 2022</b>	2021	
	2020	
	2019	
	2018	
	2017	
	2016	
	2015	
	2014	
	2013	
		2012
	2011 and Earlier	

**Starting in 2023, all EMPP is exempt from ad valorem taxation and IFT and all Eligible Personal Property, including EMPP, is subject to the ESA Specific Tax.**

## Eligibility

### **How do I determine if my personal property is eligible for the exemption?**

It is suggested that you begin by visiting the ESA Web Site which has significant information regarding the exemption, including statutory definitions that are referenced above. The ESA Web Site can be accessed at [www.michigan.gov/esa](http://www.michigan.gov/esa).

### **Am I required to pay the ESA if I have less than \$80,000 of personal property in my jurisdiction?**

The Department cannot answer questions about whether a specific taxpayer qualifies for the exemption. However, taxpayers with less than \$80,000 of personal property may qualify for the Small Taxpayer Exemption pursuant to MCL 211.9o, if the exemption is properly claimed by filing Form 5076 by February 10<sup>th</sup> each year. Please visit the PPT Web Site at [www.michigan.gov/ppt](http://www.michigan.gov/ppt) for more information regarding this exemption.

### **I understand that only manufacturers are eligible for the exemption, is this true?**

Eligible Manufacturing Personal Property (EMPP) means all personal property located on occupied real property if that personal property is predominantly used in industrial processing or direct integrated support. Please see the definitions section of the ESA Web Site for specific definitions regarding those activities. Non-manufacturers may qualify for the exemption.

### **How do I determine if personal property is predominantly used in industrial processing or direct integrated support?**

MCL 211.9m indicates personal property located on occupied real property is predominantly used in industrial processing or direct integrated support if the result of the following calculation is more than 50%:

(i) Multiply the original cost of all personal property that is subject to the collection of taxes under this act and all personal property that is exempt from the collection of taxes under sections 7k, 9b, 9f, 9n, and 9o and this section (9m) that is located on that occupied real property and that is not construction in progress by its percentage of use in industrial processing or in direct integrated support.

Personal property is used in industrial processing if it is not used to generate, transmit, or distribute electricity for sale, if it is not utility personal property as described in section 34c(3)(e), and if its purchase or use by the person claiming the exemption would be eligible for exemption under section 4t of the general sales tax act, 1933 PA 167, MCL 205.54t, or section 4o of the use tax act, 1937 PA 94, MCL 205.94o. For an item of personal property that is used in industrial processing, its percentage of use in industrial processing shall equal the percentage of the exemption the property would be eligible for under section 4t of the general sales tax act, 1933 PA 167, MCL 205.54t, or section 4o of the use tax act, 1937 PA 94, MCL 205.94o. Utility personal property as described in section 34c(3)(e) is not used in direct integrated support.

(ii) Divide the result of the calculation under subparagraph (i) by the total original cost of all personal property that is subject to the collection of taxes under this act and all personal property that is exempt from the collection of taxes under sections 7k, 9b, 9f, 9n, and 9o and this section (9m) that is located on that occupied real property and that is not construction in progress.

**Do you have an example of the predominant use calculation?**

Personal Property	Status	Original Cost	% of use in IP or DIS	IP/DIS Eligible Cost
Machine 1	IFT Exempt	\$500,000	100%	\$500,000
Office Furniture	GPTA Taxable	\$100,000	0%	\$0
Shipping container	GPTA Taxable	\$50,000	30%	\$15,000
Die/Mold	Special Tool	\$250,000	100%	\$250,000
Machine Foundation	GPTA Taxable	\$100,000	50%	\$50,000
Computers	GPTA Taxable	\$35,000	60%	\$21,000
Machine 2	328 Exempt	\$250,000	50%	\$125,000
Machine 3	IFT Exempt	\$350,000	100%	\$350,000
Mahine 4	GPTA Taxable	\$150,000	100%	\$150,000
Totals		\$1,785,000		\$1,461,000
<b>\$1,461,000 divided by \$1,785,000 = 82%</b>				

Each item of personal property is individually identified, the status determined, as well as the original cost and percent of use in industrial processing or direct integrated support. The original cost of each item of personal property is multiplied by its percentage of use in industrial processing or direct integrated support to determine an eligible cost. The total eligible cost is then divided by the total original cost to determine the percent of predominant use. Because the result of the calculation is greater than 50%, all personal property on this occupied real property would qualify as EMPP.

If the result of the calculation would have been less than 50%, then none of the personal property on this occupied real property would qualify for the EMPP exemption.

**Is it necessary to calculate the usage of each piece of personal property when calculating EMPP?**

Yes. For an item of personal property that is used in industrial processing, its percentage of use in industrial processing shall equal the percentage of the exemption the property would be eligible for under MCL 205.54 or MCL 205.94o.

**When does industrial processing begin and end?**

Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing. It ends when finished goods first come to rest in finished goods inventory storage.

**Can EMPP be located at another facility or site?**

Personal property that is not owned, leased, or used by the person who owns or leases occupied real property where the personal property is located is not EMPP, unless the personal property is located on the occupied real property to carry on a current on-site business activity. Personal property placed on occupied real property solely to qualify the personal property for an exemption under MCL 211.9m or 211.9n is not EMPP.

**Can previously owned equipment qualify for ESA?**

Yes. The equipment will be treated based upon the year it was first placed into service by its first user, who is not necessarily the current owner. The original cost for used equipment is the acquisition cost to the first owner, including sales tax, freight, and installation.

**Can self-constructed equipment qualify for ESA?**

Self-constructed equipment may qualify for ESA. The key factors will be the tax year that the equipment was placed in service and whether the equipment qualifies as EMPP.

**Is property that is exempt as special tooling required now to pay ESA?**

No, exempt special tooling will remain exempt under MCL 211.9b.

**Is property that is subject to an Air Pollution Control or Water Pollution Control Exemption now subject to ESA?**

No, that property will remain exempt under the Air or Water Pollution Control exemption.

**I bought the property used. Can I report the year and cost for which I purchased the property?**

If the property was placed into service prior to your acquisition of the property, you must use the year it was placed into service by its original owner as well as its original cost, including sales tax, freight, and installation costs. This applies even if the property was re-booked for accounting purposes.

**What is acquisition cost?**

Acquisition cost means the fair market value of the personal property at the time of acquisition by the first owner, including the cost of freight, sales tax, and installation, and other capitalized costs, except for capitalized interest.

For personal property exempt under MCL 211.9m or MCL 211.9n that would otherwise be exempt under MCL 211.7k (IFT) and for property subject to an extended IFT, acquisition cost means ½ of the fair market value of that personal property at the time of acquisition by the current owner.

For personal property exempt under the Renaissance Zone Act, the acquisition cost is \$0 except for the three (3) years immediately preceding the expiration of the exemption of that personal property, during which time the acquisition cost for that personal property



means fair market value at the time of acquisition by the current owner multiplied by the percentage reduction in the exemption as described MCL 125.2689(9)(3).

**Do I have to be manufacturing within Michigan to qualify for the exemption?**

No. Property can be direct integrated support to a manufacturing activity not located within the State of Michigan.

**How is construction in progress treated with respect to ESA?**

Construction in Progress is personal property which is not yet in service for a given assessment year. If the personal property is not in service on December 31st immediately prior to the beginning of the assessment year in question, it is Construction in Progress. Costs which are reportable as Construction in Progress include not only the cost of the property itself but also design, engineering, sales tax, freight and other installation costs relating to the personal property.

New Personal Property that is Eligible Manufacturing Personal Property (EMPP) is exempt from ad valorem taxation, and subject to the Essential Services Assessment (ESA) specific tax, beginning with the 2016 assessment year (having a valuation date of December 31, 2015). Personal Property is EMPP if it is located on Occupied Real Property where the predominant use of all of the personal property on the Occupied Real Property is for industrial processing and/or direct integrated support. Construction in progress qualifies as New Personal Property and will be exempt if it is EMPP.

For purposes of determining whether the personal property on Occupied Real Property is EMPP, the amount of cost incurred relating to Construction in Progress is not considered. In other words, when calculating the predominant use of the personal property on Occupied Real Property, the cost incurred for Construction in Progress is not included either in the denominator or the numerator of the fraction that determines the predominant use of the personal property. If the 50% test is met, all personal property, including construction in progress in EMPP. When the personal property which was formerly Construction in Progress is placed in service, it is thereafter considered in both the denominator and numerator of the fraction that determines the predominant use of the personal property on the Occupied Real Property.

If the Construction in Progress relates to a new facility, where there is no existing personal property being used for any purpose on the Occupied Real Property, then the Construction in Progress is EMPP, if the predominant use of the new facility when the Construction in Progress is placed in service will be for industrial processing. Considering new facility Construction in Progress is also New Personal Property, it is exempt from ad valorem taxation and subject to the ESA specific tax beginning in the 2016 assessment year.

## **Filing Requirements**

### **How do I claim the EMPP Exemption?**

In order to claim the exemption an eligible claimant must file Form 5278, *Affidavit and Statement for Eligible Manufacturing Personal Property and Essential Services Assessment* with the local tax collecting unit where the personal property is located no later than February 20<sup>th</sup> of each tax year.

### **Is it OK to postmark Form 5278 by February 20?**

The form must be received by the local tax collecting unit no later than February 20. See State Tax Commission Bulletin 7 of 2015.

### **What if February 20 does not fall on a business day?**

The deadline to file Form 5278 is February 20 or the next business day if February 20 falls on a Saturday, Sunday, or legal holiday.

### **What if I miss the deadline to file Form 5278 with the local tax collecting unit by February 20?**

The State Tax Commission has determined that late-filed Affidavits should not be accepted by the local unit. Affidavits that are not properly filed or are late filed are not considered a denial by the assessing officer for purposes of appeal rights. See State Tax Commission Bulletin 7 of 2015.

### **Can I file all of my parcels located within a single tax collecting unit on a single Form 5278?**

No. Form 5278 must be filed for each personal property parcel for which the exemption is being claimed.

### **I did not check the All, Part or None Box on my 2015 Personal Property Statement. Can I still claim the exemption in 2016?**

Yes. You simply timely file Form 5278 with the local tax collecting unit.

### **Does a taxpayer who filed Form 5278 also need to file Form 632 (the personal property statement) for the same parcel?**

No. Taxpayers will file either Form 5278 or Form 632, but not both, for a given parcel.

### **What do I do when my property no longer qualifies for the exemption?**

A rescission affidavit (Form 5277) must be filed with the assessor of the local tax collecting unit where the personal property is located no later than December 31 of the year in which the exempted property is no longer eligible for the exemption.

### **What records am I required to retain to support my claim for exemption?**

For all personal property exempt under ESA, the taxpayer must maintain records which at minimum include:

- Location and description of the property
- Date of purchase

- Lease or acquisition information
- Purchase price
- Lease amount or value of property
- Information about the customary industrial use for the property
- Asset classification

Eligible claimants must provide access to their books and records if requested by the local unit assessing officer, County Equalization Department, or Department of Treasury for any year in which they claim the exemption.

**Are there any penalties for falsely claiming the ESA exemption?**

Yes. Pursuant to MCL 211.21, an assessor shall report to the prosecuting attorney where the property is located any individual suspected of fraudulently claiming the exemption. Any individual who fraudulently claims an exemption is guilty of a misdemeanor punishable by not less than 30 days and not more than 6 months in jail and a fine of not less than \$500 or not more than \$2,500 or both.

**I'm a leasing company, can I claim the exemption and which form do I file?**

Leasing companies are not eligible to claim the EMPP Exemption. Form 5278 specifically states that the form cannot be filed by leasing companies and further indicates *“Leasing companies are not eligible to receive the EMPP exemption and may not use this form. Leased equipment is reported by the lessor on Form 632 Personal Property Statement, until such time as the personal property becomes exempt and is reported as EMPP in Part 3 of this Affidavit and Statement by the lessee.”*

The instructions contained in Form 632 – page 7 indicate: *“Lessors do not report Eligible Manufacturing Personal Property (EMPP), which is instead reported by the lessee on Form 5278”*. In this context Eligible Manufacturing Personal Property should be read as Exempt Eligible Manufacturing Personal Property.

Practically, this means that, for the 2016 year, EMPP placed in service during the years 2006 through 2012 will be listed, for information purposes only, by the Lessee on Form 5278, Part 2 under J and K and reported for the in-service years of 2005 and prior and 2013 and later on Part 3 for ESA purposes. The Lessee will pay the ESA on that leased equipment that is reported on Form 5278, Part 3.

The Lessor will report the equipment on Form 632 for the equipment placed in service during 2006 through 2012 and will pay the Ad Valorem tax for those specific years.

**I'm confused, are you telling me I have pay both ad valorem personal property tax and ESA?**

A company that meets the requirements of EMPP for tax year 2016, will pay ad valorem personal property tax on personal property placed into service from tax year 2006 to tax year 2012. The same company will also pay ESA on personal property placed into service in 2005 or earlier and/or in tax years 2013 or later.

## Special Acts

### How is my property treated if I have an Industrial Facilities Tax - PA 198 (IFT) Certificate.

Discussions regarding the treatment of IFT property begins with the taxpayer answering two questions:

1. Is my property subject to an IFT Certificate that was in effect before January 1, 2013?
2. Is my property subject to an IFT Certificate which was in effect on or after December 31, 2012 and therefore was extended under the provisions of MCL 207.561a?

Answering these two questions will guide you to understanding how your property is reported and treated under the personal property tax changes. Simply put, if you can answer yes to question 1, then property exempt under MCL 211.9m or MCL 211.9n will pay the ESA Specific Tax at ½ the Fair Market Value at the time of acquisition by the first owner (Acquisition Cost) until that IFT Certificate expires.

If you answer yes to question 2, your certificate will be extended and not expire until all the property covered under that IFT certificate is exempt under MCL 211.9m and MCL 211.9n. Once the certificate expires, then the property will pay ESA on the full Acquisition Cost.

### Do you have an example of how an extended IFT is treated?

A six year IFT Certificate was approved in 2007 and in effect for 2008 through 2013 (expires 12/30/13). The personal property under this certificate was placed in service in 2007 and is Eligible Manufacturing Personal Property (EMPP). As a reminder, personal property that was first placed in service in 2007 will become exempt under MCL 211.9n in 2018.

Beginning with our two simple questions:

1. Is my property subject to an IFT Certificate that was in effect before January 1, 2013? **Yes**
2. Is my property subject to an IFT Certificate which was in effect on or after December 31, 2012 and, therefore, was extended under the provisions of MCL 207.561a? **Yes**

Because the answer to question 2 was Yes, in 2016 and in 2017 the taxpayer, when filling out Form 5278, will check Box 6 as yes on Part 3 of the Form and the IFT Certificate now has an extended term of 2014, 2015, 2016 and 2017 under the provisions of MCL 207.561a.

During the extended term, the property remains subject to the IFT tax and will be reported in the appropriate table in Part 2 of Form 5278, but will also be subject to the ESA Specific Tax and will also have to be reported in Part 3, Section 2 of Form 5278.

However, because the answer to question 1 was Yes, in 2016 and also in 2017, the personal property will be subject to ESA at ½ the Fair Market Value at the time of

acquisition by the first owner (MCL 211.1053a). Note: The Fair Market Value at the time of acquisition by the first owner should be reported at 100% on Form 5278; the ESA Specific Tax at ½ the Fair Market Value at the time of acquisition by the first owner (Acquisition Cost) will be calculated on the statement subsequently filed with the Department of Treasury, not on Form 5278.

Since the property becomes exempt under MCL 211.9n in 2018, the property is now subject to the full ESA Specific Tax and reported on Form 5278 on Part 3, Section 1.

### **What about an example of a non-extended IFT?**

A twelve year IFT Certificate was approved in 2009 and in effect for 2010 through 2021 (expires 12/30/21).

The personal property was placed in service in 2009 and is Eligible Manufacturing Personal Property (EMPP). As a reminder, personal property that was first placed in service in 2009 will become exempt under MCL 211.9n in 2020.

Going back to our two simple questions:

1. Is my property subject to an IFT Certificate that was in effect before January 1, 2013? **Yes**
2. Is my property subject to an IFT Certificate which was in effect on or after December 31, 2012 and, therefore, was extended under the provisions of MCL 207.561a? **No**

The answer to question 2 is No, because the personal property covered under the IFT Certificate will become exempt under MCL 211.9n before the certificate was scheduled to expire. For 2016 through 2019 the personal property will be subject to the IFT Specific Tax and will be reported on Form 5278, Part 2 only and it will not pay ESA Specific Tax.

However, because the answer to question 1 was Yes, the taxpayer will check Box 4 on Form 5278 as Yes and will report the property in Part 3, Section 2 starting in 2020. In 2020 and in 2021 the personal property is subject to the ESA Specific Tax at ½ the Fair Market Value at the time of acquisition by the first owner. **Note: In this case the assessor must retain the IFT parcel number until 2022 and not move the property to the Ad Valorem parcel for purposes of ESA reporting.**

Since the property is exempt under MCL 211.9m and MCL 211.9n and the IFT Certificate that would have been in effect for the parcel has expired, in 2022 the property is subject to the full ESA Specific Tax and reported on Form 5278 on Part 3, Section 1.

### **I have an IFT that was recently approved. How is that treated?**

A six year IFT Certificate was approved in 2013 and in effect for 2014 through 2019 (expires 12/30/19).

The personal property was placed in service in 2013 and is Eligible Manufacturing Personal Property (EMPP). As a reminder, personal property that was first placed in service in 2013 will become exempt under MCL 211.9m in 2016.

Going back to our two simple questions:

1. Is my property subject to an IFT Certificate that was in effect before January 1, 2013? **No**
2. Is my property subject to an IFT Certificate which was in effect on or after December 31, 2012 and, therefore, was extended under the provisions of MCL 207.561a? **No**

Because in 2016, EMPP first placed in service after 2012 is exempt, the IFT Certificate expires and the personal property is reported on Form 5278, Part 3 Section 1. Because the answer to question 1 was No, the personal property is subject to the ESA Specific Tax at the full Acquisition Cost.

**Those are pretty simple examples, what about a more complex example?**

An IFT Certificate was approved in 2005 and in effect for 2006 through 2017 (expires 12/30/17).

The personal property was placed in service in 2005, 2006, 2007, 2008 and 2009 and is Eligible Manufacturing Personal Property (EMPP). As a reminder, personal property that was first placed in service in 2005 will become exempt under MCL 211.9m in 2016, personal property that was first placed in service in 2006 will become exempt in 2017, personal property first placed in service in 2007 will become exempt in 2018, personal property first placed in service in 2008 will become exempt in 2019 and personal property first placed in service in 2009 will become exempt in 2020.

We will begin with our two simple questions:

1. Is my property subject to an IFT Certificate that was in effect before January 1, 2013? **Yes**
2. Is my property subject to an IFT Certificate which was in effect on or after December 31, 2012 and, therefore, was extended under the provisions of MCL 207.561a? **Yes**

Because the answer to question 2 was “Yes”, the IFT Certificate has an extended term of 2017, 2018 and 2019 under the provisions of MCL 207.561a. The taxpayer will check Box 6 as yes on Part 3 of Form 5278.

In 2016, the taxpayer will report the property placed in service in 2005 on Part 3 Section 2 of Form 5278. Because the answer to question 1 was yes, the personal property will be subject to ESA at ½ the Fair Market Value at the time of acquisition by the first owner. The taxpayer will report the property placed in service in 2006, 2007, 2008 and 2009 in Part 2 of Form 5278 and this property will be subject to the IFT Specific Tax only.

In 2017, the taxpayer will report the property placed in service in 2005 and 2006 on Part 3, Section 2 of Form 5278. Because the answer to question 1 was Yes, the personal property will be subject to ESA at ½ the Fair Market Value at the time of acquisition by the first owner. The taxpayer will report the property placed in service in 2007, 2008 and 2009 in Part 2 of Form 5278 and this property will be subject to the IFT Specific Tax only.

In 2018, the taxpayer will report the property placed in service in 2005, 2006, 2007, 2008 and 2009 on Part 3, Section 2 of Form 5278. Because the answer to question 1 was Yes, the personal property will be subject to ESA at ½ the Fair Market Value at the time of acquisition by the first owner. The taxpayer will also report the property placed in service in 2008 and 2009 in Part 2 of Form 5278 and this property will also be subject to the IFT Specific Tax.

In 2019, the taxpayer will report the property placed in service in 2005, 2006, 2007, 2008 and 2009 on Part 3, Section 2 of Form 5278. Because the answer to question 1 was Yes, the personal property will be subject to ESA at ½ the Fair Market Value at the time of acquisition by the first owner. The taxpayer will also report the property placed in service in 2009 in Part 2 of Form 5278 and this property will also be subject to the IFT Specific Tax.

Beginning in 2020 all the property is subject to the full ESA Specific Tax and reported on Form 5278 on Part 3, Section 1.

<b>IFT Certificate Effective 12-31-05 and Expires on 12-30-17 IFT</b>					
<b>Year Placed in Service</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>2005</b>	ESA at ½ FMV	ESA at ½ FMV	ESA at ½ FMV	ESA at ½ FMV	ESA At Full Cost
<b>2006</b>	IFT Specific Tax	ESA at ½ FMV	ESA at ½ FMV	ESA at ½ FMV	ESA At Full Cost
<b>2007</b>	IFT Specific Tax	IFT Specific Tax	ESA at ½ FMV	ESA at ½ FMV	ESA At Full Cost
<b>2008</b>	IFT Specific Tax	IFT Specific Tax	ESA at ½ plus IFT Specific Tax	ESA at ½ FMV	ESA At Full Cost
<b>2009</b>	IFT Specific Tax	IFT Specific Tax	ESA at ½ plus IFT Specific Tax	ESA at ½ plus IFT Specific Tax	ESA At Full Cost

**I have a P.A. 328 (MCL 211.9f) exemption. How is that exemption treated?**

MCL 211.9f(8) indicates:

Notwithstanding any other provision of this section to the contrary, if new personal property exempt under this section on or after December 31, 2012 is eligible manufacturing personal property, that eligible manufacturing personal property shall remain exempt under this section until the later of the following:

- (a) The date that eligible manufacturing personal property would otherwise be exempt from the collection of taxes under this act under section 9m, 9n, or 9o.
- (b) The date that eligible manufacturing personal property is no longer exempt under the resolution adopted under subsection (1).

Simply put: Eligible Manufacturing Personal property (EMPP) that was subject to a P.A. 328 exemption on or after December 31, 2012 but before December 31, 2014, shall remain exempt until the later of the following:

- a. The personal property is exempt under MCL 211.9m, 9n or 9o
- b. The P.A. 328 exemption expires.

The definition of new personal property under P.A. 328 does not include EMPP for a resolution adopted after December 31, 2014.

**Do you have an example of what happens to a PA 328 exemption that would not be extended?**

A P.A. 328 exemption was approved in 2000 and effective for 2001 through 2030 (expires 12/30/30). The personal property is Eligible Manufacturing Personal Property (EMPP).

The exemption does not need to be extended because the exemption is valid until 2031.

The personal property will remain exempt under P.A. 328 until 2031 and will not be subject to the Essential Services Assessment (ESA) until 2031. The taxpayer is not required to file Form 5278 until 2031 when the property is no longer exempt under P.A. 328.

**Do you have an example for a PA 328 exemption that would need to be extended?**

A P.A. 328 exemption was approved in 2003 and effective for 2004 through 2013 (expires 12/30/13). The personal property was placed in service in 2004 and 2005. The personal property is Eligible Manufacturing Personal Property (EMPP).

The law will extend the P.A. 328 exemption through 2015. Property placed in service in 2004 and 2005 will be considered eligible personal property in 2016 under MCL 211.1053(e)(i).

Beginning in 2016 the property will pay the full Essential Services Assessment (ESA). The taxpayer will fill out Form 5278, Part 3 Section 1.



### **What about a more complex example?**

A P.A. 328 exemption was approved in 2010 and effective for 2010 through 2015 (expires 12/30/15). The personal property was placed in service in 2011, 2012 and 2013. The personal property is Eligible Manufacturing Personal Property (EMPP).

Eligible Manufacturing Personal Property (EMPP) that was subject to a P.A. 328 exemption on or after December 31, 2012 but before December 31, 2014, shall remain exempt until the later of the following:

- a. The personal property is exempt under MCL 211.9m, 9n or 9o
- b. The P.A. 328 exemption expires.

The P.A. 328 exemption was in effect on or after December 31, 2012. Therefore, the exemption is extended until 2023 and the property shall remain exempt under P.A. 328 until the personal property is exempt under MCL 211.9m, 9n or 9o. (property first placed in service in 2012 becomes exempt under MCL 211.9n in 2023). This property will be reported on Form 5278 Part 3 Section 2.

This property will be subject to the full payment of the Essential Services Assessment (ESA) because MCL 211.1053 defines eligible personal property (which is property subject to pay the ESA) as both EMPP that is subject to an extended exemption under MCL 211.9f(8)(a) and EMPP exempt under MCL 211.9m or 9n.

### **What about a P.A. 328 exemption approved in 2014?**

The full ESA must be paid for all P.A. 328 exemptions approved in 2014 unless the application was filed before August 5, 2014 and the resolution approving the exemption projected costs to be at least \$25 million. The taxpayer will fill out Form 5278, Part 3 Section 2.

### **Is my property exempt from ESA if it is located in a Renaissance Zone?**

Generally, yes. Property located in a Renaissance Zone is 100% exempt from ESA until the three (3) years immediately preceding the expiration of the exemption of that personal property. During the last three years, the acquisition cost of the personal property is multiplied by the percentage reduction as outlined by MCL 125.2689.

## **Statement Certification and ESA Payments**

### **I have determined I am eligible for the exemption. I have timely filed Form 5278 with my local unit assessor. What happens now?**

Once an eligible claimant has properly claimed the personal property tax exemption by filing the *Affidavit and Statement for Eligible Manufacturing Personal Property and Essential Services Assessment* (Form 5278) with the local unit assessor no later than February 20<sup>th</sup> (February 22, 2016 due to the weekend), the assessor will transmit the information contained in Form 5278 to the Michigan Department of Treasury by April 1.

The Department of Treasury will create an *Electronic ESA Statement (Statement)* from the information contained in Form 5278 and will make that *Statement* available through Michigan Treasury Online (MTO) not later than May 1. Eligible claimants must submit a certified *Statement* either through MTO or through e-file (paper *Statements* are not accepted).

**Can I make changes to the information in the Electronic Statement?**

An eligible claimant may amend a return through MTO on or before September 15 of the tax year.

**Can I add a parcel to the affidavit in MTO or e-file?**

A taxpayer may amend a return until September 15 of the tax year in question by adding or removing a parcel.

**Do I have to sign up for MTO to view my statement, certify and pay?**

Eligible claimants or their authorized preparer may utilize MTO to view their *Statement*, view correspondence from Treasury, make changes to their *Statement*, Certify their *Statement* and pay the ESA tax.

Eligible claimants and/or authorized preparers that utilize third-party preparation software will have the option of certifying the *Statement* by filing a return electronically through the Modernized e-File System (MeF). MeF offers that advantage of allowing the eligible claimants or their authorized preparers to use the approved software developer of their choice to file their return.

**If I'm planning on using MTO, do I have to register?**

Yes. You can register now to use MTO. However ESA specific registration will not be available until Mid-to-late April, after the Form 5278's are transferred to the State from the local unit assessors.

**Why do I have to wait to complete my ESA specific registration?**

The shared secrets which are part of the ESA registration are based upon information contained in the Form 5278 and therefore cannot be created until those forms are transmitted to the State.

**Will there be multiple users from one company and can all users see the information in MTO? Will they all have different passwords?**

A company can allow multiple registrants to have an MTO business relationship with ESA. Each user would have their own password.

**Is there anything I need to know if I'm using E-File?**

The electronic *Statement* must be signed by an authorized person, the Electronic Return Originator (ERO), if applicable, as well as any paid tax preparer. The *Statement* must be signed using Form MI-5352 (*E-file Authorization for the Essential Services Assessment (ESA) MI-5352*). Returns are signed by entering the taxpayer PIN in the software after reading the perjury statement displayed in the software. The taxpayer

PIN will be selected by the taxpayer, or the taxpayer may authorize his or her tax preparer to select the taxpayer PIN. The MI-5352 will be printed and contain the taxpayer PIN. The tax preparer will retain Form MI-5352 in his or her records as part of the taxpayer's printed return. ESA e-filings submitted without a taxpayer PIN will be rejected by Treasury.

**Do not** mail Form MI-5352 to Treasury.

**Do not** include Form MI-5352 as an attachment to a return.

A "Tax Preparer Handbook for Electronic Filing Programs" as well as more information, program updates and a list of approved software developers is available on the Treasury web site at [www.Mlfastfile.org](http://www.Mlfastfile.org).

**Can a taxpayer use a Social Security number if they do not have a FEIN?**

No. A taxpayer must have a valid Federal Employer Identification Number to file an ESA affidavit and statement. MCL 211.1053(a).

**What if a taxpayer is a sole proprietor and does not have a FEIN?**

An FEIN is required in order to file for ESA. FEIN's can be obtained at no cost from the Internal Revenue Service.

**When is my payment due?**

An eligible claimant is required to make payment in full, by using MTO or Electronic Funds Transfer (EFT) credit, by August 15 without penalty. Payments **cannot** be mailed to the Department of Treasury.

**Can taxpayers make one payment on the FEIN level?**

Yes. Taxpayers will be allowed to pay their ESA *Statements* on either MTO or E-File. Those systems allow taxpayers to pay their parcels at the FEIN level.

**Is there a late payment provision?**

An eligible claimant can pay the ESA tax by using MTO or Electronic Funds Transfer (EFT) credit with penalty no later than October 15.

**What if I don't certify my *Statement* or make payment in full by August 15?**

An eligible claimant who fails to submit a certified *Statement* and pay ESA in full via MTO or e-file by August 15 shall be subject to late penalty at a rate of 1% per week, up to a maximum of 5%, of the total amount due and unpaid. For an eligible claimant's first assessment year, the penalty shall be waived if the *Statement* and full payment are submitted by September 15.

**What if I don't certify my *Statement* or make payment by October 15?**

Eligible claimants who fail to submit a certified *Statement* and pay ESA in full by October 15 via MTO or e-file shall be subject to rescission of their personal property tax exemption. More information on appeals and rescission can be found in the appeals section below.

### **Is there any provision for a penalty waiver?**

For the eligible claimant's first assessment year, the penalty shall be waived if the eligible claimant submits the *Statement* and full payment of the assessment levied by September 15 of the tax year.

## **Calculation of the Tax**

### **How much is the ESA tax?**

The ESA tax is calculated by multiplying the acquisition cost of the eligible personal property by the following millage based upon the year the property was first placed into service:

- Multiply the acquisition cost by 2.4 mills if the property was placed into service 1 to 5 years before the assessment year
- Multiply the acquisition cost by 1.25 mills if the property was placed into service 6 to 10 years before the assessment year
- Multiply the acquisition cost by 0.9 mills if the property was placed into service more than 10 years before the assessment year

### **Is there anything I can do to reduce my ESA tax?**

As described above, the acquisition cost reported is reduced for certain IFT Certificates. Property located in a Renaissance Zone is 100% exempt from ESA until the three (3) years immediately preceding the expiration of the exemption of that personal property. During the last 3 years, the acquisition cost of the personal property is multiplied by the percentage reduction as outlined by MCL 125.2689.

Additionally, the Michigan Strategic Fund Board (MSF) may adopt a resolution to exempt from the assessment under this act eligible personal property (Alternative ESA).

### **What is the Alternative Essential Services Assessment?**

Like ESA, the Alternative Essential Services Assessment is a state-specific tax on the eligible personal property owned by, leased to, or in the possession of an eligible claimant on December 31 of the year immediately preceding the assessment year. An eligible claimant may be exempt from ESA and would instead qualify for the Alternative Essential Services Assessment if the board of the Michigan Strategic Fund adopts a resolution to exempt the eligible claimant from ESA and instead states the eligible personal property is subject to assessment under the Alternative Essential Services Assessment.

### **How much is the Alternative Essential Services Assessment tax?**

The Alternative Essential Services Assessment is calculated by multiplying the acquisition cost of the eligible personal property by the following millage based upon the year the property was placed into service:

- Multiply the acquisition cost by 1.2 mills if the property was placed into service 1 to 5 years before the assessment year
- Multiply the acquisition cost by 0.625 mills if the property was placed into service 6 to 10 years before the assessment year

- Multiply the acquisition cost by 0.45 mills if the property was placed into service more than 10 years before the assessment year

**Is there a minimum investment required to be eligible for the exemption?**

An eligible claimant shall present a business plan or demonstrate that a minimum of \$25,000,000.00 will be invested in additional eligible personal property in this state during the duration of the written agreement.

**Are there other statutory requirements to be exempt by the MSF Board?**

Statute requires that the MSF Board consider the following criteria when approving an exemption:

- (a) Out-of-state competition.
- (b) Net-positive return to this state.
- (c) Level of investment made by the eligible claimant.
- (d) Business diversification.
- (e) Reuse of existing facilities.
- (f) Near-term job creation or significant job retention as a result of the investment made in eligible personal property.
- (g) Strong links to Michigan suppliers.
- (h) Whether the project is in a local unit of government that contains an eligible distressed area as that term is defined in section 11 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1411.

**Is it possible to receive the MSF exemption and immediately affect my ESA tax?**

An exemption is effective in the assessment year immediately succeeding the year in which the fund board adopts the resolution.

**RESCISSION AND APPEAL RIGHTS**

**Where can a taxpayer appeal a denial of exemption made by the assessor?**

Taxpayers who timely and properly file Form 5278 may appeal a denial of the exemption to the March Board of Review.

In the case of a qualified error as defined in MCL 211.53b, an appeal may also be made to the July Board of Review or December Board of Review. The July or December Board of Review may not hear an appeal of a denial of the exemption from the March Board of Review.

**If I disagree with my assessor’s assessment, can I skip the March Board of Review and appeal to the Tax Tribunal?**

No. Although industrial and commercial taxpayers need not appeal a real property assessment to the March Board of Review, that exception does not apply to this exemption and ESA.

**I did not certify my ESA *Statement* and did not pay my ESA tax by October 15, what happens now?**

For any assessment year in which an eligible claimant does not submit payment in full and any penalty due by October 15, the State Tax Commission (STC) shall issue an order to rescind no later than the first Monday in December for the assessment year: any exemption described in section 9m or 9n of the general property tax act, any exemption under section 9f of the general property tax act which was approved after 2013, any extended exemption for eligible personal property under section 9f(8)(a) and any exemption for eligible personal property subject to an extended industrial facilities exemption certificate.

**What happens after the STC issues an order to rescind?**

The eligible claimant must file with the assessor of the township or city within 30 days of the date of the STC order to rescind a personal property statement, for all property for which the exemption has been rescinded under this section.

Within 60 days of an order of rescission by the STC, the treasurer of the local tax collecting unit shall issue amended tax bills for any taxes, including penalty and interest, that were not billed under the general property tax act and that are owed as a result of the order of rescission.

**Can I appeal the rescission decision?**

An eligible claimant may appeal a rescission to the STC by filing a petition not later than December 31 in that tax year.

An eligible claimant may appeal a rescission, as a result of an audit by filing a petition with the STC within 30 days of the date of that assessment's issuance.

Any eligible claimant may appeal the determination of the STC to the Michigan Tax Tribunal within 35 days of the date of the determination.

**Can I appeal my ESA tax or penalty?**

An eligible claimant may appeal an assessment levied or a penalty to the STC by filing a petition not later than December 31 in that tax year.

An eligible claimant may appeal an assessment issued, including penalties or interest as a result of an audit conducted by filing a petition with the STC within 30 days of the date of that assessment's issuance.

Any eligible claimant may appeal the determination of the State Tax Commission to the Michigan Tax Tribunal within 35 days of the date of the determination.