

Essential Services Assessment Frequently Asked Questions 2019

CLAIMING THE EMPP EXEMPTION

Does my property qualify for the Eligible Manufacturing Personal Property (EMPP) exemption as “Industrial Processing” or “Direct Integrated Support”?

Without physically visiting a property and reviewing financial information, the Department cannot comment on whether a specific parcel qualifies for the exemption.

Taxpayers and assessors are reminded that personal property meets the definition of EMPP if “all personal property located on occupied real property if that personal property is predominantly used in industrial processing or direct integrated support.”

Therefore:

1. The personal property must be located on “occupied real property” or, in the case of construction in progress, be part of a new facility that is not yet in operation,
2. The predominant use of all of the personal property located on the occupied real property must be:
 - a. Industrial processing and/or
 - b. Direct integrated support

If the property meets this definition it is EMPP. If it was first placed in service after 2012 and/or more than ten years ago, it qualifies for the exemption of EMPP under MCL 211.9m and MCL 211.9n.

How do I report Idle, Obsolete, and Surplus Equipment that is also EMPP?

The definition of Eligible Manufacturing Personal Property includes *all* personal property on occupied real property. Idle, Obsolete, and Surplus equipment would therefore be reported along with all other personal property on the parcel when both calculating the predominant use of the personal property and reporting the acquisition costs on Form 5278.

When reporting the acquisition costs on Form 5278, the true cash value at the time of acquisition by the first owner needs to be reported in Part 2 or Part 3, depending on when the personal property was first placed in service. Eligible claimants cannot report depreciated costs on Form 5278.

How do I report leasehold improvements that are also EMPP?

The state Tax Commission is responsible for issuing guidance on whether leasehold improvements shall be reported as personal property or real property. Eligible claimants

should ask the assessor in the local unit in which the property is located to determine how leasehold improvements are to be reported. If leasehold improvements are to be reported as personal property, the true cash value at the time of acquisition by the first owner should be reported in the appropriate year.

If leasehold improvements are to be reported as real property, they do not qualify for the exemption.

I did not file Form 5278 to claim the EMPP exemption prior to the deadline, what can I do to receive the exemption for this year?

Statute is clear that to receive the Eligible Manufacturing Personal Property (EMPP) exemption, the exemption must be properly claimed. This means that the claim must be made by filing the Combined Document (Form 5278) with the assessor of the local unit in which the property is located by February 20 or to the March Board of Review prior to its adjournment. There is no provision for either the local unit or Department of Treasury to grant the exemption if the Combined Document (Form 5278) was not delivered by these dates.

However, because the EMPP exemption is granted on an annual basis, the exemption may be claimed in future years by timely filing the Combined Document (Form 5278).

ESA STATEMENTS

I filed the Combined Document (Form 5278) with the assessor or March Board of Review, and was told the EMPP exemption was granted, but my parcel isn't on my ESA statement. What do I do?

Please contact the ESA unit as soon as possible at 517-241-0310 or ESAQuestions@michigan.gov. In some cases, it may be a simple matter of information not being submitted timely to the Department of Treasury and we can request this information and an explanation from the assessor. In other cases, the issue may be more complicated but ESA staff will be able to advise on possible resolutions.

I was told by the assessor that the EMPP exemption was granted, but I just received a tax bill. What's wrong?

Nothing is necessarily wrong. The most likely reason is that some of the personal property on the parcel is not yet eligible for the exemption due to the year it was first placed in service. Because MCL 211.9m exempts EMPP placed in service after 2012

and MCL 211.9n exempts EMPP placed in service more than ten years prior to the current year, there is a gap of years in which the exemption does not apply. Property placed in service during these gap years will continue to be taxed locally until ten years have passed.

The assessor did not properly process the exemption. What do I do?

If, for any reason, the assessor neither exempted the parcel from the local roll prior to certifying it nor forwarded the information reported on Form 5278 to the Department, the assessor effectively denied the exemption. Neither the assessor nor the Department has any authority to grant the exemption after the close of the March Board of Review.

If this denial of the EMPP exemption was unintentional – due to an error made by the assessor – the only remedy is an appeal to the Michigan Tax Tribunal (MTT). Per statute, appeals to the MTT must be filed within 35 days of the denial notice. If you did not receive a denial notice, you may wish to contact the Tribunal or local legal counsel to determine what, if any, appeal rights you may have. Their contact information is available at www.michigan.gov/taxtrib.

The Assessor and Taxpayer wish to file a stipulated agreement with the Michigan Tax Tribunal, is there any information that must be included?

In order for the Department of Treasury to update or generate an ESA statement based upon a Michigan Tax Tribunal order, a stipulated agreement must include language that clearly indicates the following:

1. The property on the parcel is eligible manufacturing personal property as defined by MCL 211.9m(8) and that some or all of the eligible manufacturing personal property is “qualified new personal property” as defined under MCL 211.9m or “qualified previously existing personal property” as defined under MCL 211.9n and therefore exempt from local property taxes.
2. The acquisition costs of the eligible manufacturing personal property that is exempt under MCL 211.9m or MCL 211.9n listed in the years in which the property was acquired by the original owner.
3. A statement that the assessor must forward a copy of the consent judgment and Form 5278 to the Department of Treasury within 15 days of the date of the consent judgment, that the Department of Treasury must generate or amend the taxpayer’s ESA statement within 15 days of receipt of Form 5278, and that the taxpayer must pay full liability with any interest or penalty assigned by the Tribunal, within 30 days of posting the ESA statement. The taxpayer should also

be advised that failing to pay ESA liability and any interest or penalty will result in rescission of the EMPP exemption.

When filling out the Combined Document (Form 5278), I entered the incorrect FEIN. How can I change it on my ESA Statement?

Pursuant to MCL 211.1057(2), the Department of Treasury is required to annually generate, for each eligible claimant, an Essential Services Assessment (ESA) statement utilizing the information provided on the Combined Document (Form 5278) when claiming the Eligible Manufacturing Personal Property (EMPP) exemption with the local assessment unit. Statute does not give authority to the Department of Treasury to amend the information that was certified true and accurate by the claimant at the time that the Combined Document (Form 5278) was filed. This includes amending the FEIN/identity of the claimant and recipient of the EMPP exemption and therefore the party responsible for certifying the ESA statement and making payment of ESA liability.

I did not include Form 5467 when filing the Combined Document (Form 5278), may I still add leased equipment to my ESA statement?

Statute requires that for the lessee to report EMPP and pay ESA, Form 5467 – the Election of Lessee Report of Eligible Manufacturing Personal Property – must be completed and filed with Form 5278, which was due back in February. If that Form was not filed, then the property cannot be added the Lessee’s ESA statement for this year.

I received a letter stating that “Year claimed does not qualify under MCL 211.9m or 211.9n” – What does that mean?

Only eligible manufacturing personal property first placed in service in qualifying years is eligible for the EMPP exemption. If the system detects property was reported in years in which the exemption is not available, the acquisition costs are removed from the ESA statement and a letter issued. This property should instead be assessed on the local roll and local property taxes should be paid.

Assessors receiving a copy of the Combined Document (Form 5278) Reporting Error stating “Year claimed does not qualify under MCL 211.9m or 211.9n” should verify that personal property was reported for the affected years in part 2 of Form 5278 and are on the local assessment roll. The State Tax Commission has issued guidance in its Assessor’s Guide to Eligible Manufacturing Personal Property Tax Exemption and ESA, indicating that “the assessor should immediately file a MCL 211.154 petition to return the [years removed from the ESA statement] to the Ad Valorem roll” (page 18).

Is my IFT certificate eligible to be extended?

An IFT certificate is eligible for extension under MCL 207.561a if three conditions are met:

1. The IFT certificate was in effect on or after January 1, 2013,
2. The IFT expired prior to the current assessment year, and
3. Some or all of the property reported on the parcel was first placed in service (and the acquisition costs therefore reported) in the “gap” years and therefore not qualifying for the exemption under MCL 211.9m or 9n.

If the parcel meets all of these three criteria, the IFT certificate is extended under MCL 207.561a and the property reported on the IFT parcel until all the property is exempt under MCL 211.9m or 9n.

I have an IFT certificate, why did I not receive a reduction to my ESA liability?

The State Essential Services Act (Act 92 of 2014) defines “acquisition cost” as “the fair market value of 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.” It further defines “acquisition cost” as one half this amount if the personal property is subject to an IFT certificate *that was in effect before January 1, 2013*. Conversely, if the IFT certificate went into effect after 2012, personal property subject to it does not receive the benefit of being taxed ESA at one-half fair market value and is instead calculated on the full fair market value

My IFT expired more than a year ago but I just learned about EMPP and ESA, can I now file and extend my IFT certificate?

IFT certificates may be extended beyond their expiration date under authority of MCL 207.561a which requires, in part, that the holder of the IFT certificate annually report all personal property subject to the IFT certificate is EMPP by filing the Combined Document (Form 5278). If the Combined Document (Form 5278) is not filed in any year after the original expiration of the IFT certificate, then the certificate must expire on December 30th of the year prior to the assessment year. Once an IFT certificate expires, there is no provision in statute to re-instate the certificate simply by claiming the EMPP exemption.

ESA PAYMENTS

When will I receive my ESA statement or ESA tax bill?

The Department of Treasury does not mail or otherwise send out copies of the ESA statement or the tax bill. ESA statements are electronic documents that can be accessed through the Michigan Treasury Online (MTO) portal. Instructions for MTO and other information related to certifying ESA statements and making payments can be found on the ESA website.

How much do I owe?

ESA statements are available on Michigan Treasury Online (MTO) and include an amount due based upon the information submitted on Form 5278. Any changes made to the Statement while reviewing or certifying the Statement (required by August 15 to avoid late payment penalty) may result in changes to the ESA liability due, but an estimate will be provided. Claimants are advised to return to MTO 2-3 days after submitting changes to their ESA Statement to determine if changes in liability have occurred during processing.

How do I pay my liability?

Instructions for making ACH payments via the Michigan Treasury Online (MTO) website can be found starting on page 20 of the attached MTO instructions. Instructions for making payments EFT payments are also attached. If you need further assistance, please call the ESA help line at 517-241-0310 and ESA staff will be happy to walk you through the process.

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My payment was only one day late, why am I being charged the full 3% for a month?

Pursuant to MCL 211.1057(4): "In calculating the [late payment] penalty, a partial month is considered a whole month and the [late payment] penalty shall not be prorated based on the day of the month the late payment is received."

Can you waive my late payment penalty?

Statute is unambiguous that late payment penalty accrues at 3% of unpaid liability per month or part of a month up to a maximum of 27% and does not allow for waivers except for first-year filers. If you have filed ESA in previous years, the Department of Treasury does not have any statutory authority to waive the late payment penalty in 2019. Statute does allow ESA taxpayers the right to appeal the late payment penalty to the Michigan Tax Tribunal. To do so, you must file a petition with the Tribunal no later than December 31.

I overpaid my ESA liability, when will I receive a refund?

If payment was applied to an ESA statement that is now paid in full, any additional funds will be refunded when a mandatory hold on payments is lifted after the September 15th deadline to amend ESA statements has passed.

How do I receive an exemption from the ESA Tax?

The Michigan Strategic Fund (MSF) Board may authorize State Essential Services Assessment (SESA) Exemptions for qualifying investment(s) of \$25 million or more in Eligible Personal Property owned by, leased to, or in the possession of an Eligible Claimant. The MSF is part of the Michigan Economic Development Corporation (MEDC) and unrelated to the Michigan Department of Treasury. You will want to contact them with any specific questions you may have.

OTHER TAXES

Income Tax Questions

The income tax division is separate from the ESA unit – ESA is a special tax paid by manufacturers receiving a special property tax exemption – so cannot help you further. Please visit <https://www.michigan.gov/treasury/0,4679,7-121--8483--,00.html> for more information.

SUW questions

The Essential Services Assessment (ESA) Division administers a special tax on manufacturing related personal property exempt from property taxes at the local level. ESA is unrelated to sales and use tax. Please contact them at 517-636-6925.