

State Tax Commission



Assessor Guide to Eligible Manufacturing Personal Property Tax Exemption and ESA

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Introduction:

“I’ve heard Business Personal Property Taxes are all being eliminated”, is one of the most frequently asked questions received by the STC. While significant changes to Business Personal Property Taxes began 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 ½ of personal property from ad valorem 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 identified a replacement specific tax on personal property, Essential Services Assessment (ESA) and reimbursement for local units lost revenue.

This Guide will focus on detailed information that assessors need to know about the Eligible Manufacturing Personal Property Tax Exemption, ESA, and Special Act changes and will provide resource material and contact information. The Small Business Taxpayer Exemption will not be covered in this material; the Guide to the Small Business Taxpayer Exemption can be found on the PPT website at www.michigan.gov/ppt.

Additionally, the local unit reimbursement will not be covered in this guide. More information on the local unit reimbursement can be found on the PPT website at www.michigan.gov/ppt under personal property tax information, personal property tax reimbursement.

Statutory Review:

MCL 211.9m and MCL 211.9n provide the statutory authority for the Eligible Manufacturing Personal Property Tax Exemption. ESA statutory authority is contained in P.A. 92, which will be covered in a separate section.

MCL 211.9m and MCL 211.9n are essentially identical except for the “type” of personal property they exempt.

MCL 211.9m exempts Qualified New Personal Property. Qualified New Personal Property is defined as 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).

Effectively this means any eligible manufacturing personal property placed in service in 2013 and after is exempt from ad valorem personal property taxation and subject only to the ESA.

MCL 211.9n exempts Qualified Previously Existing Personal Property. Qualified Previously existing personal property means 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).

Effectively this means that in 2016, EMPP placed in service in 2005 and earlier is exempt from ad valorem personal property taxation and subject only to the ESA. In 2017, EMPP placed in service in 2006 and earlier is exempt from ad valorem personal property taxation and subject only to the ESA.

This phase in of the exemption continues with all new EMPP placed in service being exempt and all existing EMPP phasing into exempt status each year beginning with 2005 and working up to EMPP placed in service in 2012 becoming exempt by 2023. In 2023, all EMPP will be exempt.

Please see the following phase out chart:

Personal Property Phase Out Chart						
					October 22, 2015	
Tax Year	Exempt and Subject to ESA	Pays Ad Valorem		Tax Year	Exempt and Subject to ESA	Pays Ad Valorem
Tax Year 2016	2015			Tax Year 2017	2016	
	2014				2015	
	2013				2014	
		2012			2013	
		2011				2012
		2010				2011
		2009				2010
		2008				2009
		2007				2008
		2006				2007
	2005 and Earlier				2006 and Earlier	
Tax Year	Exempt and Subject to ESA	Pays Ad Valorem		Tax Year	Exempt and Subject to ESA	Pays Ad Valorem
Tax Year 2018	2017			Tax Year 2019	2018	
	2016				2017	
	2015				2016	
	2014				2015	
	2013				2014	
		2012			2013	
		2011				2012
		2010				2011
		2009				2010
		2008				2009
	2007 and Earlier				2008 and Earlier	

Tax Year	Exempt and Subject to ESA	Pays Ad Valorem		Tax Year	Exempt and Subject to ESA	Pays Ad Valorem
Tax Year 2020	2019			Tax Year 2021	2020	
	2018				2019	
	2017				2018	
	2016				2017	
	2015				2016	
	2014				2015	
	2013				2014	
		2012			2013	
		2011				2012
		2010				2011
	2009 and Earlier				2010 and Earlier	
Tax Year	Exempt and Subject to ESA	Pays Ad Valorem	After 2023, All Eligible Personal Property is subject to the ESA Specific Tax			
Tax Year 2022	2021					
	2020					
	2019					
	2018					
	2017					
	2016					
	2015					
	2014					
	2013					
		2012				
	2011 and Earlier					

Key to the definition of both Qualified New Personal Property and Qualified Previously Existing Personal Property is that both must be Eligible Manufacturing Personal Property.

Eligible Manufacturing Personal Property (EMPP) is statutorily defined as all personal property located on occupied real property if that personal property is predominantly used in industrial processing or direct integrated support. Let's examine in more detail each component of the definition of EMPP beginning with the definition of *occupied real property*.

Occupied Real Property is defined in MCL 211.9m as all of the following: (i) A parcel of real property that is entirely owned, leased, or otherwise occupied by a person claiming an exemption under section 9m or 9n. (ii) Contiguous parcels of real property that are entirely owned, leased, or otherwise occupied by a person claiming an exemption under section 9m or 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. Contiguity is not broken by a boundary between local tax collecting units, a road, a right-of-way, or property purchased or taken under condemnation proceedings by a public utility for power transmission lines if the 2 parcels separated by the purchased or condemned property were a single parcel prior to the sale or condemnation. As used in this subparagraph, "single, integrated business operation" means a company that combines 1 or more related operations or divisions and operates as a single business unit. (iii) The portion of a parcel of real property that is owned, leased, or otherwise occupied by a person claiming the exemption section 9m or 9n or by an affiliated person.

To this point, we have covered that in order to be eligible to receive the exemption, EMPP must have been placed in service in 2013 and later or more than 10 years before the current year, for example in 2017 that would include EMPP placed in service in 2006 and earlier.

The personal property must be located on an occupied real property parcel, which is a parcel or part of a parcel owned or leased or occupied by the person claiming the exemption or contiguous parcels. That property must be predominantly used in industrial processing or direct integrated support. Please note: the classification of the property is not a determining factor in eligibility for the exemption. Nor is the fact that the personal property may be located in an industrial district or subject to an IFT.

Industrial Processing is defined in MCL 211.9M as: that term as defined in 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. Industrial processing does not include the generation, transmission, or distribution of electricity for sale. MCL 205.54t and MCL 205.94o both contain the same definition of industrial processing and indicates that industrial processing includes the following activities:

- 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 materials 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.

For a more detailed definition of industrial processing and exclusions please review:

RAB 2000-4: http://www.michigan.gov/documents/rab-2000-4_108793_7.pdf and

MCL 205.54t:
[http://www.legislature.mi.gov/\(S\(l2ybk4njhsrfjyuikfljxyc\)\)/documents/mcl/pdf/mcl-205-54t.pdf](http://www.legislature.mi.gov/(S(l2ybk4njhsrfjyuikfljxyc))/documents/mcl/pdf/mcl-205-54t.pdf)

Direct Integrated Support is defined in MCL 211.9m as any of the following:

- (i) Research and development related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
- (ii) Testing and quality control functions related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
- (iii) Engineering related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
- (iv) 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.
- (v) 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 business that produced the inventory.
- (vi) Sorting, distributing, or sequencing functions that optimize transportation and just-in-time inventory management and material handling for inputs to industrial processing.

These activities do not have to occur on the same site as the industrial processing nor do they have to be conducted by a related entity.

The final key piece of the definition is that the personal property located on occupied real property is **predominantly used** in industrial processing or direct integrated support. The determination of predominant use is a mathematical calculation. Property is determined to be predominantly used 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, 9m, 9n, and 9o 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, 9m, 9n, and 9o that is located on that occupied real property and that is not construction in progress.

A graphic representation of this formula is:

<p>Personal Property Original Cost on occupied real property times the percentage of use in industrial processing or direct integrated support</p> <p>-----Divided by-----</p> <p>Personal Property Original Cost on occupied real property</p>
--

For this calculation:

Personal property includes all taxable personal property, personal property exempt under IFT (211.7k), exempt special tooling (211.9b), exempt under PA 328 (211.9f), exempt under the Small Business Taxpayer Exemption (211.9o) and exempt as EMPP under MCL 211.9m and 211.9n. Subtract the cost of construction in progress.

Original Cost means the fair market value of personal property at the time of acquisition by the first owner.

Example 1: Sample 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
Machine 4	GPTA Taxable	\$150,000	100%	\$150,000
Totals		\$1,785,000		\$1,461,000
\$1,461,000 divided by \$1,785,000 = 82%				

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 for the EMPP exemption and be subject to ESA.

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.

Example 2: Contiguous Properties

Combining the EMPP calculation for contiguous parcels involved in a single integrated business operation can expand the exemption to parcels that would not qualify on their own.

For example 3 contiguous parcels that host a single integrated business operation:

Parcel A: Total Eligible Cost \$12 M divided by Total Original Cost \$15 M = 80%

Parcel B: Total Eligible Cost \$1 M divided by Total Original Cost \$5 M = 20%

Parcel C: Total Eligible Cost \$10 divided by Total Original Cost \$12M = 83%%

Combined = Total Eligible Cost \$23 M divided by Total Original Cost \$32 M = 72%

Therefore, personal property on all three parcels would qualify for the exemption.

For personal property that is construction in progress and part of a new facility not in operation, EMPP means all personal property that is part of that new facility if that personal property will be *predominantly used in industrial processing* when the facility becomes operational.

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 that is placed on *occupied real property* solely to qualify the personal property for an exemption under 9m or 9n is not EMPP.

Utility personal property as described in section 34c(3)(e) and personal property used in the generation, transmission, or distribution of electricity for sale are not eligible manufacturing personal property.

Assessors are responsible for the determination that personal property meets the definition in order to be exempt. Due to the number of variables involved in the definition to qualify for the exemption, the State Tax Commission or the Department of Treasury cannot provide a determination that any individual entity or "type" of business would qualify for the exemption.

Claiming the Exemption, Review of Form 5278:

Taxpayers claim the exemption by filing Form 5278 *Eligible Manufacturing Personal Property Exemption Claim, Personal Property Statement, and Report of Fair Market Value of Qualified New and Previously Existing Personal Property (Combined Document)* with the local unit where the personal property is located no later than February 20th. The February 20th date will move to the next business day when February 20th falls on a weekend or a holiday. Form 5278 must be postmarked on or before February 20th.

Form 5278 contains three parts: Part 1, Form to Claim the Exemption, Part 2, Personal Property Statement and Part 3, Report of Fair Market Value of Qualified New and Previously Existing Personal Property. Together these three parts form the Combined Document.

Assessors must review the combined document carefully and in particular should pay attention to the following:

Form 5278 Part 1:

- The form must be signed and dated.
- Taxpayer name must be provided.
- The personal property number must be correct, and the information provided match the information contained in your records.
- The form must contain a nine-digit FEIN number in the following format: XX-XXXXXXX.
- Was a separate Form 5278 filled out for each personal property parcel number? This is particularly important when there is an IFT or PA 328 exemption on the same real property parcel. Assessors should have established for 2016 a separate personal property parcel number for IFT Personal Property, PA 328 Personal Property and Ad Valorem Personal Property even if located on the same real property parcel. Failure to do so could result in incorrect calculation of the Ad Valorem Tax and/or ESA Tax that is due for that Personal Property.

If a form is filed without the FEIN, parcel number, if the taxpayer name is not provided or if the form was not signed and dated, then the form is not considered fully complete and should be denied. The STC strongly recommends that assessors contact taxpayers who have not fully completed Part 1 in an effort to obtain the missing information before issuance of a denial.

Please note that pursuant to statutory authority an electronic or facsimile signature may be used on Form 5278.

Form 5278 Part 2: This part of the Combined Document mirrors the personal property statement; however it contains reporting only for the non-exempt years. For example, in 2017 taxpayers will report EMPP placed in service in 2007 through 2012 in Part 2 of the Combined Document. As with the personal property statement, taxpayers must include any “other” forms that they would normally file with their personal property statement.

These “other forms” include:

- Form 633 Electric Distribution Cooperative Personal Property Statement
- Form 3589 Cable Television and Utility Personal Property Report
- Form 4565 Wind Energy System Report
- Form 2698 Idle Equipment, Obsolete Equipment and Surplus Equipment Report
- Form 4452 Cellular (Wireless) Site Equipment Personal Property Report
- Form 4798 Automotive Manufacturing Equipment Personal Property Report

It is important to note that these forms should only include the non-exempt years. For example, in 2017, taxpayers should only report on these additional forms, EMPP placed in service in 2007 through 2012. Assessors should ensure that EMPP reported on these additional forms includes only the non-exempt years and all other years are reported on Part 3 of the Combined Document.

There are a few minor differences between the personal property statement and Form 5278. For example, Sections C and H from the personal property statement are not included on Form 5278. This is because the years that were included in those sections are now all “exempt” years.

Exempt special tooling retains their specific exemption under MCL 211.9b and MCL 211.9d. As a reminder, there are very few tools that fall into the exempt special tools category. Tooling that was previously reported in Section H will either now be exempt and subject to ESA and reported in Part 3 (in 2017 this would include year’s 2013, 2014, 2015 or 2016 and 2006 and prior) or be reported in Part 2 (in 2017 for years 2007 through 2012) in the corresponding table, we suggest using Table B.

Finally, construction in progress has been removed from Part 2 of the Form. In almost all cases, construction in progress would apply only to the immediately preceding year and two prior years. In the case of Form 5278, those years are all “exempt” years and are reported in Part 3 only.

As with Ad Valorem personal property statement filings, assessors should compare prior year(s) reporting to information reported on Form 5278 to ensure that the information filed appears accurate and complete. If the information filed on the Combined Document does not correspond with information previously filed, the assessor should contact the taxpayer to discuss the information filed to ensure the information filed on the Combined Document is accurate.

Form 5278 Part 3: This part of the Combined Document is the required Report of Fair Market Value of Qualified New and Previously Existing Personal Property. Taxpayers will begin by answering four questions regarding IFT’s, PA 328 Exemptions, Renaissance Zones and MSF Resolutions.

Finally, the taxpayers will report the Acquisition Cost of EMPP for the “exempt” years (in 2018 this will include 2013, 2014, 2015, 2016 and 2017 and 2007 and prior), with an exception related to extended IFT’s and PA 328 exemptions which will be covered in detail in a later section.

If a taxpayer includes an incorrect certificate number in any of these sections, assessors are asked to contact the taxpayer to correct the filing and ensure proper reporting and transmittal of information to the State of Michigan.

Some taxpayers may file Form 5278 when they have no property that is required to be reported on Part 3. This may be done in an effort to provide information to the assessor that this property qualifies for the exemption and will be subject to ESA at some future date. To that end, a checkbox has been included at the top of Part 3 for those taxpayers to indicate they have no current ESA liability for the personal property reported on the form.

Assessors are asked to review the following specific information in Part 3:

- IFT Certificate Number to ensure that is a valid certificate number, related to personal property within your local unit. Additionally, the format of the number must be verified to ensure it is in the correct format. IFT certificate numbers should follow the format of Year (4 digits) – Number (3 digits). Some certificate may end with a letter, but not all will contain this alpha character. Example Certificate Number: 2012-177.

Assessors are also asked to verify the certificate begin and end date. As will be covered in a later section, the ESA Tax is reduced for some specific IFT certificates. The determination of qualification for that reduction is based on the effective dates of the certificate. Taxpayers are instructed to attach a copy of their certificate to make verification of this information easier for assessors.

- PA 328 Certificate Number to ensure that is a valid certificate number, related to personal property within your local unit. Additionally, the format of the number must be verified to ensure it is in the correct format. PA 328 certificate numbers should follow the format of Number (3 digits) - Year (4 digits). Example Certificate Number: 159-2012.

Assessors are also asked to verify the certificate begin and end date. Taxpayers are instructed to attach a copy of their certificate to make verification of this information easier for assessors.

- MSF Certificate for Alternative ESA to ensure that is a valid certificate number, related to personal property within your local unit. Additionally, the format of the number must be verified to ensure it is in the correct format. MSF Alternative ESA certificate numbers should follow the format of Year (4 digits) – Number (3 digits). Example Certificate Number: 2016-001.

Assessors should note that MSF Certificates for Alternative ESA will be issued beginning in 2016. The certificate is not effective for Alternative ESA until the year following the issuance. Therefore, in 2018 only those certificates issued in 2016 or 2017 will qualify for Alternative ESA.

Assessors are also asked to verify the certificate begin and end date. Taxpayers are instructed to attach a copy of their certificate to make verification of this information easier for assessors.

- Assessors are asked to verify the Renaissance Zone name and Expiration Date to ensure that both are correct and that the information entered reflects a valid Renaissance Zone related to personal property within your local unit.
- Assessors should review the information regarding the acquisition cost and years placed in service, comparing this information to what has been previously filed by this taxpayer on their personal property statement. If the information filed on the Combined Document does not correspond with information previously filed, the assessor should contact the taxpayer to discuss the information filed to ensure the information filed on the Combined Document is accurate.

Transmitting Information to the State of Michigan:

Following review and verification, assessors are required to enter the information contained on Form 5278 into their computer assisted mass appraisal (CAMA) software. All information contained on the Form should be entered into the CAMA software, as submitted by the taxpayer or as amended after discussions with the taxpayer as referenced above.

Assessors should double check to ensure accuracy of the data entered, specifically: FEIN, Parcel Number, Taxpayer Name, Certificate Numbers and Acquisition Cost.

Assessors are statutorily required to transmit the information contained in the Combined Document no later than April 1 each year.

Information will be provided to assessors annually on how the information contained in Form 5278 is to be transmitted to the State of Michigan via the CAMA software. Information will also be provided annually to those assessing officers who do not use CAMA software on how to transmit Form 5278 directly to the State of Michigan.

Common Errors:

1. Skipping a line when entering acquisition cost. For example, entering 2014 values in 2015, 2013 in 2014, etc. Assessors should be mindful of the inclusion of the Construction in Progress line, which is not present on the 632 and has resulted in many instances of misreported acquisition costs.

2. Missing information that was reported on Form 5278 when transmitting the information to the Department of Treasury. If the information has been included on the Form 5278, it should be forwarded.
3. Failing to submit the information from Form 5278 to the Department of Treasury or failing to timely submit the information from Form 5278 to the Department of Treasury. Filing Form 5278 is just part of the EMPP exemption, taxpayers have to pay ESA and in order to generate a statement the assessor must timely transmit the information to the Department of Treasury *as required by statute (MCL 211.9m(2)(f))*.
4. The parcel entered by the taxpayer in MTO or e-file does not match the parcel number submitted by CAMA software, requiring the taxpayer to reference previous personal property assessment notices or to contact the assessor. Taxpayers are unable to register for MTO if the number entered does not match exactly what was reported by the assessor in their CAMA software.
5. Taxpayer must enter the parcel number in the exact format utilized by and uploaded through the CAMA software. If the taxpayer reports dashes or spaces or differently that is entered in the CAMA software, the taxpayer will encounter difficulties when they try to register to view their statement in MTO.
6. Incorrect FEINs. FEINs are nine digits long in the format XX-XXXXXXX (entered into CAMA software without the dash). If a taxpayer submits Form 5278 with an FEIN that is longer or shorter, the assessor should contact the taxpayer to obtain the correct FEIN.
7. Changing values reported by the taxpayer in Part 3. While assessors should verify that the value entered in Part 3 correspond to prior year reporting, it is important that those values are not changed without notification to and discussion with the taxpayer. Taxpayers are able to update these values themselves when logging into MTO. If the assessor changes values without taxpayer notification and input, it may cause a problem with the taxpayer gaining access to their electronic statement.
8. Reporting incomplete 5278s to the Department of Treasury. Missing fields sometimes affect Treasury's ability to generate a statement. For example, if there is no FEIN, the department cannot apply a parcel to a taxpayer's account. As a reminder, taxpayers can amend an incomplete 5278 by appealing an assessor's denial of the Form when it is once filed. If a taxpayer does not appeal the denial of an incomplete form, there is no recourse available to grant the EMPP.
9. Reporting values in the wrong *part* of Form 5278. Property placed in service in 9m/9n years (and any property subject to an extended IFT or P.A. 328) is reported in Part 3. Property placed in service during phase-in years is reported in Part 2.

10. Reporting values for the same year in *both parts* of Form 5278, unless that property is subject to an extended IFT. In effect, this will result in a taxpayer being taxed at both the local and state levels for the same property. Taxpayers with an extended IFT pay both the IFT Specific Tax and the ESA Specific Tax, therefore they are required to report values in both Parts 1 and 2 of the form.
11. Incorrect certificate format. Assessors should verify that the certification number is valid, entered into the correction section (IFT in IFT and 328 in 328) and the correct format is used: IFT is YYYY-### and 328 is ###-YYYY.

Denials, Appeals, Amended Forms, Misplaced/Missed Forms, Late Filings and the 154 Process

The appeal and denial process for the exemption is detailed in MCL 211.9m:

The combined document prescribed in this section, shall be completed and delivered to the assessor of the township or city in which the qualified new personal property is located by February 20 of each year. However, if February 20 of a year is a Saturday, Sunday, or legal holiday, the delivery deadline for that year is the next day that is not a Saturday, Sunday, or legal holiday. For purposes of a combined document delivered by the United States Postal Service, the delivery is timely if the postmark date is on or before the delivery deadline prescribed in this subdivision. If the combined document prescribed in this section is not timely delivered to the assessor of the township or city, a late application may be filed directly with the March board of review before its final adjournment by submitting the combined document prescribed in this section. The board of review shall not accept a filing after adjournment of its March meeting. An appeal of a denial by the March board of review may be made by filing a petition with the Michigan tax tribunal within 35 days of the denial notice.

If the assessor of the township or city believes that personal property for which the form claiming an exemption is timely filed each year under subsection (2)(c) is not qualified new personal property or the form filed was incomplete, the assessor may deny that claim for exemption by notifying the person that filed the form in writing of the reason for the denial and advising the person that the denial shall be appealed to the board of review under section 30 by filing a combined document as prescribed under subsection (2). If the denial is issued after the first meeting of the March board of review that follows the organizational meeting, the appeal of the denial is either to the March board of review or the Michigan tax tribunal by filing a petition and a completed combined document as prescribed under subsection (2), within 35 days of the denial notice. The assessor may deny a claim for exemption under this subsection for the current year only. If the assessor denies a claim for exemption, the assessor shall remove the exemption of that personal property and amend the tax roll to reflect the denial and the local treasurer shall within 30 days of the date of the denial issue a corrected tax bill for any additional taxes.

Let's review in detail each component of the statutory requirement.

First, if an assessor believes that a property does not qualify for the exemption or if the form is filed incomplete, then the assessor must deny that claim for exemption. As discussed earlier, if a form is filed without the FEIN, taxpayer name, parcel number or if it was not signed and dated, then the form is not considered fully complete and should be denied. However, the STC strongly recommends that assessors communicate with taxpayers who have not fully completed Form 5278 in an effort to obtain the missing information before issuance of a denial.

Denials are issued for the current year only. Denials must be issued in writing and should be issued as soon as possible in order to afford the taxpayer all available rights of appeal.

If the written denial is issued prior to the first meeting of the March Board of Review that follows the organizational meeting, the taxpayer must appeal to the March Board of Review by filing a completed Combined Document (Form 5278).

If the written denial is issued by the assessor after the first meeting of the March Board of Review that follows the organizational meeting, then the taxpayer may appeal to the March Board or they may appeal directly to the Michigan Tax Tribunal. Taxpayers would appeal directly to the Michigan Tax Tribunal by filing a petition within 35 days of the issuance of a denial.

March Board of Review Authorities:

The March Board of Review has the authority to hear the denial of an exemption by the assessor or to review a late filed Form 5278. This also includes denial due to the filing of an incomplete Form 5278. If the taxpayer presents a fully completed Form 5278 to the March Board of Review and the Board believes the property meets the exemption requirements, then the Board may grant the exemption, again this includes a late filed form.

The March Board of Review also has the authority to review and accept an amended filing by the taxpayer as long as the taxpayer properly claimed the exemption by timely and completely filing Form 5278.

Finally, taxpayers who do not timely file by February 20th may claim the exemption by filing directly with the March Board of Review. The March Board of Review should grant the exemption if the taxpayer meets all other statutory requirements.

Late filing with the March Board of Review may require an in-person appearance by the taxpayer or their representative. Taxpayers should contact the local unit where the personal property is located for more information. MCL 211.30 indicates:

A **nonresident taxpayer** may file his or her appearance, protest, and papers in support of the protest by letter, and his or her personal appearance is not required.

The governing body of the township or city may authorize, by adoption of an ordinance or resolution, **a resident taxpayer** to file his or her protest before the board of review by letter without a personal appearance by the taxpayer or his or her agent. If that ordinance or resolution is adopted, the township or city shall include a statement notifying taxpayers of this option in each assessment notice under section 24c and on each notice or publication of the meeting of the board of review.

If the March Board of Review approves the exemption, the Board is statutorily required to remove the personal property from the assessment roll and the Board of Review shall file an affidavit with the proper officials involved in the assessment and collection of taxes and all affected official records shall be corrected.

Taxpayers appeal a denial by the March Board of Review directly to the Michigan Tax Tribunal.

July or December Board of Review Authorities:

The July and December Boards of Review **have no authority** over the exemptions in MCL 211.9m or MCL 211.9n.

If an assessor misplaces or missed a timely filed Form 5278, that **is not** considered a clerical error or mutual mistake and cannot be considered by the July or December Board of Review.

A taxpayer who filed Form 632 and later believe they qualify for the exemption cannot appeal to the July or December Board of Review. Failure to properly claim the exemption **is not** a qualified error under MCL 211.53b.

Amended Forms:

Assessors are encouraged to work with taxpayers regarding any missing information on Form 5278 and any concerns that the assessor may have regarding the accuracy of reported acquisition cost.

An assessor may accept an amended form from a taxpayer up until they turn their assessment roll over to the March Board of Review.

The March Board of Review also has the authority to review and accept an amended filing by the taxpayer as long as the taxpayer properly claimed the exemption by timely and completely filing Form 5278.

Misplaced or Missing Forms:

The ESA unit is frequently contacted by taxpayers who, once they log into their electronic statement, find a parcel or parcels missing for which they timely and completely filed Form 5278 with the proper local unit. When contacted, the assessor may determine that the Form was timely filed but was misplaced or is missing.

The assessor has no authority following submission of their assessment roll to the March Board of Review to grant the exemption. At the point that the taxpayer timely filed for the exemption and the assessor did not change their assessment roll to reflect that exemption, the assessor has effectively denied the exemption and the taxpayer should appeal to the Michigan Tax Tribunal.

Late Filed Forms:

Taxpayers claim the exemption by filing Form 5278 *Combined Document* with the local unit where the personal property is located no later than February 20th. The February 20th date will move to the next business day when February 20th falls on a weekend or a holiday, postmark is acceptable.

Forms that are received or postmarked after the due date should not be accepted, however the taxpayer should immediately be notified that they may file directly with the March Board of Review to claim the exemption (see March Board of Review authorities on page 16). If the taxpayer meets all other statutory requirements for the exemption, the Board of Review should grant the exemption.

MCL 211.154 Petitions

The MCL 211.154 process can be used in a few limited instances to correct issues with Part 2 (Ad Valorem) Reporting from Form 5278.

The first situation is to correct an error in failing to extend an IFT Certificate. MCL 207.561a indicates in part:

If a facility was subject to an industrial facilities exemption certificate on or after December 31, 2012, notwithstanding any other provision of this act to the contrary, that portion of the facility that is eligible manufacturing personal property shall remain subject to the industrial facilities tax and shall remain exempt from ad valorem property taxes as provided in section 8 until that eligible manufacturing personal property would otherwise be exempt from the collection of taxes under section 9m, 9n, or 9o of the general property tax act.

Following statute, the assessor should have extended any IFT that was in effect on or after December 31, 2012 and would expire before the personal property on that IFT becomes exempt under MCL 211.9m or MCL 211.9n. For example: An IFT was approved effective December 31, 2007 with an expiration date of December 30, 2017. The personal

property was placed in service in 2008 and 2009. Because personal property placed in service in 2009 will not be exempt until 2020, the IFT will be extended from 2017 until 2020.

The second situation is when an assessor extended an IFT Certificate under the presumption that the taxpayer was going to claim the exemption, however the taxpayer does not file Form 5278 to claim the exemption.

Example: An IFT was approved effective December 31, 2010 with an expiration date of December 30, 2014. The personal property was placed in service in 2010. Because personal property placed in service in 2010 will not be exempt until 2021, the assessor extended the IFT from 2014 until 2021. The taxpayer filed Form 5278 in both 2016 and 2017 but, did not file in 2018 to claim the exemption. At that point, the assessor is placed on notice that the IFT should not have been extended and should place the property on the Ad Valorem roll for the 2018 year.

The third situation is when a change is made in Part 3 of the ESA statement that would affect the Ad Valorem reporting in Part 2 of the statement. This may occur because the information transmitted to the Department included years that do not qualify for exemption under 9m or 9n – in which case a *Combined Document (Form 5278) Reporting Error* will be issued upon ESA Statement generation – or if the taxpayer removes from their ESA Statement, value for property placed in service during the non-eligible years.

Example: A taxpayer logs into MTO in 2018 and realizes they accidentally reported 2008 and 2009 personal property in Part 3 on the 2015 line. They make the change in MTO to reduce the 2015 line in Part 3. A notice is sent to the assessor after September 15th, indicating the taxpayer reduced their Part 3 filing and why. The assessor should immediately file a MCL 211.154 petition to return the 2008 and 2009 property to the Ad Valorem roll for the 2018 year. **Please note:** the July and/or December Boards of Review would no authority to make the change to the 2018 roll.

More information on the MCL 211.154 Petition process is available at www.michigan.gov/taxes.

Essential Services Assessment (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). Essentially, ESA is a specific tax replacement for the Ad Valorem personal property tax for exempt personal property.

As indicated in the statutory definition, personal property subject to ESA is defined as *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:
 1. The application for the 328 exemption under MCL 211.9f was filed before August 5, 2014, and
 2. 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).

The calculation of the ESA specific tax is relatively simple. MCL 211.1055 indicates:

1. Beginning January 1, 2016, the state essential services assessment is levied on all eligible personal property as provided in this section.
2. The assessment under this section 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 and shall be calculated as follows:
 - a. For eligible personal property acquired by the first owner in a year 1 to 5 years before the assessment year, multiply the acquisition cost of the eligible personal property by 2.4 mills.
 - b. For eligible personal property acquired by the first owner in a year 6 to 10 years before the assessment year, multiply the acquisition cost of the eligible personal property by 1.25 mills.
 - c. For eligible personal property acquired by the first owner in a year more than 10 years before the assessment year, multiply the acquisition cost of the eligible personal property by 0.9 mills.

The statute does contain some reductions in the ESA specific tax in certain circumstances:

1. The acquisition cost reported is reduced for EMPP subject to **IFT Certificates** that were in effect before January 1, 2013. Specifically, this eligible personal property that is exempt under MCL 211.9m or MCL 211.9n and was previously subject to the IFT certificate, will pay the ESA Specific Tax at $\frac{1}{2}$ the Fair Market Value at the time of acquisition by the first owner (Acquisition Cost) until that IFT Certificate

expires. More specific information will be provided on IFT certificates later in this Guide.

2. Personal Property located in a **Renaissance Zone** is 100% exempt (the acquisition cost is zero) 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 in a Renaissance Zone is multiplied by the percentage reduction as outlined by MCL 125.2689:
 - a. For the tax year that is 2 years before the final year of designation as a renaissance zone, the percentage shall be 25%.
 - b. For the tax year immediately preceding the final year of designation as a renaissance zone, the percentage shall be 50%.
 - c. For the tax year that is the final year of designation as a renaissance zone, the percentage shall be 75%.
3. MCL 211.1071 provides that the Michigan Strategic Fund Board (MSF) may adopt a resolution to exempt from the assessment eligible personal property and either make the property subject to the **Alternative ESA** (P.A. 93 of 2014, as amended) or to exempt the property from both ESA and the Alternative ESA. 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.

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

An eligible claimant must 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.

Statute also 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.
4. The Department may provide guidelines for circumstances in which the actual acquisition price is not determinative of acquisition cost and the basis of determining acquisition cost in those circumstances.

When the acquisition cost, year of acquisition by the first owner, or both are unknown, the Department may provide guidelines for estimating the acquisition cost and year of acquisition by the first owner. The Department may issue guidelines that allow for the reduction of acquisition cost for property that is idle, is obsolete or has material obsolescence, or is surplus.

To date, the Department has not issued guidance in these areas.

5. Beginning with the 2017 assessment year, for property that is **construction in progress**, "acquisition cost" means 1/2 of the fair market value at the time *acquired* by the first owner, including the cost of freight, sales tax, and installation.

In terms of reporting for ESA purposes, for property that is construction in progress, "acquired by" in the preceding definition, means the year the property is first reported on the Combined Document in Part 3.

ESA Due Dates:

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, any funds received via check will be refunded and not applied to the ESA account.

An eligible claimant who fails to submit a certified statement and electronically pay ESA in full via MTO or e-file by August 15 shall be subject to late penalty, assessed by the Department, at a rate of 3% per month or part of a month, up to a maximum of 27%, of the total amount due and unpaid.

For an eligible claimant's first assessment year, the penalty is waived by the Department if the statement is certified and full payment is submitted by September 15.

Eligible claimants who fail to submit a certified statement and pay ESA liability and late payment penalty in full by April 15th of the year immediately following the assessment year via MTO or e-file are subject to rescission of their eligible manufacturing personal property tax exemption. Should the eligible manufacturing personal property tax exemption be rescinded on property subject to an extended IFT or extended PA 328 exemption, the extended IFT or PA 328 exemption will be rescinded by the State Tax Commission.

If an ESA due date falls on a weekend or state holiday, the date will **not** change.

ESA Electronic System to Certify and Pay:

Once an eligible claimant has properly claimed the eligible manufacturing personal property tax exemption by filing the Form 5278 with the local unit assessor no later than February 20th and the assessor has transmitted the information contained in Form 5278 to the Michigan Department of Treasury, the Department of Treasury will create an *Electronic ESA Statement (Statement)* from the information contained in Form 5278. That *Statement* will be made available through Michigan Treasury Online (MTO) not later than May 1. Statements are not made available via paper form and are not sent directly to taxpayers.

Eligible claimants are statutorily required to submit a certified *Statement* either through MTO or through e-File (paper *Statements* are not available and paper *Returns* are not accepted). Prior to certifying the ESA Statement, a taxpayer may amend a return through MTO or e-File. Returns can only be amended up to and until September 15 of the tax year. Examples of amending returns include but are not limited to: adding a parcel, removing a parcel, changing the values reported from Part 3 of Form 5278 or correcting an incorrect certificate number.

Eligible claimants or their authorized preparer must utilize MTO to view their *Statement*, view correspondence from Treasury, make changes to their *Statement*, certify their *Statement* and pay the ESA tax. The Department will not send copies of any ESA Statement by mail or electronically.

An eligible claimant is required to make payment in full, by using MTO, Electronic Funds Transfer (EFT) credit, or via e-File by August 15 without penalty. Check payments **cannot** be mailed to the Department of Treasury ESA payments received by mail will not be applied to the ESA account but refunded to the taxpayer.

ESA Letters to Assessors:

The ESA System will automatically generate copies to assessors of letters sent to taxpayers when a taxpayer makes a change to certain information in the system, including

when a parcel is added or removed from a taxpayer's filing or when a certification (IFT, PA 328, MSF) or renaissance zone is added or removed because the certificate is not valid or has been entered incorrectly.

A Summary of Change letter is issued to all assessors in local units of government in which EMPP was claimed once the September 15th deadline to amend certified ESA statements has passed. This summary includes detailed information as to individual years that have been removed from any ESA Statement.

These letters are sent to ensure that assessors have all available information to guarantee proper ad valorem personal property taxation. Assessors have no authority, nor do they have any responsibility, to use the MTO system to make corrections to any item for taxpayers. Taxpayers alone have authority to update their statements in response to letters. Assessors are only required to ensure their personal property tax roll is correct. Please see the section on MCL 211.154 Petitions above.

If assessors are concerned that a taxpayer's ESA Statement contains incorrect information or should be reviewed by the Department, they should submit their concerns *in writing* to the Department who may review the account.

Rescissions and Appeal Rights:

Assessors will also receive a copy of the rescission when one is issued to the taxpayer by the Department of Treasury

Statute requires that, for any assessment year in which a taxpayer does not submit payment of ESA liability and any late payment penalty due in full by April 15th of the year immediately following the assessment year, the Department of Treasury rescind the EMPP exemption on that parcel(s). The Department must rescind the exemption no later than the first Monday in June following the April 15th deadline.

In addition to rescinding the EMPP exemption, the Department will also ask the STC to revoke 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 under MCL 211.561a.

After the Department rescinds the exemption, the taxpayer, assessor, and treasurer will be notified that the exemption has been rescinded. The taxpayer will be notified that they must file with the assessor of the Township or City within 30 days of the date of the rescission a personal property statement (Form 632), for all property for which the exemption has been rescinded.

Assessors must ensure that they correct their assessment roll to return the personal property to the Ad Valorem roll. It is **not necessary** for an assessor to take this matter

to any Board of Review; the determination of the Department is the necessary authority to correct the assessment roll.

Within 60 days of the date of the rescission, 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.

An eligible claimant may appeal a rescission by filing a petition with the MTT not later than December 31 of the year in which the rescission was issued.

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

An eligible claimant may appeal an assessment levied or a late payment penalty to the MTT by filing a petition not later than December 31 of the year in which the assessment was levied, or the late payment penalty applied.

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 MTT within 30 days of the date of that assessment's issuance.

Key Things Assessors Need to Know About ESA:

- ESA is a specific tax replacement for Personal Property Tax for Eligible Personal Property.
- The specific tax is calculated based upon the year of acquisition **by the first owner**.
- ESA is reduced under specific circumstances for certain property, including certain IFT property, property in renaissance zones, property subject to Alternative ESA by the MSF and for construction in progress (CIP).
- Most taxpayers will continue to pay Ad Valorem and/or IFT taxes and will also pay the ESA specific tax until the phase out is complete in 2023.
- ESA has specific statutory dates for taxpayers to certify their ESA statement and make payment using the on-line ESA system.
- Failure to meet the ESA due dates will result in rescission of the exemption and require the assessor to return the personal property to the local personal property roll and for local unit Treasurers to bill the taxpayer for those local property taxes.
- Appeal of rescissions or the ESA tax levied are to the MTT.
- Assessors will receive copies of notification letters for changes made in the ESA system. These letters are to help assessors ensure proper local Ad Valorem and/or IFT taxation.
- Assessor will receive a Summary of Changes letter after the filing deadline has passed, detailing relevant changes to the ESA statement.
- Assessors will also receive copies of rescissions issued by the Department.

Special Circumstances:

Assessors need to be aware of several special circumstances that may affect both the Ad Valorem and ESA filings for taxpayers.

- 1. Renaissance Zones:** As indicated in P.A. 92, the acquisition cost for personal property exempt under the Michigan renaissance zone act is \$0.00 except for the 3 years immediately preceding the expiration of the exemption of that personal property, during which period of time the acquisition cost for that personal property means the fair market value of that 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 capitalized interest, multiplied by the percentage reduction in the exemption as provided in section 9(3) of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2689.

Additionally, P.A. 92 indicates: For eligible personal property exempt under the Michigan Renaissance Zone Act, 1996 PA 376, MCL 125.2681 to 125.2696, an eligible claimant shall report the fair market value of that personal property at the time of acquisition by the first owner, including the cost of freight, sales tax, installation, and other capitalized costs, except capitalized interest.

Taxpayers were advised of the following for 2016 Renaissance Zone Eligible Manufacturing Personal Property (RZ EMPP) Reporting:

- If all the RZ EMPP was first placed in service in 2006 – 2012 and is not subject to an extended IFT or PA 328 exemption, we recommend they file Form 632, the personal property statement until the property becomes exempt under MCL 211.9m or MCL 211.9n. At that time, the taxpayer will file Form 5278.
- If the RZ EMPP is not subject to an extended IFT or PA 328 exemption and the RZ EMPP was first placed in service before 2006 or after 2012 and in 2006-2012, taxpayers will file Form 5278.
- If the RZ EMPP is subject to an extended IFT or PA 328 exemption and if all the RZ EMPP was first placed in service in 2006 – 2012, taxpayers will file Form 5278.
- If the RZ EMPP is subject to an extended IFT or PA 328 exemption and the RZ EMPP was first placed in service before 2006 or after 2012 and in 2006-2012, taxpayers will file Form 5278.
- If all the RZ EMPP was first placed in service before 2006 or after 2012, taxpayers will file Form 5278.

A company who resides in a Renaissance Zone, that properly and timely files a Form 5278 for their EMPP first placed in service before 2006 or after 2012 (exempt under 211.9m or 211.9n) will be exempt from all millages and exempt from ESA unless the Renaissance Zone is in the 3-year phase-out period.

Taxpayers filing Form 5278 for RZ EMPP have been asked to fill in the acquisition cost, meaning the fair market value of that 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 capitalized interest. The ESA system will calculate the appropriate percentage reduction for that RZ EMPP Property, including a 100% reduction for property not in the 3-year phase-out period.

- 2. Leased Personal Property:** Leasing companies are not eligible to receive the EMPP exemption and may not use the Combined Document. However, MCL 211.9m does provide for lessees and lessors to make an election to allow the lessee to report the personal property under a lease agreement and pay the Ad Valorem and any ESA specific tax on that property. Specifically, MCL 211.9m indicates:

With respect to personal property that is the subject of a lease agreement, regardless of whether the agreement constitutes a lease for financial or tax purposes, all of the following apply:

(i) If the personal property is eligible manufacturing personal property, the lessee and lessor may elect that the lessee report the leased personal property on the combined document.

(ii) An election made by the lessee and the lessor under this subdivision shall be made in a form and manner approved by the department.

(iii) Absent an election, the personal property shall be reported by the lessor on the personal property statement unless the exemption for eligible manufacturing personal property is claimed by the lessee on the combined document.

The Department has designed Form 5467, Election of Lessee Report of Eligible Manufacturing Personal Property, which will be filed with Form 5278 when the lessee and lessor elect for the lessee to report the personal property. This form will include all parcels statewide for which the election is being made for a specific lessee and lessor. That list will be attached to each Form 5278 filed where the election has been made. The form will also include the lease agreement expiration date, so the assessor knows when the lease agreement ends.

The election will remain in place until rescinded by the lessee or lessor. The list of parcels/lease agreements will be updated annually and attached to Form 5278 for each election made.

3. **P.A. 328:** How P.A. 328 (MCL 211.9f) property is treated with the changes to the personal property tax can be confusing. MCL 211.9f(8) indicates:

Notwithstanding any other provision of this section to the contrary, if new personal property exempt under MCL 211.9f 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 whichever of the following is later:

- 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.

Please note, an extension of the P.A. 328 Certificate until the personal property is exempt under MCL 211.9m, 9n or 9o does not allow for the continued addition of new personal property to the P.A. 328 exemption.

Example 1: (Non-Extended P.A. 328)

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.

Example 2: (Extended P.A. 328)

A P.A. 328 exemption was effective 12/31/2012 and expires on 12/30/20. The personal property was placed in service in 2011, 2012, 2013 and 2014. The personal property is Eligible Manufacturing Personal Property (EMPP).

The law will extend the P.A. 328 exemption from Ad Valorem assessment through 2023. Property placed in service in 2012 will be considered eligible personal property in 2023 under MCL 211.1053(e)(i).

Beginning in 2021, the year following the original certificate expiration date, the property will pay the full Essential Services Assessment (ESA).

Year Property First Placed in Service	TY 2016	TY 2017	TY 2018	TY 2019	TY 2020	TY 2021	TY 2022	TY 2023
2011	328	328	328	328	328	Ext 328 - Full ESA	Ext 328 - Full ESA	9N - Full ESA
2012	328	328	328	328	328	Ext 328 - Full ESA	Ext 328 - Full ESA	9N - Full ESA
2013	328	328	328	328	328	Ext 328 - Full ESA	Ext 328 - Full ESA	9N - Full ESA
2014	328	328	328	328	328	Ext 328 - Full ESA	Ext 328 - Full ESA	9N - Full ESA

Example 3: (Extended P.A. 328 – Complex Example)

A P.A. 328 exemption was effective 12/31/2007 and expires 12/30/15. The personal property was placed in service in 2006, 2007, 2008 and 2009. 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 2020, when the property placed in service in 2009 becomes exempt. The property shall remain exempt from Ad Valorem taxation under P.A. 328 until the personal property is exempt under MCL 211.9m, 9n or 9o.

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.

Year Property First Placed in Service	TY 2016	TY 2017	TY 2018	TY 2019	TY 2020
2006	EXT 328 - Full ESA	EXT 328 - Full ESA	EXT 328 - Full ESA	EXT 328 - Full ESA	9N - Full ESA
2007	EXT 328 - Full ESA	EXT 328 - Full ESA	EXT 328 - Full ESA	EXT 328 - Full ESA	9N - Full ESA
2008	EXT 328 - Full ESA	EXT 328 - Full ESA	EXT 328 - Full ESA	EXT 328 - Full ESA	9N - Full ESA
2009	EXT 328 - Full ESA	EXT 328 - Full ESA	EXT 328 - Full ESA	EXT 328 - Full ESA	9N - Full ESA

P.A. 328 Additional Information: 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.

4. IFT (P.A. 198 Exemptions): How IFT (P.A. 198) property is treated with the changes to the personal property tax is one of the more complex and confusing parts of the statutory changes. 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?

Simply put, if the answer is 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 the answer is yes to question 2, the IFT certificate may qualify to be extended and not expire until all the property covered under that IFT certificate is exempt under MCL 211.9m and MCL 211.9n. To be extended, it is necessary for the taxpayer to annually report EMPP subject to the IFT certificate by filing Form 5278. Failure to file Form 5278, failure to report EMPP subject to the IFT certificate that is not yet exempt under 9m or 9n, or rescission of the EMPP exemption on the parcel disqualifies an IFT certificate from being extended. Once the certificate expires, then the property will pay ESA on the full Acquisition Cost.

How does an assessor or taxpayer determine if an IFT certificate can or should be extended? That can be answered by asking a few simple questions:

1. Was the IFT certificate in effect **on or after December 31, 2012?**

If yes, then the IFT certificate can be extended.

If no, the personal property should have been returned to the Ad Valorem roll upon expiration of the IFT certificate (see MCL 211.154 Petitions section

above. Depending on the year first placed in service, the property is reported in Part 2 (non-exempt) and Part 3 (exempt) of Form 5278.

2. Is the end date of the IFT certificate before or after the personal property is exempt under MCL 211.9m or MCL 211.9n? (See personal property phase out chart.)

If the end date of the IFT certificate is before the personal property is exempt under MCL 211.9m or MCL 211.9n, then the IFT certificate may qualify to be extended until the personal property is exempt under MCL 211.9m or MCL 211.9n if the EMPP exemption is annually claimed and not rescinded in any year.

If the end date of the IFT certificate is after the personal property is exempt under MCL 211.9m or MCL 211.9n, then the IFT certificate is not extended.

Example 1: (Extended IFT)

A six-year IFT Certificate was approved in 2010 and in effect for 2011 through 2016 (expires 12/30/16). The personal property under this certificate was placed in service in 2010 and is Eligible Manufacturing Personal Property (EMPP). As a reminder, personal property that was first placed in service in 2010 will become exempt under MCL 211.9n in 2021.

We will begin with two simple questions:

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

Because the answer to question 2 was Yes, the IFT Certificate may qualify to be extended in 2017, 2018, 2019, and 2020 under the provisions of MCL 207.561a if the EMPP exemption is annually claimed and not rescinded in any year.

During the extended term, the property remains subject to the IFT tax and will be reported in the appropriate table in Part 2 of the Form but beginning in 2016 will also be subject to the ESA Specific Tax and will also have to be reported in Part 3 of the Form.

However, because the answer to question 1 was Yes, in 2016, 2017, 2018, 2019, and 2020, 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 2021 the property is now subject to the full ESA Specific Tax and reported on Form 5278 on Part 3.

Year Property First Placed in Service	TY 2017	TY 2018	TY 2019	TY 2020	TY 2021
2010	EXT - IFT + 50% ESA	EXT - IFT + 50% ESA	EXT - IFT + 50% ESA	EXT - IFT + 50% ESA	9N - 1/2 ESA

Year Property First Placed in Service	TY 2016	TY 2017	TY 2018
2007	EXT - IFT + 50% ESA	EXT - IFT + 50% ESA	Full ESA

Example 2: (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 the property subject to an IFT Certificate that was in effect before January 1, 2013? **Yes**
2. Is the 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 will not pay ESA Specific Tax.

However, because the answer to question 1 was Yes, the taxpayer will report the property on Part 3 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 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.

Year Property First Placed in Service	TY 2016	TY 2017	TY 2018	TY 2019	TY 2020	TY 2021	TY 2022
2009	IFT	IFT	IFT	IFT	1/2 ESA	1/2 ESA	Full ESA

Example 3: (New IFT)

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 the 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.

Because the answer to question 1 was No, the personal property is subject to the ESA Specific Tax at the full Acquisition Cost.

Example 4: (Extended IFT – A Complex Example)

An IFT Certificate was approved in 2007 and in effect for 2008 through 2018 (expires 12/30/18). The personal property was placed in service in 2007, 2008, 2009 and 2010 and is Eligible Manufacturing Personal Property (EMPP). 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, may qualify to be extended under the provisions of MCL 207.561a? **Yes**

Because the answer to question 2 was Yes, the IFT Certificate may qualify to be extended in 2019 and 2020 under the provisions of MCL 207.561a if the EMPP exemption is annually claimed and not rescinded in any year. Because this is a complex example, we will go through the reporting year by year:

In 2018, the taxpayer will report the property placed in service in 2007 on Part 3 Section 2 of the form. 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 2008, 2009 and 2010 in Part 2 of Form 5278 and this property will be subject to the IFT Specific Tax only.

In 2019, the taxpayer will report the property placed in service in 2007 and 2008 (combined under 2008 and prior) on Part 3 Section B 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 2009 and 2010 in both Part 2 and Part 3 Section B of Form 5278. This property will be subject to the IFT Specific Tax for 2009 and 2010 and one-half ESA for both years.

In 2020, the taxpayer will report the property placed in service in 2007, 2008 and 2009 (combined under 2009 and prior) on Part 3 Section B 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 2010 in both Part 2 and Part 3 Section B of Form 5278. This property will be subject to the IFT Specific Tax and one-half ESA for 2010.

Beginning in 2021 all the property is subject to the full ESA Specific Tax and reported on Form 5278 on Part 3 Section B.

Year Property First Placed in Service	TY 2018	TY 2019	TY 2020	TY 2021
2007	9N - 1/2 ESA	9N - 1/2 ESA	9N - 1/2 ESA	9N - Full ESA
2008	IFT	9N - 1/2 ESA	9N - 1/2 ESA	9N - Full ESA
2009	IFT	EXT - IFT + 50% ESA	9N - 1/2 ESA	9N - Full ESA
2010	IFT	EXT - IFT + 50% ESA	EXT - IFT + 50% ESA	9N - Full ESA

If, in some year after 2018, the taxpayer fails to file Form 5278 or the IFT certificate is revoked by the State Tax Commission, the IFT certificate expires on December 30 of the previous year. In that year and subsequent years, the IFT certificate will no longer be valid and therefore not receive any benefit under ESA.

Contact Information:

ESA:

Email: ESAQuestions@michigan.gov

Phone: 517-241-0310

Web: www.michigan.gov/esa (updated ESA Topics and FAQ's can be found on the ESA website)

State Tax Commission

Email: Statetaxcommission@michigan.gov

Phone: 517-335-3429

Local Unit Reimbursement Questions:

Email: TreasORTAPPT@michigan.gov

Phone: 517-373-2697