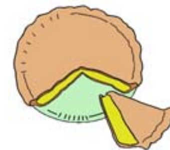
CHAPTER 12
Introductory comments for Exemptions, Abatements, Authorities and Special Assessments

1. Introduction

The purpose of this chapter is to provide an overview of the many forms of exemption, tax burden reduction or diversion of revenue from ad valorem property tax levies that have been codified in Michigan's statutes. In addition, this chapter discusses relationships between special assessments and ad valorem taxation, including tax capture legislation. The chapter provides an in-depth discussion of laws by classes of property (e.g. residential, commercial or industrial). Finally, the chapter provides specific details of importance to the professional engaged in the administration of property taxation. The four basic categories of laws highlighted in this chapter are:

- Exemptions – full or partial
- Abatements
- Authorities
- Special Assessments



Detailed material is provided on the following exemptions: Industrial Facilities, Air Pollution, Water Pollution, Principal Residence, Qualified Agricultural, Qualified Forest and M.C.L. 211 Real and Personal Property exemptions. Abatements covered include the Obsolete Property, the Neighborhood Enterprise Zone and the Industrial Facilities acts. Tax Capturing Authority material covers general information on several forms, including: Downtown Development Authority, the Local Development Financing Authority and the Brownfield Redevelopment Authority. The section on Special Assessments provides an overview of the special assessment process and important court decisions.

The layperson frequently interprets property taxation from the perspective of the taxpayer. Clearly, that is an oversimplification. It is true that laws such as the "hardship exemption" are designed primarily with the taxpayer in mind. However, professionals realize laws exist to isolate property tax revenue for specific purposes or to offer incentives which stimulate job generation and a local economy. Any law that modifies a property tax collection ripples through a number of fiscal areas. This chapter provides guidance consistent with the mandate for assessors: "1962 PA 122; MCLA 211.721; MSA 7.40 requires that assessors us the Assessor's Manual, as approved by the State Tax Commission" … "as a guide in preparing assessments."[1]

[1] See OAG, 1981-1982, No. 5909, p 206 (May 20, 1981)

This chapter will examine not only the General Property Tax Act (GPTA), but economic development and other acts linked to the GPTA. An important purpose of this chapter is to provide information to the property tax administrator on related categories of legislation affecting the property taxing mechanism. Here is a the impact of the four categories of law cited above:

1. Exemptions immediately reduce taxable value and the financial burden of a taxpayer for every year in which they are granted
2. Abatements either preserve the tax base or increase the tax base, while providing a reduced future tax burden on new investments
3. Tax Capturing Authorities (with one exception) do not affect tax the tax base at all, they affect the distribution of taxes
4. Special assessments are not ad valorem property taxes, but when levied as an ad valorem millage, can sometimes be captured by an authority

The most commonly used provisions of the four categories of ad valorem tax procedure listed above currently are found in found in Chapters 125, 207, 211, and 324 of Michigan's Compiled Laws (http://www.legislature.mi.gov/). Let us introduce some of their mechanics before moving on to specific laws.

The mechanism of an exemption is simple: it *reduces a property's taxable value* and provides immediate relief from a tax burden. Specific exemptions in the GPTA for personal and real property will be discussed.

Unlike exemptions which diminish a tax base, abatement legislation is formulated to be an incentive fostering enlarged tax bases and *new tax revenue to all taxing units. Abatements reduce the maximum future tax burden on investments* by a taxpayer as its incentive. The incentive *modifies either the millage rate or taxable value* used to calculate taxes if, an investor improves either real or personal property. As a general rule, abatement law is structured so that, if no improvement is made, there is no benefit to the taxpayer and no financial loss to the taxing jurisdictions. All abatement laws create a "specific tax" roll. Land remains taxed on the ad valorem roll. Improvements are taxed as a specific tax. Some abatements freeze the taxable value of an improvement; others lower the millage rate applied for taxation.

In contrast to exemptions and abatements, tax capturing "Authorities," affect neither the property tax levied nor the taxpayer's burden. The sole exception is the Downtown Development Authority. It can increase a tax burden by levying up to two mills within its boundaries. A tax capturing authority *changes the distribution of taxes* collected. Authorities are designed to enable local units of government to make public improvements funded by a rising property tax base. The enabling legislation for a tax capturing authority preserves the existing property tax base by permitting "capture" of only taxes generated from taxable value which exceeds a "base" value established at the creation of the authority.

Unlike an exemption, which benefits the taxpayer, an authority is designed to benefit the public. It *intercepts the flow of new taxes to various taxing entities* which arise from an enlarged tax base. It uses the money for a public project. The value of the tax base from which taxes may be captured may arise from either inflation or new or improved properties.

Tax capturing authorities anticipate rising property values. Authorities are unique in that, if property values do not rise above the “base value” or if property values should fall below the “base value” at any time, the authority may not be able to collect any revenue – even if it has debt to repay. Another distinguishing feature of authorities is that millage rates are applied to aggregate values and not against a specific property (with some exception). The captured tax is not calculated property-by-property, but by multiplying a millage rates times the total value of several properties.

These three categories of ad valorem law have in common; either a change in levy or in the distribution of the collection. To summarize characteristics of the three forms of legislation discussed above: (1) an *exemption eliminates taxable value*, thereby diminishing revenue to taxing entities while providing relief from a financial burden to the taxpayer. (2) *Abatements are specific taxes designed to preserve or increase* the overall tax base of the community while providing the taxpayer an incentive to spend money on real or personal property. The incentive consists of either: (a) freezing an assessment on certain improvements and using contemporary millage rates to calculate the property tax; or (b) taxing new property at a millage rate lower than the contemporary rate. (3) *Authorities capture certain taxes which are generated above a “base”* taxable value and use the revenue for a public project.

The tax formula and millage rates

The ability to understand mathematical operations underlying the calculation of exemptions and abatements is critical for any property tax administrator. Therefore, a quick review of the property tax calculations is appropriate.

The ad valorem property tax and specific property tax calculation rely upon a very simple formula:

Property Tax = Valuation times Millage Rate

This formula is the basis for all real and personal property tax calculations. In some cases (e.g. exemptions listed in 211.7 and 211.9) a property value is set to zero and therefore there is no property tax.

The trickier part of tax administration comes from the large number of statutes that manipulate the millage rate component of the property tax formula. In cases such as the Industrial Facilities Exemption (P.A. 198 of 1974), the statute

provides for a "frozen value" and the unadjusted, appropriate ad valorem millage rate. Those forms are easily understandable and quickly calculated. However, the more difficult legislation will adjust the appropriate ad valorem rate by removing a specific millage rate (e.g. local school millage). Sometimes the law calls for a certain millage rate to be removed, then a mathematical operation performed on the remaining millage rate, and then the originally removed millage is added back into the newly determined millage rate (e.g. Industrial Facility New). There is also legislation that requires two multiplications of a millage rate times a value; each calculation uses differing values and millage rates (e.g. Obsolete Property Rehabilitation Act). The impact can be a confusing myriad of a series of assessment rolls using many differing calculations.

Then, a whole new set of difficulties crops up for the administrator who must deal with "tax capturing" authorities. In such situations, some of the taxes are to be distributed to tax jurisdictions in the ordinary fashion of the ad valorem tax. However, certain portions of the total levy – that is certain parts of every single type of tax roll – may have to be "captured" and distributed in a very unique way. This is the kind of thing that makes assessors go grey!

Because this chapter must explain the interwoven calculations, the first order of business will be to illustrate the relationship of millage rates. Of the two factors (value and millage rates), millage rates are by far the most manipulated component.

In an attempt to offer a practical example, the table that follows is derived from levies an actual taxing jurisdiction. It consists of two parts: the upper portion simply recites ordinary ad valorem millage rates for existing operation, debt and specially voted purposes. The sum of all those rates is shown as the "non-Homestead" ad valorem rate. It is followed by the commonly used "Homestead" millage rate. That rate is followed by rates required by law for industrial, commercial and utility property.

The Lower section consists of many unique rates, most derived directly from the non-homestead ad valorem rate shown above. The reader should note the ad *valorem special assessment, the OPRA and the NEZ rates*.

They have unique features which distinguish them from some of the other rates. Unlike traditional special assessment levies, this special assessment is not some fixed dollar amount, but a millage rate. It applies only to real property; not personal property. The NEZ rate is not connected in any way to the local ad valorem rate. Instead, it is derived from the average or residential ad valorem rates across the state. Finally, the OPRA rate consists of two rates: A rate identical to the local ad valorem rate which is applied to a "frozen" property value, and a rate consisting only of school millages, that is applied to value generated from "new" improvements under OPRA. The OPRA example is mentioned because other rates may similarly consist of a unaltered local rate applied to a

"frozen" property value and an altered rate derived from a mandated formula which uses a local millage rate as its starting point.

Illustrative Millage Rate Schedule

Source: Michigan Property Consultants: using city of Saginaw Assessor 2009 Warrant data

Ad Valorem non-Homestead		(Real)	61.16750	Includes all approved millage rates
Ad Valorem Homestead		(Real)	43.16750	Minus 18 mill local school operating
Ad Valorem Personal		(Comm)	43.16750	Minus 12 mill local school and 6 mill special assessment
Ad Valorem Personal		(Ind)	31.16750	Minus local school, state education and spec assmnt millages
Ad Valorem Personal		(Util)	55.16750	Minus special assessment millage
Unique rates				
Ad Valorem Special Assessment			6.00000	Total ad valorem special assessment rate
Ren Zone	(Debt Millage plus Spec Assmt)		10.36980	Total of all debt plus special assessment (Real Prop)
Ren Zone	(Debt Millage and no Spec Assmt)		4.36980	Total of all debt minus special assessment (P.P.)
NEZ			15.40540	1/2 of state average residential rate
OPRA	Frozen	Local rate	61.16750	Ad valorem real property rate
OPRA	School		24.00000	Ad valorem local and SET Rates
IFE Real		New	33.66750	1/2 total ad valorem (less SET) plus SET
IFE Personal		New	37.16750	Ad valorem personal rate minus special assessment
IFE Real		Rehab/Replace	61.16750	Ad valorem rate
IFE Personal		Rehab/Replace	31.16750	Ad valorem industrial rate

Special Assessments

The final component of this chapter is the special assessment. *"A special assessment is not a tax. Rather, a special assessment 'is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area.'"*[2] The costs are reimbursable because some public project provided a "benefit" to the property or properties to be assessed which exceeded the benefit to the public at-large. Special assessments may be levied as an ad valorem millage rate times a property's taxable value or as a fixed cost unrelated to a property's value. Special assessments which utilize a millage rate are termed "ad valorem special assessments." The alternative to a millage and the historical definition of a "Special assessment" is a "specific tax"[3] based upon a unique "benefit" to a property which is levied without regard to the property's value.

Special assessment levies are unique in that properties traditionally exempt from ad valorem taxes, including those owned by government units such as the state of Michigan, can be specially assessed. Special assessment administration uses rules entirely different from ad valorem taxation. For example, two guiding principles in ad valorem taxation are uniformity and equity. The comparable principles in special assessment administration are "necessity" and "benefit." A public project for which special assessments are to be levied must be specifically

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[2] Kadzban v City of Grandville, 442 Mich 495, 502; 502 NW2d 299 (1993)

[3] For a foundation discussion of specific taxes see: Banner Laundering Co. et al v State Board of Tax Administration 287 Mich 419

“necessary” under the act authorizing the special assessment. This is because the levying of special assessments is a legislative function granted in a very limited form to the authorized agency or unit. This power to tax cannot be expanded by the unit or agency. Michigan’s courts have invalidated special assessments where the justification for the project did not meet the test for “necessity” unique to the authorizing legislation.

The amount to be specially assessed is determined through “apportionment.” An apportionment must be reasonably related to a measurable “benefit” the property to be taxed received directly from the public project. For *private property*, the term benefit is strictly construed by the Supreme Court to mean an increase in a property’s value uniquely and specifically arising from the public improvement causing the special assessment. Benefit to a *public property* is sometimes defined explicitly within the authorizing statute. It may be derived as an increase in property value, a relief from a burden or some special adaptability to the land. Because court decisions related to special assessment administration are often less well know than ad valorem property tax decisions, a special effort has been made to document and cite important cases in the portion of this chapter dealing in more depth with special assessments.

To summarize: special assessments do not fall within the definition of an ad valorem tax as the other three categories of this chapter did. With the exception of special assessments levied as a millage rate, the special assessment is not based upon a property’s market value. Instead, for a special assessment levy to be valid there must be specific, unique, measurable and proportional “benefit” to the property being specially assessed.[4] This benefit must exceed the project’s general benefit to other properties within the community.

2. History

From its inception in 1893, the GPTA anticipated exemptions: “all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.” Exemptions for lands of the United States and local government, religious, charitable, educational and like organizations under earlier tax laws were continued and gradually extended to a variety of nonprofit organizations and uses. There were also basic personal property exemptions for household goods, mechanic’s tools, and agricultural property.

In keeping with the reforms of the “Progressive Era,” intangible properties and public utilities, including railroads, telephone and telegraph, were taxed by the state government. Over the years, various business properties, such as dies, jigs and fixtures, have been exempted to encourage Michigan manufacturing operations. Beginning about 1974, property tax incentives have been developed to stimulate local economies and create or sustain employment.

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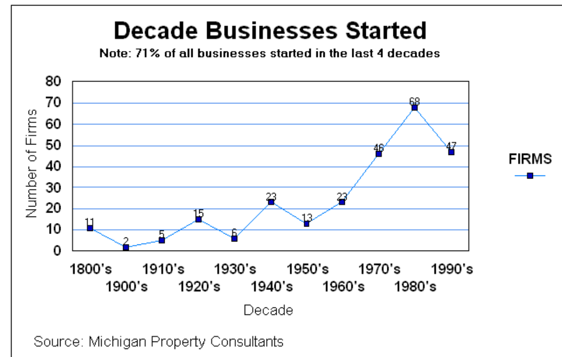
[4] **Error! Main Document Only.**Dixon Road Group v City of Novi, 426 Mich 390; 395 NW2d 211 (1986)



In any healthy local community, there is continuing turnover of business entities. A seminal study determined 8 percent of firms in a community need to be replaced each year.[5] New businesses start up, old businesses close up. Tax capturing authorities and other tax incentives were not created to address routine business turnover within stable economies. They were created to address extraordinary conditions. These include unemployment, blight and stagnation; often resulting from structural changes in the local economy. The chart is a snapshot of the life cycle of businesses in Saginaw, Michigan in 1999. 1600 firms actively doing business were surveyed for age. The chart supports the proposition of change: most firms exist for only a generation or two.

Michigan's modern efforts to sustain its property tax base and address" economic development incentives" may be traced back to 1945 with the adoption of the Municipal Blighted Area Rehabilitation Act (1945 PA 344, M.C.L. 125.71 et seq).[6] Over time, cohort legislation developed. Incentives focused upon in this text originate with the 1974 Industrial Facilities Abatement (IFT) and include the 1975 Downtown Development Authority (DDA), the1980 Tax Increment Financing Authority (TIFA) and the 1986 Local Development Financing Authority (LDFA).

The chapter's special assessment history antedates Michigan's GPTA. The use of special assessments in the United States has been traced to European countries.[7] According to research by Victor Rosewater, special assessments based upon benefit can be traced to usage in drainage and sewage acts dating from 1427 in Great Britain. When dark and narrow streets were widened in France around 1627, owners of houses facing the streets were ordered to pay shares of demolition costs because of the improved view and utility. France controlled part of Belgium, so a French special assessment ruling in 1807 carried over to Belgium and was retained after Belgium attained independence. Germans can trace contemporary special assessment laws to 1875 when a portion of the country was known as Prussia.

According to Rosewater's definitive work, in the U.S. special assessments were implemented in 1691 as a provincial law of New York; the language of the first act was copied almost verbatim from a section of an English Act passed in 1667.

[5] Birch, David L., "The Job Generation Process," U.S. Department of Commerce, Economic Development Administration, Research Division Room, 6225 Main Commerce, Washington D.C. 20230, pg 21 (1979)
[6] "Survey of Economic Development Programs in Michigan, Report 334," Citizens Research Council of Michigan, Lansing, Michigan, www.crcmich.org, May 2001
[7] Rosewater, Victor, 'Special Assessments A Study in Municipal Finance," First AMS edition, 1968 reprint of 1898 original, AMS Press Inc., New York

CHAPTER 12
GENERAL PROPERTY TAX ACT EXEMPTIONS

3. Introduction

This portion of Chapter 12 will address exemptions from taxes levied pursuant to the General Property Tax Act (GPTA). While the material presented is believed to be accurate, it is presented for illustrative purposes. Over time laws change; they may be reinterpreted and conditions requisite to applying property tax regulations may vary. The reader is cautioned to always seek the opinion of competent legal counsel before making decisions or otherwise acting based upon information provided herein.

It is a laborious job to identify every existing property tax exemption. Exemption statutes are interwoven throughout a number of seemingly unrelated areas of Michigan's compiled laws. For example, exemptions for oil and gas rights are found at M.C.L. 205.315. Certain Water Pollution exemptions are found at M.C.L. 323.354; Air Pollution exemptions are at M.C.L. 336.1 and oil and gas property exemptions are at M.C.L. 460.813. Chapter 207 of the M.C.L. contains legislation relating to tax abatements that exempt the value of certain real and personal property but not the land upon which they sit. Chapter 125 contains economic development statutes that may affect the property tax levy. Some of the exemptions are complete exemptions and some are partial exemptions.

In order to acquire the most comprehensive perspective, read this part of the chapter in concert with all other portions, and along with, legislation, Attorney General Opinions and other state publications of interest to your research.

History

Wherefrom arises authorization to tax and to exempt property from taxation? The people of the state of Michigan, by adopting its constitution, require taxation so expenses of the state can be paid (Art. 9 §1). Michigan became a state in 1837 and its first Constitution was adopted. The first revision of the Constitution was in 1850 when a provision was added providing for a uniform rate of taxation as well as the continuation of existing taxes and the use of cash value assessments. Local taxation devolves from state legislative authority and the power to tax cannot be used except when there is statutory authority.[8] The power to exempt property from taxation exists because the legislature can choose to tax

[8] City of Berkley v Township of Royal Oak, 320 Mich 597, 31 NW2d 825 (1948)

or not to tax.[9] When property taxes are levied, the method must be uniform and equitable (Art 9 § 3).

It is a fundamental premise of Michigan's property tax laws, that all property real and personal shall be taxed unless specifically exempted. The premise is stated within the GPTA (PA 206 of 1893) as: "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation (MCL 211.1). This includes lands leased or conveyed pursuant to the MCL 322.708 (The Great Lakes Submerged Lands Act).

In Michigan, two guiding principles have developed to address taxation in general and exemptions from the ad valorem tax: (1)"In general, tax laws are construed against the government;"[10] and (2) tax exemption statutes are strictly construed in favor of the government.[11]

In 1909, the Home Rule City Act was approved, which allows cities to determine the type of government they wish to form through city charter, to establish their own tax rate and to collect property tax through the city treasurer.

All property, real and personal, was taxed until the 1940s when personal property was eliminated for individual households but retained for commercial and industrial businesses. The inventory property tax was abolished for businesses in the early 1970s.

Some background – making the exemption

It is probably safe to assume that from the very first property tax levy, a person, or a group of people, began figuring out ways to avoid the property tax. Some requested exemptions were easily understandable. Others may have resulted from skillful persuasion.

Regardless of how they came into being, exemptions from property taxation have increased. Any examination of property tax history in Michigan will reveal the growth and evolution of exemptions of one kind or another. Of course with every exemption the financial burden relieved, is shifted to other taxpayers. Such circumstances require attention to equity and justice. With that in mind, we'll review some basic standards used to determine when and what should be exempted before describing various exemptions covered in this chapter.

[9] Lucking v People, 320 Mich 495, 31 NW2d 707 (1948)
[10] Great Lakes Sales, Inc v State Tax Comm, 194 Mich App 271, 276; 486 NW2d 367 (1992)
[11] Skybolt Partnership v City of Flint, 205 Mich App 597, 602; 517 NW2d 838 (1994); Bob-Lo Co v Department of Treasury, 112 Mich App 231; 315 NW2d 902 (1982)

Burden of Proof

First, among tax standards, is the "Burden of Proof" that an exemption should be granted. The party seeking the exemption must prove entitlement through a "preponderance of the evidence".[12] In an unpublished opinion (No. 283095, Smith v City of New Baltimore, 2009) the Court of Appeals described the "Burden of Proof" in this way:

> "At both the small-claims-referee and tribunal-judge levels of review, the burden of proof is on the taxpayer to establish the true cash value of the property. MCL 205.737(3); *Oldenburg v Dryden Twp*, 198 Mich App 696, 698-699; 499 NW2d 416 (1993). The burden of proof in a tax matter encompasses two concepts: '(1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.' *Great Lakes Division of National Steel Corp v Ecorse*, 227 Mich App 379, 408-409; 576 NW2d 667 (1998)"

Tests required for exemption

The Burden of Proof is established by tests. That is, for an exemption to be granted, all requirements of the authorizing legislation must be met. In cases such as the partial exemption found in the Principal Residence Exemption, specific criteria are stated. Similar criteria are found within the portions of the GPTA which authorize any of a number of exemptions. In the case of exemptions for charitable purposes a four point test was originally devised by the Supreme Court. (1) the property must be owned and occupied by exemption claimant; (2) claimant must be one of several appropriate parties listed by the applicable statute; (3) the claimant must have been incorporated under the laws of the state of Michigan; and (4) the buildings and property must be occupied by the claimant solely for the purpose for which the claimant was incorporated.[13] The requirement for state incorporation was later dropped.

Standard of evidence

Unless otherwise permitted, evidence which is to be used to make decisions in property tax cases is referred to as *competent, material and substantial.* "Evidence is competent, material, and substantial if a reasoning mind would accept it as sufficient to support a conclusion."[14] The Tax Tribunal's factual findings are final if supported by competent and substantial evidence.[15] The court "will not disturb the Tax Tribunal's factual findings if they are supported by

[12] Holland Home v City of Grand Rapids, 219 Mich App 384, 394; 557 NW2d 118 (1996)
[13] Ladies Literary Club v City of Grand Rapids, 409 Mich 748; 298 NW2d 422 (1980); E.g., Engineering Society of Detroit v Detroit, 308 Mich 539; 14 NW2d 79 (1944) as modified
[14] Galuszka v State Employees Retirement Sys, 265 Mich App 34, 45; 693 NW2d 403 (2004)
[15] Mount Pleasant v State Tax Comm, 477 Mich 50, 53; 729 NW2d 833 (2007)

competent, material and substantial evidence on the whole record. Columbia Assoc, LP v Dep't of Treasury, 250 Mich App 656, 665; 649 NW2d 760 (2002)[16]

Substantial evidence is defined as "the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion, but it may be substantially less than a preponderance."[17] From the Great Lakes Sales decision we know that there must be enough competent, material and substantial evidence to sustain the Burden of Proof standard which is set at a level known as a "preponderance" of evidence. That is, qualified evidence to support an argument for exemption must exist and there must be enough of the evidence to meet an overall level or standard of persuasion termed a "preponderence."

You are warned to always seek competent guidance in making determinations of evidence and a Burden of Proof. Notwithstanding that advice: a *preponderance of evidence* is generally evidence weighty enough that the scales of justice are not equal, but tipped slightly in one direction or another; a higher evidentiary standard is *clear and convincing evidence;* and the highest evidentiary standard is described as *beyond reasonable doubt*. Another way to interpret the term "preponderance" is as a "more likely than not" standard. The preponderance occurs when evidence sways the decision maker that "it is more likely than not" the claim is true.[18] Some written decisions of adjudicated property tax disputes contain the term *scintilla of evidence*. This term describes a situation in which no acceptable standard of evidence has been met.

The granting of an exemption requires strict adherence to the authorizing statute, rules of evidence and judicial decisions.

With this background information in place, a description of several exemptions from the ad valorem property tax burden follows. Included are: Air Pollution Control exemption, General Property Tax Act exemptions found in Chapter 211, New Personal Property exemption, Principal Residence Exemption, Qualified Agricultural Exemption, Qualified Forest Exemption, Water Pollution Control exemption. The order of discussion follows the order of exemptions listed above.

The reader should be aware that government agencies sometime are merged, replaced or eliminated. If an agency is named in a statute or rule, the reference should be interpreted to mean the named agency or its successor agency.

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[16] Court of Appeals citing Columbia Assoc. in deciding Smith v City of New Baltimore, No. 283095 (2009)

[17] Inter Co-op Council v Department of Treasury (On Remand), 257 Mich App 219, 221; 668 NW2d 1818 (2003) quoting In Re Payne, 444 Mich 679, 692, 698; 514 NW2d 121 (1994)

[18] Personal e-mail from Floyd P. Kloc, J.D., to Joseph Turner, July 7, 2010

4. GPTA exemptions and certain other specific exemptions

Discussions of specific exemptions will follow these brief introductory remarks. Besides reading this chapter, The reader is encouraged to review other recommended material. More information, including Frequently Asked Questions (FAQ), may be found at www.michigan.gov/propertytaxexemptions. FAQ information is included among the chapter's quiz questions.

Critical components

Exemptions of all kinds have critical components. It is a standard procedure that applications for certificates of exemption described in the laws which follow must be submitted to the State Tax Commission by October 31 of each year, or the application will not be considered until the following calendar year. In some cases, a local government unit or an agency of the state must make a finding or determination related to a certificate. Caution: if required findings and determinations have not been made so the application can be submitted to the State Tax Commission by the November 1st date, the application may not be processed until the next calendar year.

Air Pollution Control exemption

The Air Pollution Control exemption (P.A. 451 of 1994, Part 59, as amended) affords a 100% property and sales tax exemption to facilities that are designed and operated primarily for the purpose of controlling or disposing of air pollution that, if released, would render the air harmful or inimical to the public health or property within this state:

> **324.5902 Tax exemption certificate; application; contents; approval; notice; hearing; tax exemption.**
>
> (1) An application for a pollution control tax exemption certificate shall be filed with the state tax commission in a manner and in a form as prescribed by the state tax commission. The application shall contain plans and specifications of the facility, including all materials incorporated or to be incorporated in the facility and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of pollution control, together with the proposed operating procedure for the control facility.
>
> (2) Before issuing a certificate, the state tax commission shall seek approval of the department and give notice in writing by certified mail to the department of treasury and to the assessor of the taxing unit in which the facility is located or to be located, and shall afford to the applicant and the assessor an opportunity for a hearing. Tax exemption granted under this part shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by any air pollution control facility as defined in this part.

The exemption is achieved following a review by the Property and Services Division and the MDNR or the successor agencies. A recommendation is made

to the State Tax Commission (STC) regarding the qualification of the application. The STC is responsible for final approval and issuance of certificates. Exemptions are not effective until approved by the STC.

Applications, including the required accompanying documents, are filed with the STC. Applications can be found at: www.michigan.gov/taxes .

This legislation provides a 100 percent exemption from property taxes that would be levied on otherwise taxable property. The exemption is granted on property defined as a "facility" at 324.5901(a)(b) or (c).

Timeliness is an important part of the application process. Tardiness of an application may lead to a deferral of approval of the application, or tardiness in response to an inquiry by an agent of the state may lead to a determination that the application has been withdrawn.

Completed applications received by the Department of Treasury on or before June 15 of each year will be processed and transmitted to the Department of Environmental Quality (or its successor agency) no later than July 15. In turn, DEQ will transmit its determination for all completed applications to the State Tax Commission (STC) on or before November 1. Applications received by the Department after June 15 and transmitted to the DEQ after July 15 will be acted on as expeditiously as possible. Without exception, DEQ determinations received after November 1 will be processed by the STC in the subsequent year.

The effective date of the Air Pollution Certificate is the date on which the certificate was issued. Once approved, the certificate remains in effect until the pollution equipment is no longer in place or no longer used for pollution control.

In some cases, the "facility" has a dual role: it meets the tests for issuance of a certificate, but also benefits the business. Upon a determination that the "facility" is beneficial to the business, the amount of tax incentive may be less than 100 percent.

General Property Tax Act exemptions found in Chapter 211

The general discussion of exemptions in the GPTA will include exemptions which are simply part of a list and others requiring further elaboration. Some exemptions are very specific are require few words to codify. Others are subject to interpretation. This discussion begins with the long list of real and personal property exemptions articulated within the GPTA. Exemptions to be elaborated on following the GPTA list include but are not limited to exemptions for: New Personal Property, Principal Residence, Qualified Agriculture Property, Qualified Forest and Water Pollution Control exemptions.

Real Property: 211.7 et. seq.

211.7 Federal property
Public property belonging to the United States is exempt from taxation under this act. This exemption shall not apply if taxation of the property is specifically authorized by federal legislative action or federal administrative rule, regulation, or lease.

211.7b Exemption of real estate used and owned as homestead by soldier or sailor discharged with service connected disability

211.7d Housing exemption for elderly or disabled families

211.7e Deciduous and evergreen trees, shrubs, plants, bushes, and vines; public right of way on surface of real property being assessed

211.7g Seawall, jetty, groin, dike, or other structure

211.7h Solar, wind, or water energy tax exemption certificate

211.7i "Existing facility"

211.7j Tax exemption for new or existing facility for which commercial housing facilities exemption certificate issued

211.7k Tax exemption for facility for which industrial facilities exemption certificate is issued

211.7*l* State property

211.7m Property owned or being acquired by county, township, city, village, school district, or political subdivision

211.7n Nonprofit theater, library, educational, or scientific institution; nonprofit organization fostering development of literature, music, painting, or sculpture

211.7o Nonprofit charitable institution

211.7p Memorial homes or posts

211.7q Boy or Girl Scout or Camp Fire Girls organization; 4-H club or foundation; Young Men's or Young Women's Christian Association

211.7r Certain clinics

211.7s Houses of public worship; parsonage

211.7t Burial grounds; rights of burial; tombs and monuments

211.7u Principal residence of persons in poverty

211.7v Property of certain corporations and railroads

211.7w Property of agricultural society used primarily for fair purposes

211.7x Parks; monument ground or armory; property leased by nonprofit corporation to state

211.7y Landing area

211.7z Property used primarily for public school or other educational purposes; parent cooperative preschools

211.7aa Exemption of real property leased, loaned, or otherwise made available to municipal water authority

211.7bb Tax exemption for nursery stock seasonal protection unit

211.7cc Homestead exemption from tax levied by local school district for school operating purposes

211.7ee Qualified agricultural property exemption from tax levied by local school district for school operating purposes

211.7ff Real and personal property located in renaissance zone

211.7gg Property held by land bank fast track authority

211.7hh Qualified start-up business

211.7ii Tax exemption for property used by innovations center in certified technology park

211.7jj Federally-qualified health center

211.7mm Charitable nonprofit housing organization

211.7jj[1] Qualified forest property

211.7kk Eligible nonprofit housing property

211.7nn Supporting housing property

Personal property exemptions: 211.9 et seq

211.9
(a) The personal property of charitable, educational, and scientific institutions

(b) The property of all library associations, circulating libraries, libraries of reference, and reading rooms owned or supported by the public and not used for gain

(c) The property of posts of the grand army of the republic, sons of veterans' unions, and of the women's relief corps connected with them, of young men's Christian associations, women's Christian temperance union associations, young people's Christian unions, a boy or girl scout or camp fire girls organization, 4-H clubs, and other similar associations

(d) Pensions receivable from the United States.

(e) The property of Indians who are not citizens

(f) The personal property owned and used by a householder

(g) Household furnishings, provisions, and fuel of not more than $5,000.00 in taxable value, of each social or professional fraternity, sorority, and student cooperative house recognized by the educational institution at which it is located

(h) The working tools of a mechanic of not more than $500.00 in taxable value

(i) Fire engines and other implements used in extinguishing fires owned or used by an organized or independent fire company

(j) Property actually used in agricultural operations and farm implements held for sale or resale by retail servicing dealers for use in agricultural production

(k) Personal property of not more than $500.00 in taxable value used by a householder in the operation of a business in the householder's dwelling or at 1 other location in the city, township, or village in which the householder resides

(*l*) The products, materials, or goods processed or otherwise and in whatever form, but expressly excepting alcoholic beverages, located in a public warehouse, United States customs port of entry bonded warehouse, dock, or port facility on December 31 of each year, if those products, materials, or goods are designated as in transit to destinations outside this state pursuant to the published tariffs of a railroad or common carrier by filing the freight bill covering the products, materials, or goods with the agency designated by the tariffs, entitling the shipper to transportation rate privileges. Products in a United States customs port of entry bonded warehouse that arrived from another state or a foreign country, whether awaiting shipment to another state or to a final destination within this state, are considered to be in transit and temporarily at rest, and not subject to the collection of taxes under this act.

(m) Personal property owned by a bank or trust company organized under the laws of this state, a national banking association, or an incorporated bank holding company as defined in section 1841 of the bank holding company act of 1956, 12 USC 1841, that controls a bank, national banking association, trust company, or industrial bank subsidiary located in this state. Buildings owned by a state or national bank, trust company, or incorporated bank holding company and situated upon real property that the state or national bank, trust company, or incorporated bank holding company is not the owner of the fee are considered real property and are not exempt under this section

(n) Farm products, processed or otherwise, the ultimate use of which is for human or animal consumption as food, except wine, beer, and other alcoholic beverages regularly placed in storage in a public warehouse, dock, or port facility while in storage are considered in transit and only temporarily at rest and are not subject to the collection of taxes under this act

(o) Sugar, in solid or liquid form, produced from sugar beets, dried beet pulp, and beet molasses if owned or held by processors

(p) The personal property of a parent cooperative preschool

(q) All equipment used exclusively in wood harvesting, but not including portable or stationary sawmills or other equipment used in secondary processing operations

(r) Liquefied petroleum gas tanks located on residential or agricultural property used to store liquefied petroleum gas for residential or agricultural property use.

(s) Water conditioning systems used for a residential dwelling

(t) For taxes levied after December 31, 2000, aircraft excepted from the registration provisions of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208, and all other aircraft operating under the provisions of a certificate issued under 14 CFR part 121, and all spare parts for such aircraft

9b. (1) A special tool is exempt from the collection of taxes under this act

211.9c Exemption of personal property from tax collection; “heavy earth moving equipment” and “inventory”

211.9d Computer software exempt from taxation

211.9e Intangible personal property exempt from taxes collected

211.9f Personal property of business
Applies to personalty exempted by Pa 328 of 1998 exemption certificates

211.9g Area designated as rural enterprise community; exemption of personal property that is component part of natural gas distribution system

211.9g[1] Leased bottled water coolers

211.9i Alternative energy personal property

211.9j Tax exemption for property used by qualified high-technology business in innovations center

211.9k Industrial personal property or commercial personal property

New Personal Property exemption P.A. 328 of 1998 as amended

Provides a 100 percent property tax exemption for all new personal property owned or leased by an eligible *business located in one or more eligible districts or distressed parcels* located within *an eligible local assessing district*. Applies to all new personal property placed in a district after the adoption of a resolution by the governing body of the eligible local assessing district that approves the application.

If personalty is located within a district or within a distressed parcel which themselves are located in an eligible assessing district of a city, village or township, then a certificate can be applied for. Applies to property of a business engaged primarily in manufacturing, mining, research and development, wholesale trade or office operations. Property within an “authorized business” as defined in Section 3 of the Michgan Economic Growth Authority Act (MEGA) is eligible for credits described in Section 9 of the MEGA act. The benefit is not extended to: a casino, retail establishments, professional sports stadium or that

portion of an eligible business used for retail sales. New personal property consists of personalty not previously subject to tax under the GPTA.

The district or the eligible distressed area has to be established prior to an application for an exemption certificate. Property placed in the district prior to the resolution will not receive the exemption and is not considered new personalty. Application is made on form Treasury Form 3427. An original and two copies are filed with the clerk of the eligible assessing district.

The act requires written notification to the assessor and the legislative body of each taxing unit levying taxes in the eligible district. An opportunity for a hearing on the proposed resolution must be available to the parties notified.

Final approval of the certificate of exemption is made by the State Tax Commission. If an application is denied at the local level, there is no provision for an appeal. Upon accepting the application the STC has 60 days to approve or disapprove.

The approval process requires specific language in the local resolution. Among the requirements is to properly establish the eligible district, the length of the exemption and that the company is a qualified eligible business.

After final approval of the application, the exemption begins on the date of the local resolution approving the exemption. There is no statutory termination of the certificate. The term of the exemption is set by the local resolution and must be part of it. The average duration of approved certificates as of 2010 was 10 to 12 years. The longest term of an approved exemption to date is one half century (50 years).

Principal Residence Exemption

A Principal Residence Exemption (PRE) exempts a residence from the tax levied by a local school district for school operating purposes.

Section *211.7cc* and *211.7dd* of the General Property Tax Act, Public Act 206 of 1893, as amended, addresses PRE claims (formerly known as the Homestead Exemption). A PRE exempts a principal residence from the tax levied by a local school district for school operating purposes up to 18 mills. To qualify for a PRE on a parcel of land, a person must be a Michigan resident who owns and occupies the property as a principal residence. The PRE is a separate program from the *Homestead Property Tax Credit*, which is filed annually with the Michigan Individual Income Tax Return.

To claim a PRE, the property owner must submit a *Principal Residence Exemption (PRE) Affidavit, Form 2368*, to the assessor for the city or township in which the property is located on or before May 1 of the year the exemption is

being claimed. The exemption information is then posted to the local property tax roll. Normally, when a home is purchased, Form 2368 and other relevant principal residence exemption forms are provided by the closing agents. There are many variables in determining eligibility for the exemption. The publication found at (www.michigan.gov/documents/2856_11014_7.pdf) and titled, "Principle Residence Exemption (PRE) Guidelines," provides answers to a number of frequently asked questions.

When a person no longer owns or occupies the property as a principal residence, he or she must file a *Request to Rescind Homeowner's Principal Residence Exemption (PRE), Form 2602*, with the assessor for the city or township in which the property is located to remove the PRE. The PRE will be removed from the local property tax roll by the assessor beginning with the next tax year. Failure to rescind a PRE may result in additional taxes, interest and penalties. Under certain circumstances, a person may qualify for a conditional rescission which allows an owner to receive a PRE on his or her current Michigan property and on previously exempted property simultaneously for up to three years. To qualify initially for a conditional rescission, the owner must submit a *Conditional Rescission of Principal Residence Exemption (PRE), Form 4640* to the assessor for the city or township in which the property is located on or before May 1 of the first year of the claim.

Summary of important information about the PRE

- The exemption affidavit (form 2368) must be filed with the assessor by May 1st of each year to qualify for the current year exemption
- Only co-owners of the home who live in it must sign Form 2368. If others (e.g. children) are co-owners but not residing in the home, they do not need to sign. The same is true of a "life estate." Children of the party with the life estate do not need to sign the affidavit
- If someone own multiple residences, they may seek only a PRE on their primary residence. For example, if a person owns a home in one community but rents a property in another where they work, vote and maintain a driver's license, the work residence will be considered a homestead for the PRE
- Land Contracts and other forms of purchase where a title does not immediately pass, but ownership rights are secured, will permit the property being purchased to qualify for the PRE
- A property being rented and not owned will not qualify for the PRE
- Those parents who have sold their property to children with a verbal agreement stating the parent may continue to reside in the home until death, but with no formal life estate executed, may still qualify the home as their PRE. This is accomplished by notarizing and/or recording a written document with the Register of Deeds that grants a right for the parent to live in the home until death or a decision to leave

- Sometimes there may be two homes on one large parcel. Individuals who co-own a parcel of land large enough to contain two homes may each qualify for a PRE. However, the 100 percent will be split between the two properties: For two houses of equal value, each would be granted a 50% PRE.
- The qualifying party for a PRE must be a "person." Property owned by an L.L.C. or corporation or some other entity will not qualify.
- A denied exemption may be appealed if the property was purchased after December 31st and the statement preparer didn't properly present Form 2368.
- Residency is the place of residence where a person intends to return after traveling. Individuals who "winter" in another state do not give up their right to a PRE by doing so.
- Determination of qualification for a PRE is made by accepting various documents (e.g. driver's license; voter registration; medical and bank records, charge accounts; and income tax records and deciding if, as a whole, the documents support the contention that the property is the residence of the application. One piece of documentation is insufficient for the decision.
- If a person owns multiple homes, perhaps two within Michigan or one in Michigan and one in another state, the property which meets the test for the principal residence is the qualifying property. This may not be the property with the greatest tax burden.
- Spouses who maintain separate residences may each qualify at their respective residences for a PRE.
- Trailers in licensed trailer parks qualify for the PRE.
- A PRE may be granted on any class of property as long as the property meets the test as a primary residence.
- Property of individuals living in a nursing home qualifies for a PRE. Property of persons residing in a care facility who have no expectation of returning home will not qualify based upon that expectation.
- Property purchased but not occupied by May 1st will not qualify for a PRE
- Where a single parcel of land contains more than one home, the 100 percent PRE will be divided between the homes. This is true even if a home should be uninhabitable. The controlling factor is whether or not the individual homes are assessed as dwellings
- A person can have only one personal residence. Therefore, if a person in a nursing home claims a property tax credit for the nursing home, they may not claim a PRE elsewhere
- Large parcels of land classified as residential may qualify for a PRE on the entire parcel. For example, a principal residence on 40 acres of land. A similar circumstance exists when two adjoining residential parcels have one owner and one principal residence. For example, a 20 acre parcel with an adjacent vacant 80 acre parcel creates a PRE on the 100 acres.
- For two parcels having one owner to qualify for a PRE only one can be improved. For example, if a taxpayer had a principal residence on one

parcel and a garage and guest house on the other, only the parcel with the principal residence would qualify for a PRE.

- It is possible to have two PREs at one time. Such a circumstance would happen if an owner applied for a PRE on a newly purchased home before May 1st and the prior PRE did not expire until December 31st.
- A PRE may not be switched in mid-year. For example, suppose an owner moved to a cottage and secured a PRE on it while attempting to sell the former residence. A decision cannot be made in mid-year to return to the former residence and move the existing PRE to it. Once established, the PRE remains for the entire year.
- A residence which is rented to others may qualify for a PRE. If more than 50 percent of the property is the primary residence, then a 100 percent exemption can be obtained. If 50 percent or less is the primary residence then enter the percent of residence on line 12 of the application form.
- Multi-purpose properties may qualify for a PRE. The portion used as the principal residence qualifies for a partial PRE. So, a duplex is afforded an exemption only on that part which is a qualifying principal residence. The same logic is true for a home with a business in it.
- A principal residence that is rented for fewer days annually than the quantity required to trigger a federal income tax declaration can qualify for a PRE. Once the property must be declared as a rental property under federal income tax rules (if rented 15 days or more), the property loses its qualification as a PRE.
- Shareholders in a cooperative housing corporation may qualify for a PRE. They must file their claim with the cooperative, and the cooperative compiles all information and files with the assessing unit.
- Commercial properties such as a bed and breakfast inn or an adult foster care property which serve as the principle residence for a person may be eligible for a partial PRE.
- As a general rule when dealing with estates and trusts, if an ownership interest is legally established in the occupant of the property and the property is the occupant’s principal residence, the property may qualify for the exemption. Where the estate or trust has not conveyed an ownership interest, the occupant may not qualify. For example, the beneficiary of a trust may not qualify for the exemption until the death of the grantor. However, where a will has been executed which directs ownership of a property to a person using the property as their principal residence, and the estate is not yet finalized, the occupant may qualify for the PRE.
- The recipient of a PRE must rescind the PRE within 90 days of the date the property is no longer either owned or occupied as the principal residence, whichever comes first.
- The penalty for failing to rescind is $5 per day; up to $200. It is enforced by the Michigan Department of Treasury.
- A Notice of Denials may occur on Form 2742 or 4075. Counties that have opted-in with the Michigan Department of Treasury and local units may issue a denial for the current year and three immediately preceding years.

The exemption is terminated when the notice of denial is completed. The assessor and the July or December Boards of Review may issue a Notice of Denial. The exemption can be denied for any year in which the exemption should not have been granted.

- If a denial is sent to a taxpayer and there is reason to withdraw the denial, the only process available is an appeal to the MTT. The local unit may appeal on the taxpayer's behalf.
- Taxpayers may file an appeal of a denial by the Department of Treasury by requesting an informal hearing with the department within 35 days of the denial. Unsatisfactory appeals to Treasury may be appealed to the MTT Residential Small Claims Division within 35 days of Treasury's final denial. A local assessor, treasurer or county treasurer may appeal on the taxpayer's behalf
- Exemptions which are reinstated may result in a tax refund. The refund will include any interest and penalties paid by the owner, but refunds do not accrue interest. The refund is issued within 30 days of the date notice is received
- The Board of Review may hear claims for a PRE that have not previously been denied or appealed. Appeals to the December BOR must be received at least 5 days prior to the date the BOR is to convene.
- A local BOR may not deny an existing PRE. It may only deny PRE applications submitted to the BOR by the owner. An appeal for a PRE exemption must be submitted by the owner on Form 2368 and appealed in person or in writing. If the assessor has an affidavit, not posted to the tax roll in either the current year or 3 preceding years, the assessor may submit the affidavit to the July or December BOR as a written appeal. PRE appeals may not be taken to the BOR as an error or omission appeal.
- In a circumstance where a home has been purchased and the prior owner's PRE was denied, the new owner will not be billed for taxes and penalties related to the denial. Treasury will bill the seller, and no lien will be placed on the property.
- Denial of a PRE requires the assessor to immediately change the tax roll unless the assessor is in possession of a valid claim by a subsequent owner. The local or county treasurer, depending on who has the roll, must issue a corrected or supplemental tax bill for the additional non-principal residence taxes within 30 days.
- There are four instances where the tax should not be billed based upon a Treasury denial.

    - The assessor has received a timely filed claim for exemption from the buyer and Treasury is denying the seller. Or the assessor has received a timely filed claim from the seller and Treasury is denying the buyer.
    - The name on the denial notice does not match the name on record for the owner indicating that the parcel numer or revenue share code could be wrong

- The PRE is being denied for property classified as "agriculture" or property for which an exemption for qualified agricultural property has been claimed.
- The property has been transferred to a bona fide purchaser.

- The following information must be transmitted to the Treasury Department with a bona fide purchase for a corrective billing: name of owner to be billed; name of new owner; taxable value of property; date of sale; year being billed with due date; millage rate and amount of taxes to be billed; parcel identification number of property denied or rescinded.
- PRE information may not be used to process other work within the office
- Counties that have opted to audit their own homestead records under Act 105 may operate from leads provided by Treasury; the counties can use their own resources to investigate.
- The state will maintain a database of signed disclosure statements.
- When a county opts-in to audit PRE exemptions, it may share confidential information with local units. However, before any disclosure can be made Treasury must have on file approved, signed disclosure form(s) for the person making the request. Before anyone can view or use leads list information, there must be a signed disclosure form on file.

This ends information on the Principal Residence Exemption. Readers are urged to review current statutory language and Treasury material located on the internet including but not limited to a current FAQ and versions of the forms cited.

Qualified Agricultural Exemption

The qualified agricultural property exemption is an exemption from certain local school operating millages for parcels that meet the qualified agricultural property definition. Generally, the exemption is for 18 mills of the ad valorem levy. The exemption was established by Public Act 237 of 1994 following passage of voter approved property tax reform known as Proposal A (1994). The exemption did not exist prior to 1994; it became law effective June 30, 1994.

> **211.7ee Qualified agricultural property exemption from tax levied by local school district for school operating purposes; procedures.**
>
> (1) Qualified agricultural property is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, according to the provisions of this section.
> (2) Qualified agricultural property that is classified as agricultural under section 34c is exempt under subsection (1) and the owner is not required to file an affidavit claiming an exemption with the local tax collecting unit unless requested by the assessor to determine whether the property includes structures that are not exempt under this section. To claim an exemption under subsection (1) for qualified agricultural property that is not classified as agricultural under section 34c, the owner shall file an affidavit claiming the exemption with the local tax collecting unit by May 1.
> (3) The affidavit shall be on a form prescribed by the department of treasury.

> (4) For property classified as agricultural, and upon receipt of an affidavit filed under subsection (2) for property not classified as agricultural, the assessor shall determine if the property is qualified agricultural property and if so shall exempt the property from the collection of the tax as provided in subsection (1) until December 31 of the year in which the property is no longer qualified agricultural property as defined in section 7dd. An owner is required to file a new claim for exemption on the same property as requested by the assessor under subsection (2).

The owner of a parcel that is classified agricultural does not usually have to file Form 2599, Claim For Farmland Exemption From Some School Operating Taxes, for the parcel to receive the qualified agricultural exemption. A parcel that is classified agricultural normally receives the exemption automatically. However, if the assessor requests the form to determine if the parcel contains structures that are not entitled to the exemption, the owner must file.

Owners of property not classified as agricultural must file form 2599 to receive the exemption.

All owners must file forms to rescind the exemption within 90 days of a change that would cause rescission (e.g. change in use, change in ownership etc.). The requirement applies whether only a part or, all of the property is affected. Compliance is accomplished by filing Form 2473, Request to Rescind Qualified Agricultural Property Exemption. The form is available at the Michigan Department of Treasury web site: www.michigan.gov/treasury. The penalty for not filing a rescission form is a maximum fine of $200.

The exemption status is determined as of May 1st of the year of the exemption. May 1st is termed the "status day." Unlike the Principal Residence Exemption, property owned by a legal entity (such as a partnership, corporation, limited liability company, or association) may receive the exemption.

Denials and Appeals

An assessor may deny the qualified agricultural exemption in four circumstances: (1) For an application for a new exemption, the assessor may deny the exemption in full or in part if, in her/his judgment, the property or part of the property does not qualify; (2) At the time of preparation of the annual tax roll, the assessor may deny, in full or in part, any exemption being carried forward from the previous year when the assessor concludes the property is no longer qualified to the extent of the prior exemption; (3) In the opinion of the State Tax Commission, an assessor can deny in full or in part an existing exemption after the close of the local property tax board of review and up to the status day if the property is no longer qualified for the exemption or is not qualified to the same extent of the existing exemption; and (4) An assessor may also deny a qualified agricultural exemption when the property owner has requested a withdrawal of the exemption for the current year, even if the request occurs after May 1st.

Even if the assessor discovers a situation where it is clear that a parcel is incorrectly receiving the qualified agricultural property exemption for the current year; after May 1 the assessor has no power to deny the exemption. The assessor may deny the exemption for the next year. Similarly, the assessor may not deny a qualified agricultural property exemption for a prior year.

A denial, or partial denial, of an exemption may be appealed. For new qualified agricultural property exemptions, the owner may appeal to the July or December Board of Review where the property is located. Board of Review denials may be appealed to the Michigan Tax Tribunal within 30 days of the board's action. If the denial of the exemption (in full or in part) occurred while the assessor was preparing the annual assessment roll, an appeal may be made to the March Board of Review. Appeals from this board of review's decision are made to the Michigan Tax Tribunal by June 30th. When the assessor exercises the power to deny an exemption, in full or in part, after the March Board of Review and before the status day, in the opinion of the State Tax Commission an appeal may be made to the July or December Board of Review. Appeals of either decision date are to be made to the Michigan Tax Tribunal within 30 days of the action by the Board of Review.

More information about the exemption

The definition of "agricultural use" contained in MCL 324.36101 which applies to the qualified agricultural property exemption is:

> "'Agricultural use' means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot."

Note: While they are similar, the definition of "agricultural use" differs from the definitions used to determine a parcel's classification. The definition of "agricultural use" is <u>not</u> to be used in determining a parcel's classification. Similarly, the definition for classification contained in MCL 211.34c is <u>not</u> to be used in determining whether a parcel is devoted primarily to agricultural use for the qualified agricultural exemption. For example, sometimes land covered by a Farmland Development Rights Agreement (a/k/a Public Act 116) has a classification other than agricultural. Land so classified and under the agreement may qualify for the exemption.

There is no minimum parcel size and no minimum income from agricultural production needed to qualify. There are circumstances in which the land may qualify even though the land is not actively farmed. For example, the land may be

left intentionally fallow or the growing season for a crop may begin after May 1st. There are restrictions on these special circumstances.

Property taxes are determined by multiplying a parcel's taxable value by an overall millage rate: **Taxable Value X Millage Rate = Property Taxes**

Some property tax exemptions eliminate the taxable value of property receiving the exemption. The qualified agricultural property exemption, however, has no effect on the taxable value of parcels receiving the exemption. Instead, the qualified agricultural property exemption reduces but does not eliminate property taxes by reducing the overall millage rate for parcels receiving the exemption.

A parcel that is a qualified agricultural property is entitled to an exemption from certain local school operating taxes, typically up to 18 mills. Additionally, a transfer transfer of qualified agricultural property is not considered a transfer of ownership if both of the following are true:

1. The property remains qualified agricultural property after the transfer.
and
2. The new owner files Form 3676 with the assessor and the register of deeds. This form, available in the appendix, is an affidavit attesting that qualified agricultural property shall remain qualified agricultural property.

Although the qualified agricultural property exemption and the homeowner's principal residence exemption both provide an exemption from the same local school operating taxes, the requirements for obtaining these two exemptions are different. For information regarding the homeowner's principal residence exemption, please see the Guidelines for the Michigan Homeowner's Principal Residence Exemption Program.

The State Tax Commission (STC) has directed that property which is receiving the homeowner's principal residence exemption **cannot** also be considered qualified agricultural property. In the opinion of the STC, the homeowner's principal residence exemption takes priority over the qualified agricultural property exemption.

However, in very unusual circumstances it is possible for one parcel to qualify for both exemptions at the same time by receiving a partial exemption for each.

To be eligible for the exemption, a parcel has to be a qualified agricultural property. A parcel can become a qualified agricultural property in two ways:

1. Classification of the parcel as agricultural on the current assessment roll
or

2. Devotion of more than 50% of the acreage of the parcel to agricultural use as defined by law (MCL 324.36101).

A parcel does not have to be classified as agricultural by the assessor to be eligible. A parcel that is classified residential, for example, can be eligible for the Qualified Agricultural Property Exemption, provided that more than 50% of the parcel's acreage is devoted to an agricultural use as defined by law.

When a parcel is classified agricultural more than 50% of it does not have to be devoted to agricultural use for eligibility. Example: an unimproved 40-acre parcel classified agricultural is entitled to the qualified agricultural exemption even if only 10 acres (less than 50% of the parcel's acreage) is devoted to a defined agricultural use. Note: Assessors must establish the classification of parcels in accordance with MCL 211.34c. When determining the classification of a parcel, assessors must not consider the effect of the classification on the parcel's eligibility for the qualified agricultural property exemption.

Owners of parcels that are not classified agricultural must file an affidavit claiming the exemption with the local assessor by May 1 using form 2599, Claim for Farmland Exemption from some School Operating Taxes. This form is available on the State Tax Commission web site. Owners of property that is classified agricultural, are not normally required to file this affidavit to obtain the exemption.

The status day for the qualified agricultural property exemption is May 1. When determining a parcel's eligibility for the qualified agricultural property exemption, an assessor is to consider the relevant facts for that parcel as of May 1 of the year the exemption is being considered.

In some situations, land may not be actively farmed on May 1, yet the parcel containing the land may still be eligible for the qualified agricultural property exemption. For example, the land may be intentionally left fallow; the growing season for a crop in some parts of the state may begin after May 1, etc. For information on fallow land, see the definition of agricultural use later in this document.

The percentage of a parcel that is devoted to agricultural use is calculated based on the portion of the parcel's **total acreage** that is devoted to agricultural use, **not** the portion of the parcel's **tillable acreage** that is devoted to agricultural use. Example: A 15-acre parcel is classified residential. Of the parcel's 15 acres, four acres are tillable and are devoted to an agricultural use as defined by law. The remaining 11 acres are not devoted to an agricultural use. The parcel is not eligible for the qualified agricultural property exemption, since the parcel is not classified agricultural and only 26.7 percent of the parcel is devoted to a defined agricultural use, even though 100.0 percent of the tillable acreage of the parcel is devoted to a defined agricultural use.

The percentage of a parcel that is devoted to agricultural use is calculated based on the parcel's **total acreage**. **Total acreage** includes any area within the parcels ownership including any area(s) covered by an easement or right-of-way for road or drain purposes. This is true even though the area under a public road right-of-way or a public (surface) drain right-of-way is exempt from taxation. The area of such a public right-of-way is still part of the parcel despite any exemption provided for that area.

The fact that farmland is rented by the owner is generally not a consideration in determining a parcel's eligibility for the qualified agricultural property exemption. The primary considerations are (1) whether the parcel is classified agricultural on the assessment roll and (2) whether more than half the parcel's acreage is devoted to an agricultural use as defined by law. This means that renting part of the property for non-agricultural use could adversely affect the eligibility for the exemption. An example would be land leased for a cellular broadcasting tower.

Another example of a rental that is not a disqualifier for an agricultural use would be a house on a parcel rented to a farmhand. It is not a consideration in determining the parcel's eligibility for the exemption. Under the law, for a residence to be qualified agricultural property, the residence must be occupied by someone who is either employed in or actively involved in the agricultural use on the property and who has not claimed a homeowner's principal residence exemption on other property. A house that is rented to a farmhand is considered to be 'related building.'

Sometimes, a commercial operation can co-exist on the otherwise qualified property without negating the entire exemption. The parcel would receive a partial qualified agricultural property exemption. The portion of the parcel's total state equalized valuation (SEV) related to the property that is used for the commercial marketing operation or the barn used for commercial storage is not entitled to the qualified agricultural property exemption. In these situations the partial exemption percentage is determined based on the SEV of the portion of the parcel entitled to the exemption in relation to the SEV of the entire parcel. The percentage of the exemption is **not** based on the **size (i.e., area)** of the portion of the parcel entitled to the exemption; it is based on value.

STC Bulletins

Several bulletins have been issued by the Michigan State Tax Commission that are important to administration of the qualified agricultural property exemption. As of July 11, 2010 the following web address contained the bulletins: http://www.michigan.gov/treasury/0,1607,7-121-1751_2228---,00.html

The bulletin issued when the exemption was first established was Bulletin No. 10 of 1995. It was replaced by Bulletin No. 4 of 1997. Bulletin 4 was supplemented by Bulletin 8 of 2001. Bulletin No. 10 of 2000 covers the transfer of ownership exemption provided for the Qualified Agricultural Property Exemption in certain circumstances. Readers may be interested in Bulletin 12 of 1997 (supplemented by Bulletin No. 6 of 2003) for information on the authority of the July and December Boards of Review over this exemption. A memorandum dated February 24, 2004 issued to assessors and equalization directors may also be of interest.

www.michigan.gov/documents/Qualified_Agricultural_Prop_139854_7.pdf has information.

Qualified Forest Exemption

Public Acts 378, 379 and 380 of 2006 created the Qualified Forest Property (QFP) program. The program created an opportunity for owners of smaller forestland parcels in Michigan, which are not classified as agricultural land or do not receive a principal residence exemption, to receive reduced property taxes on land in productive, managed forests. The program exempts qualified property from certain school operating taxes, and purchasers of QFP enrolled property may apply to the local government to prevent a property's taxable value from "uncapping," which normally occurs in the year following a transfer of ownership.

The program is incorporated within the GPTA. Excerpts that briefly describe it follow. As will be seen, implementation is completed over several years.

211.7jj[1] Qualified forest property; exemption; affidavit; form; determination; rescission; appeal; denial or modification; placement on tax roll; corrected tax bill; subject to recapture tax; report; definitions

(1) Except as otherwise limited in this subsection, qualified forest property is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, according to the provisions of this section. The amount of qualified forest property in this state that is eligible for the exemption under this section is limited as follows:

(a) In the fiscal year ending September 30, 2008, 300,000 acres.
(b) In the fiscal year ending September 30, 2009, 600,000 acres.
(c) In the fiscal year ending September 30, 2010, 900,000 acres.
(d) In the fiscal year ending September 30, 2011 and each fiscal year thereafter, 1,200,000 acres.

(2) To claim an exemption under subsection (1), the owner of qualified forest property shall file an Affidavit claiming the exemption and an approved forest management plan or a certificate provided by a third-party certifying organization with the local tax collecting unit by December 31. An owner may claim an exemption under this section for not more than 320 acres of qualified forest property in each local tax collecting unit. If an exemption is granted under this section for less than 320 acres in a local tax collecting

> unit, an owner of that property may subsequently claim an exemption for additional property in that local tax collecting unit if that additional property meets the requirements of this section.
> (3) The affidavit shall be on a form prescribed by the department of treasury and shall require the person submitting the affidavit to attest that the property for which the exemption is claimed is qualified forest property and will be managed according to the approved forest management plan.
> (4) The assessor shall determine if the property is qualified forest property based on a recommendation from the department of natural resources and confirmation that the acreage limitation set forth in subsection (1) has not been reached and if so shall exempt the property from the collection of the tax as provided in subsection (1) until December 31 of the year in which the property is no longer qualified forest property.

This is a partial exemption from taxation which accomplishes its goals, not by changing a property's taxable value, but by modifying the millage rate used to calculate taxes. Unlike the principal residence exemption, a qualified property may be owned by a legal entity (such as a partnership, corporation, limited liability company, or association).

Application for this exemption varies from most other ad valorem exemption procedures. Property owners must complete a series of steps and have in place agency approvals before a request for an exemption can be forwarded to the local assessor. Prior to forwarding to the assessor, the applicant must be:

- Petitioning for a parcel of between 20 and 320 acres within a township or city
- At least 80 percent of the property must be productive forest
- The forestland must have a sufficient percentage of the area occupied by trees that would produce a forest product. Forest products are timber, pulpwood and related products
- There must be no buildings or other structures on the parcel
- There must be a forest management plan approved for the parcel by the state Department of Natural Resources (or its successor) OR a plan approved by a third party certifying organization. The plan must include:
    - Name, address and dated signatures of all owners
    - Name, address and dated signature of plan writer
    - Complete legal description of the property including property identification numbers
    - A described parcel containing 20 contiguous acres with 80 percent or more productive forest and a term for the plan of no more than 20 years
    - A statement of the owner's forest management goals and objectives
    - A description of the management of forest resources other than timber
    - A description of soil types and soil management practices if used
    - A narrative description of each management unit

    - A list of prescribed practices, approximate treatment, schedule and accomplishment dates for each stand
    - Signature of compliance with all terms and conditions of plan

The applicant must:

- Update the forest plan at least every 20 years
- Attest that the property will be managed according to the plan
- Report the amount of timber produced on the enrolled lands each year

With these items properly disposed of, property owners shall complete Treasury Form 4449, Claim for Qualified Forest Property Tax Exemption from Some School Operating Taxes, and file it with two copies to the Michigan Department of Natural Resources (or its successor agency) by November 1 preceding the year for which the exemption is sought. The DNR approved plan and the affidavit must then be submitted to the local assessor by December 31st. The local assessor determines if the property qualifies for the qualified forest property enrollment. The decision is based upon the recommendation of the DNR (the forest management plan is acceptable and the state-wide acreage limitation has not been exceeded), a field review of the property to ensure that it is vacant and a check of the assessment rolls to determine that the acreage limitation of the property owner has not been exceeded.

Once granted, an exemption may be withdrawn or rescinded. A withdrawal works to remove the exemption from the parcel for the year(s) involved as if there had been no exemption. A withdrawal results in additional taxes being billed for the current and/or prior years. A withdrawal is only available for an exemption that was erroneously granted. If an owner requests the exemption be withdrawn before the owner is contacted in writing by the local assessor regarding the owner's eligibility for the exemption, and if the owner pays the corrected tax bill(s) within 30 days after the corrected tax bill(s) are issued, the owner is not liable for any penalty or interest on the additional taxes. Otherwise, there will be an additional liability for penalties and interest from the date of the original levy.

A rescission works to remove the exemption for the next year. The owner is required to rescind the qualified forest property exemption when all or part of the property benefiting from the exemption is no longer qualified forest property. This is done by filing Form 4450, Request To Rescind Qualified Forest Property Exemption, not more than 90 days after all or a portion of the property is no longer qualified for the exemption. An owner may request that the assessor create a split of the property and withdraw only that part not qualified, provided the split is requested prior to the non-qualified use and the remainder meets requirements of the act. The penalty for not filing a rescission is a fine of up to $1000.

Denials and Appeals

An owner of property that is qualified forest property on December 31st for which an exemption was not on the tax roll, may file an appeal with the July or December local property tax Board of Review. The appeal is filed pursuant to M.C.L. 211.53b in the year the exemption was claimed or in the immediately succeeding year. To appeal, the property must have qualified (all the conditions required for an exemption) were met and there must be acreage available under the state-wide cap. An appeal from the Board of Review's decision can be made to the Michigan Tax Tribunal.

If a property qualified for the exemption on December 31 and an exemption was denied by an assessor prior to the March Board of Review, the owner may appeal to the March Board of Review. A decision of the March Board of Review can be appealed to the Michigan Tax Tribunal.

An assessor may not deny a qualified forest property exemption for a prior year unless there has been a request for a withdrawal by the property owner. If a parcel was exempt in a prior year and the assessor discovers a situation where it is clear that a parcel is incorrectly receiving an exemption in the current year after the close of the March Board of Review, the assessor may not deny the exemption. A delay in processing an application can result in a valid denial of an exemption after the March Board of Review. For example, if an affidavit claiming the exemption is filed on or before December 31, the assessor may not have time to process and deny the claim. The processing time may lead to denial after the March Board of Review. The State Tax Commission has recommended to assessors that the denial occur before July 1.

Notification to the owner of denials of exemption by the assessor change based upon circumstances. The State Tax Commission has recommended that a denial for a claim on a new exemption be made in writing; be made immediately upon denial and include information on the reason and the owner's rights to appeal to the July or December Board of Review. Denial of an existing qualified forest property exemption when preparing the annual assessment roll results in a notification of a change in assessment by mail at least 10 days in advance of the Board of Review. The notice will include the level of qualified forest property exemption, if any. While not required by statute, it is advisable for the assessor to notify any property owner in writing if their exemption is being denied. Immediate notification in writing must occur if the assessor denies the exemption after the March Board of Review. The notification would include the reasons for the denial and the owner's right to appeal to the July or December Board of Review.

When an assessor has denied or partially denied a claim for a **new** qualified forest property exemption, the property owner must appeal to the July or December Board of Review. Appeals from those board hearings are made to the

Michigan Tax Tribunal within 30 days of the Board of Review action. When an assessor denies an **existing exemption** while preparing the annual assessment roll, the property owner must appeal to the March Board of Review in the jurisdiction where the property is located. Appeals from a decision of the March Board of Review are made to the residential and small claims division of the Michigan Tax Tribunal by July 31 of that year. When the assessor has denied an existing exemption after the close of the March Board of Review, in the opinion of the State Tax Commission, the owner must appeal to the July or December Board of Review for that year. Appeals from those Boards of Review are filed with the Michigan Tax Tribunal within 30 days of the board's action.

More information about the exemption

The forest management plan submitted by the original applicant will be the basis for determining the compliance with the QFP Act. If there is a partial transfer of QFP a new forest management plan is required. If the entire property is transferred, the grantee should inquire of the grantor about receiving a copy of the forest management plan. The expiration date of the original plan will not change. The new owner may wish to submit a revised plan along with the appropriate fee to the DNR. The new forest management plan will enable the new owner to tailor the forest land to individual and specific goals.

Property used for forest product and hunting will qualify for the exemption as long as the criteria for the exemption are met.

Properties enrolled in the Commercial Forest Act (CFA) can be eligible for a qualified forest property exemption. However, they will have to be removed from the CFA and follow application guidelines. Also, because the land was exempt under CFA it will be put on the roll at 50% of true cash value.

Sometimes property may be split into two parcels to acquire the exemption. If ownership changes are not made the property will not be uncapped in this process. An assessor requires a legal description for each parcel in the split. A registered survey is not required. Zoning laws may impact the eligibility following a property split. To be eligible the property zoning must permit forest management.

Structures such as an old barn or pole barn on a parcel will disqualify the property from the exemption. However, certain structures related to oil or gas lease may be included with the permitted 20% area that is non-productive forest land. Therefore, the area with oil and gas structures would not necessarily make the property ineligible for the exemption. A well and non-enclosed pump will not be considered structures and that land could be included within the 20% area. However, maintenance sheds and storage tanks are considered structures and that land would have to be split from the area for which an exemption is sought.

Ownership and acreage restrictions are important. For example, if two brothers jointly owned 640 acres of land as one parcel, the parcel would not qualify for an exemption. An action such as one brother filing on one 320 acre parcel and the other brother filing on a 320 acre parcel would not be permitted. They could each deed the other ownership rights so that each brother owned 320 acres individually. If all other requisite conditions were met, the parcels would qualify. Another variation of two siblings owning land in one jurisdiction is illustrative. If two brothers jointly owned a 200 acre parcel and one of the brothers owned a 300 acre parcel as a sole owner, both parcels would qualify for the exemption. The ownership of each parcel is considered unique.

Another illustrative example concerns the death of an owner. The exemption follows the property until such time as the property is no longer qualified forest property. Property is no longer qualified forest property when a rescission is made (Form 4450), the forest management plan has not been revised during the past 20 years, or the requirements of the exemption are not met. The taxable value of the property will uncap when heirs become the beneficiaries of the estate. However, they may file the appropriate form with the register of deeds in the county where the property is located and with the local assessor certifying that the property will remain qualified forest land and the taxable value will not be uncapped.

Property qualifies for the exemption if the owner has retained a life lease on it. The property also qualifies if the owner was the beneficiary of a will or trust.

Property exempted under process that is sold has certain obligations associated with it. The owner of qualified forest property shall inform a prospective buyer that the qualified forest property is subject to recapture tax provided in the qualified forest property recapture tax act. If the new owner of the property does not wish to maintain the property as a Qualified Forest Property Exemption (QFP), he/she may desire that the exemption be rescinded and pay the recapture tax. The recapture tax is the responsibility of the owner at the time the property ceases to be QFP

There is a provision for tax recapture associated with the Qualified Forest Property Exemption.

The QFP recapture tax applies when the property ceases to be QFP either through rescission (Form 4450), violation of the requirements of the QFP Act, or by a change in use that is not compatible with the QFP Act.

There are two parts of the QFP Recapture Tax Act. Part 1 applies whenever a QFP ceases to be QFP. The recapture tax is payable by the parties in ownership of the property when it ceases to be QFP. There are two possible calculations for Part 1 that depend on whether a harvest of forest products was made after the enrollment of the property.

If a harvest was made:

(Current SEV of the Property) X (Total Millage in the Township or City the property is located in) X 7

Example:

Current taxable value = $15,000
Current SEV = $25,000
Current Millage = 45 Mills

$25,000 X 0.045 X 7 = $7,875

If there was not a harvest made, the recapture tax is twice the above.

Same Example – no harvest

$25,000 X 0.045 X 7 X 2 = $15,750

Part 2 of the recapture tax applies if there was a transfer of ownership that was exempt from the uncapping requirement because of Form 4508, Affidavit Attesting that Qualified Forest Property Shall Remain Qualified Forest Property.

Part 2 equals the difference in the amount of property tax paid and the amount of property tax that would have been paid if the taxable value of the property had uncapped, but only for the most recent 10 years after the exempt transfer. If there was more than one exempt transfer, the calculation will be made taking into consideration the taxable values that would have resulted because of each transfer of ownership.

More information can be found at:

www.michigan.gov/documents/treasury/QualifedForestPropExemptGuidelines07_210766_7.pdf and www.Michigan.gov/treasury

Water Pollution Control exemption

As of January 2010 more than 5,000 water pollution control exemptions were listed on the internet.

The Air Pollution Control exemption (P.A. 451 of 1994, Part 37, as amended) affords a 100% property and sales tax exemption to facilities that are designed and operated primarily for the control, capture and removal of industrial waste from water. The exemption applies to property not previously certified as pollution control for the granting of this exemption, even if the property is currently assessed.

324.3702 Tax exemption certificate; application; filing; manner; form; notice; hearing.

(1) An application for a water pollution control tax exemption certificate shall be filed with the state tax commission in a manner and in a form as prescribed by the state tax commission. The application shall contain plans and specifications of the facility, including all materials incorporated or to be incorporated in the facility and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of industrial waste pollution control, together with the proposed operating procedure for the control facility.

(2) Before issuing a certificate, the state tax commission shall seek approval of the department and give notice in writing by certified mail to the department of treasury and to the assessor of the taxing unit in which the facility is located or to be located, and shall afford to the applicant and the assessor an opportunity for a hearing. Tax exemption granted under this part shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by any facility.

The exemption is achieved following a review by the Property and Services Division and the MDNR or the successor agencies. A recommendation is made to the State Tax Commission (STC) regarding the qualification of the application. The STC is responsible for final approval and issuance of certificates. Exemptions are not effective until approved by the STC.

Timeliness is an important part of the application process. Tardiness of an application may lead to a deferral of approval of the application or, if in response to an inquiry by an agent of the state, may lead to a determination that the application has been withdrawn.

Completed applications received by the Department of Treasury on or before June 15 of each year will be processed and transmitted to the Department of Environmental Quality (or its successor agency) no later than July 15. In turn, DEQ will transmit its determination for all completed applications to the State Tax Commission (STC) on or before November 1. Applications received by the Department after June 15 and transmitted to the DEQ after July 15 will be acted on as expeditiously as possible. Without exception, DEQ determinations received after November 1 will be processed by the STC in the subsequent year.

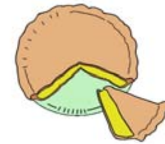
The effective date of the Air Pollution Certificate is the date on which the certificate was issued. Once approved, the certificate remains in effect until the pollution equipment is no longer in place or no longer used for pollution control.

More information at: www.michigan.gov/treasury and at http://www.michigan.gov/documents/taxes/Air_FAQ_276614_7.pdf

CHAPTER 12
Abatements and Tax Capturing Authorities

5. Introduction – Economic Development Legislation

The purpose of this portion of Chapter 12 is to provide an overview of two forms of economic development laws affecting property taxation. Both forms are tools designed to be applied in a specific geographic area. They use part of the property tax pie to either reduce future property tax burdens for investors (**abatements**) or to channel future property tax revenue streams into specific projects with a public purpose (**Tax Increment Financing** or **TIF**). "Economic development" integrates ad valorem taxation and these two classes of legislation to create or save jobs, fight blight, stimulate the local economy or achieve other goals for the public good.



Illustrative material is provided on some "Abatements" and some "Authorities." Due to space limitations and changing legislation, not every act herein cited can be extensively discussed. Those that are will be used to highlight elements both common and unique to economic development legislation.

The term **"abatements**" will refer to the following legislative programs (listed in chronological order): Industrial Facilities Tax (IFT)[19] PA 198 of 1974; Commercial Facilities Tax (CFT) PA 225 of 1978; Technology Park, PA 385 of 1984; Enterprise Zone, PA 224 of 1985; Neighborhood Enterprise Zone (NEZ) PA 147 of 1992; Obsolete Property Rehabilitation Act (OPRA) PA 146 of 2000; Eligible Tax Reverted Property Act, PA 260 of 2003; and Commercial Rehabilitation Act, PA 210 of 2005. *The legislative common element is a "specific tax*" which replaces the ad valorem tax. Characteristics of abatements that distinguish them from ad valorem taxation include: creation of the "specific tax" roll for improvements; leaving land to be assessed on the ad valorem tax roll and manipulation of either a millage rate or a property value.

Legislation enabling tax capture is termed is termed "Tax Increment Financing Authorities" or **Authorities.** The legislation listed in chronological order is: Downtown Development Authority (DDA) PA 197 of 1975; Tax Increment Financing Authority Act (TIFA) PA 450 of 1980; Local Development Financing Act (LDFA) PA 281 of 1986; Brownfield Redevelopment Authorities (BRFA) PA 381 of 1996; Historical Neighborhood Tax Increment Finance Authority (HNTIFA) PA 530 of 2004; Corridor Improvement Act (CIA) PA 280 of 2005; Neighborhood Improvement Authority Act (NIA) PA 61 of 2007; and Water Resource

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[19] The nomenclature for PA 198 legislation is slightly different today than when first instituted. Previously term IFTs, today "IFE" or Industrial Facilities Exemption is the term of choice.

Improvement Tax Increment Finance Authority Act (WITIFA) PA 94 of 2008. Their common element is the capturing of tax revenue. A distinguishing characteristic of the TIF is that *it modifies the tax distribution, not the tax levy.* The state of Michigan provides detailed information on the administration of many of these statutes at: http://www.michigan.gov/taxes/0,1607,7-238-43535_53197---,00.html . Other material pubished by the state of Michigan at its web site, including *Frequently Asked Questions (FAQ)*, is hereby incorporated within this chapter by reference.

General History

As stated earlier, Michigan's modern efforts to sustain its property tax base and address" economic development incentives" can be traced back to 1945 and the adoption of the Municipal Blighted Area Rehabilitation Act (1945 PA 344, M.C.L. 125.71 et seq). 1945 was the year in which World War II ended. As the war ended, the U.S. saw increasing demand for housing, creating jobs and eliminating blight. Public and private leaders attacked the challenges.

Among private investors, perhaps Abraham Levitt (and his sons) are most well known for addressing the need for housing. During the war, they honed their construction skills with private developments of up to 2,200 upscale homes on Long Island, New York and a large number of military housing units. After the war (1947 to 1951) they built 17,447 "tract" homes in an area known as Levittown.[20] Their ability to make money, and quickly erect attractive housing, was copied across the U.S. Businesses want to be near people and vice versa, so in 1956, another innovation was introduced to America. The first enclosed "shopping center" in the U.S. was built near Minneapolis, Minnesota.

On the government side, blight, housing and job issues were addressed in traditional ways, but innovation took hold too. In 1945 the state of California enacted a unique form of law, America's first tax increment financing (TIF) legislation, the Community Redevelopment Act.[21] Thus, the collection and use of property taxes came under scrutiny with an economic development focus.

One view was expressed in a confident declaration by a spokesman for the National Tax Association. He said, "by 1976, the property tax will have become an all but forgotten relic of an earlier fiscal age."[22] Contrary to the spokesman's expectation, more and more communities saw relief from rising tax burdens as a needed economic development tool. Cities were losing people to the suburbs and the world was changing rapidly.

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[20] http://www.levittownbeyond.com/ accessed June 15, 2010 and http://geography.about.com/od/urbaneconomicgeography/a/levittown.htm accessed June 15, 2010

[21] Tosun, Mehmet S. and Yakovlev, Pavel, "Tax Increment Financing and Local Economic Development," West Virginia Business and Economic Development Review, Fall 2002, 8(4)University.

[22] Arlo Woolery, "The Future of the Property Tax in the United States," International Assessor, Vol 42, No. 11, p. 16, Nov 1976,

Comments from around the world reflect both current and past worries: "The mom-and-pop shops of Japan's old-style downtown shopping arcades are in serious decline, suffering under a weak economy and competition from supermarkets, convenience stores and cheaper mega-outlets of the modern economic world."[23] "Vietnam is the new China: Globalization's Victors Hunt for the Next Low-Wage Country."[24] "Change" is creating world-wide competition.

According to Tosun and Yakovlev[25], the use of tax capturing authorities did not become widespread across the U.S. until the 1970's. Here in Michigan, the 1970's saw elimination of the property tax on business inventories and the introduction of property tax relief for homeowners. Homestead obligations were capped at 3.5 percent with the passage of PA 20 of 1973 (Circuit Breaker Law). Industry got the first abatement (IFT – PA 198 of 1974). Local government units applauded a new tax capturing authority (DDA PA 197 of 1975). Such laws were not universally welcomed and tax capturing authorities were opposed.

On January 28, 1987 two important events happened that would impact the use of tax capturing authorities within the state of Michigan. On that date, an advisory opinion of the state's Supreme Court was requested by Governor Blanchard in the form of a letter and from the Senate by way of its Resolution No. 30. They jointly requested an opinion of the "constitutionality" of the Local Development Financing Act (LDFA). The court was asked to decide two questions: (1) if the capture of revenues by a local development finance authority unconstitutionally diverted tax revenues from other taxing entities; and (2) if capturing tax revenue and using it for specific purposes authorized by the LDFA unconstitutionally lent the credit of the state of Michigan or a municipality.

The state Attorney General was asked to argue merits, pro and con, of the two questions in a brief for the court. In addition, briefs were solicited from interested parties throughout the state. The court decision (March 22, 1988) relied upon cases from across the U.S. in concluding the tax increment law did not violate the constitution.

In its decision the court concluded *"that the provisions of LDFA that allow the capture and use of tax increment revenues do not violate Const. 1963, art. 9, § 6. In addition, application of the same provisions does not on its face constitute an unconstitutional lending of credit in violation of Const. 1963, art. 9, § 18, or art. 7, § 26.*[26] These conclusions were reached after considering the implications of all three then existing authorities (DDA, LDFA and TIFAA).

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[23] Yamaguchi, Mari, Japan's Shops Fading Away, The Saginaw News, pg C-5, July 17, 2000 (AP story)
[24] GLOBALtalk, Global Auto Experts electronic newsletter, September 2008
[25] Tosun, M.S. and Yakovlev, P., Tax Increment Financing and Local Economic Development, A Policy Report by the West Virginia Public Finance Program, West Virginia University, pg 2, October 2002
[26] In RE Request For Advisory Opinion, 430 Mich 93, 99; 422 N.W. 2d 186 (1988)

Michigan's Supreme Court distinguished between the legality of these laws and the wisdom of employing them as a tax policy in this way: *"Regardless of the relative policy merits of tax increment financing, we are persuaded by the arguments of the Attorney General (in favor of constitutionality) and of various amici curiae, on both sides of the constitutional issue, that tax increment financing is a vital source of funding for many communities".*[27]

The advisory opinion[28] has since guided the implementation of tax capturing legislation, so a few of the court's statements are restated for your reference.

> (1) tax increment financing is a vital source of funding for many communities, (2) once a tax increment financing plan has been approved, the property values covered by the tax increment financing plan are, in effect frozen, (3) initial assessed value means the assessed value, as equalized, of the eligible property identified in the tax increment plan at the time the resolution establishing the tax increment financing plan is approved as shown by the most recent assessment roll for which equalization has been completed at the time the resolution is adopted," (4) tax increment financing is premised on the theory that, without the redevelopment project, property values would not increase or increases in land values and assessments in the project area are caused by the redevelopment authorities own construction of economic activity in the district, (5) the LDFA permits, but does not require a municipality to exclude from captured assessed value the portion of the increase that results solely from inflation, (6) Once a tax increment financing plan is adopted, it is binding on all taxing units levying ad valorem property taxes or specific local taxes against property located in the authority district, (7) In answer to the question of diversion of tax revenues from local governments to the tax capturing authority, the Supreme Court found no violation because "we do not interpret the applicable portions of art. 9, § 6, as governing the capture and use of tax increment revenues; (8) the court found constitutional limitations are on the tax rate, not on revenues or their use; (9) the legislature is not prohibited from allowing the capture of tax revenues; (10) the bonds used for the LDFA tax capture programs rely upon the credit of the sponsoring municipality and not the state of Michigan; (11) the consensus of modern legislative and judicial thinking is to broaden the scope of activities considered a "public purpose;" (12) economic welfare is one of the main concerns of the city, state and federal governments; (13) the capture and use of tax revenues by an LDFA amounts to a loan of credit under the constitution, but the credit is a municipal credit permitted under the constitution.

Once the constitutionality of these laws was confirmed, more AG opinions quickly followed (numbers 6558, 6589 and 6687) which further clarified outstanding issues. The end result was that tax capturing authorities grew in number following their inception rising to about 600 plans in 1999. The state initiated an audit of all plans for compliance with the capture of school taxes. The use of capturing plans has since fallen by about fifty percent.

Legal issues are not all that has been clarified. There has been considerable academic research on the economic impact of adding jobs to a community over the decades. Common sense, and reasonable evidence, support the importance

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[27] In re Request for Advisory Opinion on Constitutionality of Local Development Financing Act, 430 Mich 93, 99; 422 N.W. 2d 281, FN 3

[28] In re Request for Advisory Opinion on Constitutionality of Local Development Financing Act, 430 Mich 93; 422 N.W. 2d 281

of economic development. Enrico Moretti, of the University of California at Berkley, said:

> "Every time a local economy generates a new job by attracting a new business, additional jobs might also be created, mainly through increased demand for local goods and services." … "I find that for each additional job in manufacturing in a given city, 1.6 jobs are created in the nontrade sector in the same city." … "This effect is significantly larger for skilled jobs, because they command higher earnings. Adding one skilled job in the tradable sector generates 2.5 jobs in local goods and services. The corresponding figure for unskilled jobs is one. The multiplier also varies across industries. Industry specific multipliers indicate that high tech industries have the largest multipliers."[29] Similar multipliers have been determined by others.[30]

Non-payroll *cash flows*, new to a local economy, have a similar impact.

Summary

About the middle of the 20th century, major structural changes were taking place in the economy of the United States. The agrarian society became industrialized. Populations prospered and relocated. Once favored cities, and other communities, found themselves stressed by change, including the movement of families to new suburban areas. Businesses followed and instituted malls and other retailing innovations. The development of modern technology, from computers to robots to supersonic travel, facilitated international competition.

This change took place over many decades, during which communities adjusted, planned and implemented new strategies. A big part of the response was the codification of laws designed to "abate" or even eliminate certain property taxes, to stimulate economic growth and to provide mechanisms whereby financially stressed communities could compete for jobs and residents in state, national and international arenas. Two of Michigan's legislative responses to societal changes are discussed in this chapter. They are certain exemptions termed "abatements" and tax capturing authorities. Abatement legislation retains land values on the ad valorem tax roll; there is no impact on land taxes. Abatements either freeze the existing tax value base for rehabilitation "improvements" or tax new improvements at a reduced millage rate. TIFs are tools which capture taxes for specific public purposes.

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[29] Enrico Moretti, American Economic Review: Papers and Proceedings of the One Hundred Twenty Second Annual Meeting of the American Economic Association, May 2010, pg 373.

[30] Lefkowitz, Martin, What 100 New Jobs Mean to a Community, Economic Policy Division, U.S. Chamber of Commerce, 1615 H Street, N.W., Washington D.C. (1993)

Property tax abatement defined and mechanism described

A tax abatement is a "specific" tax on real property improvements and personalty. It is not levied on land. It is a form of development incentive which reduces a future tax burden; but only if, an investment increases property value. Unlike tax capturing legislation, abatements do not last for decades and they do not divert tax revenue from its normal distribution to all units of government.

Acts considered "abatements" have a main goal of eliminating a financial burden during the initial phase of a project. Presumably, it is during a growth phase that a taxpayer is most burdened by high costs. Abatements can be operative for up to fifteen years. If no investment is made, the incentive creates no cost to local government. If an investment is made, the qualifying property has a lower tax burden than it might otherwise have. New construction generates new revenue for taxing entities. Rehabilitations preserve the existing tax base.

Residential abatements (Act 147 of 1992), function like commercial and industrial abatements. Instead of jobs the home is to attract residents. If the initial tax burden can be lightened an expectation exists that citizens might be able to purchase housing not otherwise available to them. New housing would stimulate the tax base. Advantageously priced housing provides an opportunity for families to move into an area where property had previously been unused and oftentimes vacant. Of course, new families, means more children and more school revenue.

At the time of this writing, a child entering the local public school system represents a new cash flow to the schools of between $7314 and $12,443 annually. Therefore, every 100 new students entering a school system stimulate the local economy with an influx of between $731,400 and $1,244,300. Each cash flow of approximately one million dollars circulating in a local economy in 2004 may be expected to sustain or support approximately 25 to 30 jobs in occupations such as retail, restaurants and motels.[31]

Creating an abatement

While specifics vary from law to law, there is a general procedure which must be followed for a property to obtain any abatement from ad valorem property taxation. The first order of business to achieve an abatement is for an eligible unit of government to delineate the specific geographic area in which an eligible property may be certified for an abatement. This geographic area becomes a "district" defined by a formal resolution of the governing body of the unit of government and named in a manner consistent with the enabling legislation. For example, properties eligible for Industrial Abatements may be located in a Plant Rehabilitation "District" or an Industrial Development "District." The "district"

[31] Daniel Styne, PhD, personal correspondence to Joseph Turner (Assessing Certificate R-1798), 2004

created pursuant to the Neighborhood Enterprise Zone Act is termed a “Neighborhood Enterprise Zone.” The NEZ act also provides for a district termed the “Homestead Zone.”

Properties must be eligible for a certificate under the appropriate act. For example, the act usually requires a certain class or classes of property. The act may require certain findings: e.g. that granting a certificate will not financially impair the unit or that a certain level of “obsolescence” exists within properties comprising the district. Acts usually grant specific certificates of exemption from the ad valorem tax based upon the nature of the project: “new construction,” “rehabilitation” or “replacement” projects. Each act has its unique set of criteria.

Mechanics of the abatement

As a general rule, abatements accomplish their task by removing (exempting) part of the assessment value (personalty, buildings and other improvements) from the ad valorem tax roll and placing them on a “specific tax” roll. The specific tax is then calculated using a unique millage rate and valuation. Though sometimes similar, abatements do not follow rules applicable to an ad valorem calculation. Examples of calculations for three abatement laws follow. They represent industrial, commercial and residential properties.

Each abatement law has a specific set of criteria which must be met before the certificate of exemption from the ad valorem tax is issued. As a general rule, some form of the following sequence must be completed in a timely matter. Once completed the abatement certificate application is forwarded to the state of Michigan for final approval. First designated geographic area must be created.

- A qualified authority must designate a specific geographic area (district) or areas within which certificates may be issued
- The legislative body of the government unit may sometimes establish a district of its own volition or the district may be initiated through the written request of a statutorily defined property owners
- The designation of the area begins with a formal resolution of intent
- Before a final resolution approving the district can be completed, timely notice must be sent to all entities and parties so stipulated in the authorizing legislation, notifying them of the intent to create the district and offering them the right to a public hearing
- The final resolution approving the district usually must contain a mandated “finding” or findings
- The final resolution must often contain certain plans, goals, objectives, companion ordinances and policies as defined within the authorizing statute to be complete
- The final resolution must often contain fiscal information supplied by the taxing unit or its agents including but not limited to a statement of the

value of property located within the zone and other information considered necessary by the authorizing governing body

The certificate

Once the geographic area required by the enabling legislation is legally created, property owners may then proceed to apply for certificates which exempt the property (with certain exceptions such as land) from the ad valorem tax roll.

Applications requirements for abatement certificates are unique to each enabling law. Those requirements extend to not only the content of an application, but to when the application may be filed and the nature of a "timely" response by the appropriate government entity or entities. However, there is a general pattern as outlined next.

- The application may not be filed until after a district is legally established
- Filing an application is often available to either a property owner or a lessee
- Upon receipt of an application (the clerk) of the unit of government proceeds with a series of "notifications" to prescribed entities and individuals
- The local unit of government receiving the application must conduct a public hearing on the application before approving it
- The local unit of government can sometimes charge an application fee – usually limited to actual cost or some percentage of the abated taxes – whichever is less
- The local unit of government must respond with an approval or disapproval within a specific time period from receipt (usually 60 days or less)
- Applications approved must be forwarded to the designated state oversight agency (usually the State Tax Commission) within a specific time period (usually 60 days or less) and before October 31st of the year
- State approval or denial of the application must be made (usually within 60 days of receipt)
- Before final approval the state agency (STC) may be required to perform certain notifications and secure written concurrence of compliance with statutory requirements

Frozen value times contemporary millage rate

In the case of the "rehabilitation" of an existing structure (and the construction of certain "replacement' facilities), the property value in effect when the certificate is approved is "frozen" for the duration of the abatement period. Unaltered ad valorem millage rates are multiplied by the "frozen" property value to calculate the "specific tax." Taxes are "abated" because the frozen value is lower than the property might otherwise be valued at. Some legislation protects revenue for

education. The OPRA example which follows illustrates protection of school millage rates. That law requires a school levy on the total taxable value which results from improvements. Two distinct mathematical operations accomplish that goal. For accuracy of calculation, it is critical the appropriate law be carefully reviewed with respect to every tax computation guideline.

Each of the three tables which follow, illustrate calculations in circumstances where a taxable value is frozen. The non-homestead millage rate applied is sixty mills. Taxable value is shown as a total amount for the property with and without the rehabilitation. "Value" is broken into the land component which is taxed at standard ad valorem rates and not shown. Improvement values are shown as they would be in a taxing formula without the abatement and with the abatement.

Following the separation of land value from the value of improvements, there are two basic steps in calculating the levy for the specific tax roll:

(1) determine the appropriate value to use
and
(2) determine the appropriate millage rate.

M.C.L. 207.564(14)(1) contains instructions for calculating the industrial abatement tax. It "shall be determined by multiplying the total mills levied as ad valorem taxes for that year by all taxing units within which the facility is situated by the taxable value of the real and personal property of the obsolete industrial property for the tax year immediately preceding the effective date of the industrial facilities exemption certificate after deducting the taxable value of the land" … The following example uses a millage rate of 60 mills and improvements to the land with a taxable value of $1,000,000 before the restoration and $2,200,000 after. The restoration added $1,200,000 to the Taxable Value.

Sample calculation – Rehabilitation (restoration) of an industrial building

$1,000,000 Taxable Value before rehabilitation; improvements add $1,200,0000 in Taxable Value							
	Taxes w/o certificate			**Taxes with certificate**			
	Taxable Value	Millage	Tax	Value	Millage	Tax	Levy difference
Improvements	$2,200,000	60.00000	$132,000	$1,000,000	60.00000	$60,000	$72,000

An example of the specific tax on a commercial real property qualified under P.A. 146 of 2000, (Obsolete Property Rehabilitation Act or OPRA) follows. Under this abatement, schools are protected from lost revenue. To proceed, one must identify the appropriate taxable values and millage rates to use. M.C.L. 125.2790 provides the beginning point, directing calculations as follows:

1. The amount of the obsolete properties tax, in each year, shall be determined by adding the results of both of the following calculations

    a. Multiplying the total mills levied as ad valorem taxes for that year by all taxing units within which the rehabilitated facility is located by the taxable value of the real and personal property of the obsolete property on December 31 immediately preceding

the effective date of the obsolete property rehabilitation exemption certificate after deducting the taxable value of land" … (Frozen Taxable Value)

b. Multiplying the mills levied for school operating purposes for that year under the revised school code, … and the state education tax, by the taxable value of the real and personal property of the rehabilitated facility, after deducting all the following: the taxable value of the land and of the personal property assessed pursuant to sections 8(d) and 14(6) of the general property tax act … and deducting the taxable value used to calculate the tax under subdivision (a). (Current TV)

It is important to note the variations in taxable value cited in this portion of the OPRA statute. In "a" above, the frozen value is identified (the value preceding the certificate). In "b" the instruction is to begin with the current year's taxable value (not the frozen value) and then subtract from it the frozen value used in the calculation under "a." Multiplying the increased taxable value resulting from a rehabilitation activity by total school millage rates current in each new year (instruction "b"), ensures education taxes are not diminished. The end result of the computations is: a taxpayer benefits by having all taxes, but school taxes, computed on a "frozen" value; school tax collections based upon the investment and not simply the "frozen" value; preservation of the existing base taxable value.

In the OPRA example, we'll use a 60 mill non-homestead levy and the same $1,200,000 improved value as was found in the industrial example. The school operating millage will be 18 mills and the State Education Tax 6 mills. School tax collections are shown as one without the OPRA certificate and another as the sum of two school calculations under OPRA. The first of the two OPRA computations uses the frozen value to calculate a school tax; the second, uses the current value after improvement minus the frozen value. As shown, adding the two school calculations required under OPRA yields taxes equal to those that would exist if no certificate had been granted (zero change in total levy).

Example calculation – OPRA Rehabilitation of a qualified commercial Building

$1,000,000 current Taxable Value; improvements add $1,200,0000 in Taxable Value							
	Taxes w/o certificate			**Taxes with certificate**			
	Taxable Value	Millage	Tax	Value	Millage	Tax	Levy difference
Improvements	$2,200,000	60.0000	$132,000	$1,000,000	60.0000	$60,000	$72,000
School tax calculation	$2,200,000	24.0000	$52,800	$1,000,000	24.0000	$24,000	$0
School tax calculation				$1,200,000	24.0000	$28,800	$0

The last of the abatement examples is a residential abatement created by the Neighborhood Enterprise Zone Act (NEZ) PA 147 of 1972. Controlling language for a calculation of this specific tax is found at M.C.L. 207.779 (9)(4): "the amount of the neighborhood enterprise zone tax on a rehabilitated facility is determined each year by multiplying the taxable value of the rehabilitated facility, not including the land, for the tax year immediately preceding the effective date of the neighborhood enterprise zone certificate by the total mills collected under the general property tax act" … "for the current year by all taxing units" … The homestead millage rate is 42 mills. The example uses a $50,000 (Taxable Value)

home that has been rehabilitated so that the after renovation (Taxable Value) is $100,000.

Example calculation – (NEZ) Rehabilitation (restoration) of a residential building

$1,000,000 Taxable Value before rehabilitation; improvements add $1,200,0000 in Taxable Value							
	Taxes w/o certificate			**Taxes with certificate**			
	Taxable Value	Millage	Tax	Value	Millage	Tax	Levy difference
Improvements	$100,000	42.00000	$4,200	$50,000	42.00000	$2,100	$2,100

Summary of specific tax calculation after rehabilitation or restoration

The specific tax computation for properties undergoing a rehabilitation or restoration varies from law-to-law. However, all use some form of "frozen" taxable value as one of the multiplicands. This value is multiplied by the contemporary millage rate for the year of the tax levy using the appropriate homestead or non-homestead millage rate. As in OPRA, sometimes, abatement legislation preserves certain tax levies for education. In such cases, multiple values and millage rates are used. In OPRA the taxable value of the property after restoration is calculated as if no abatement were in place. From this value, the "frozen" taxable value is subtracted. The remainder (taxable value) is then multiplied by the millage rate contemporary for the tax year of the levy. This produces additional school tax revenue which, when added to the school taxes computed from a "frozen" value, creates a total specific tax equal to what the education levy would have been if no abatement existed.

Calculating abatements for new construction

In the case of abatements for new improvements, the property value is not usually manipulated to lower taxes, the millage rate is. As will be seen, there are wide variations between laws for determining the appropriate millage rate.

Three tables follow which illustrate calculations for new construction using the same pattern as for rehabilitations. First will be an industrial property, then a commercial property and finally, a residentially abated property. The same values following an investment will be used as was found in the preceding examples. In the following cases however, the calculation of the specific tax will proceed based upon "new" construction.

The first example will be an industrial property where a new improvement has been built. A certificate of exemption has been secured pursuant to PA 198 of 1974. The non-land, pre-certificate value for this example is $1,000,000. The new improvements add $1,200,000 in taxable value. The non-homestead millage rate is 60 mills.

Instructions for computing the specific tax under PA 198 are found at M.C.L. 207.564(14)(3): "for a new facility"… "for which an industrial facilities exemption

certificate becomes effective after December 31, 1993, shall be determined by multiplying the taxable value of the facility excluding the land" … "by the sum of ½ of the total mills levied as ad valorem taxes for that year by all taxing units" … "other than mills levied under the state education tax"… It should be noted that the law provides for other millage rate adjustments under very specific circumstances. This example is premised upon a millage rate unaffected by other potential adjustments. See M.C.L. 207.564a (14a) as an example of further adjustments. The appropriate formula for computing the industrial facilities tax in the table below is: the taxable value of the "new construction" (as determined for each year in which the specific tax levy is made) multiplied by ½ of the non-homestead millage rate (excluding the state education millage) plus the entire state education millage rate. The millage rate for the example below is determined by removing 3 mills from the 60 mill total (57 mills) and dividing the 57 mills by 2. The answer (quotient) of that operation (28.5 mills) is added to the 3 mill state education millage. The sum (31.5 mills) is the millage rate to be used to calculate the specific tax for new construction under PA 198.

Example calculation – New industrial real property

$1,000,000 Taxable Value before; "new" improvements add $1,200,0000 in Taxable Value							
	Taxes w/o certificate			**Taxes with certificate**			
	Taxable Value	Millage	Tax	Value	Millage	Tax	Levy difference
Improvements	$2,200,000	60.00000	$132,000	$2,200,000	31.50000	$69,300	$62,700

An example of an abatement for new commercial structures has been made using PA 255 of 1978 (as amended), the Commercial Redevelopment Act. This abatement is similar in structure to the industrial PA 198 of 1974. The premise for the levy will again be improvements with a taxable value of $1,000,000 prior to new construction and a total taxable value of $2,200,000 after new construction.

Instructions for the levy of this abatement are found at M.C.L. 207.662(12)(3): "The amount of the commercial facilities tax, in each year, for a new" … "facility shall be determined by multiplying the taxable value of the facility excluding the land" … "by the sum of ½ of the total mills levied as ad valorem taxes for that year by all taxing units" … "other than mills levied under the state education tax act" … "plus" … "the number of mills levied under the state education tax act."

It should be noted that the law provides for other millage rate adjustments under very specific circumstances. This example is premised upon a millage rate unaffected by other potential adjustments. See M.C.L. 207.662a (12a) as an example of further adjustments. The appropriate formula for computing the commercial facilities tax in the table below is: the taxable value of the "new construction" (as determined for each year in which the specific tax levy is made) multiplied by ½ of the non-homestead millage rate (excluding the state education millage) plus the entire state education millage rate. The millage rate for the example below is determined by removing 3 mills from the 60 mill total (57 mills) and dividing the 57 mills by 2. The answer (quotient) of that operation (28.5

mills) is added to the 3 mill state education millage. The sum (31.5 mills) is the millage rate to be used to calculate the specific tax for new construction under PA 255.

Example calculation – New commercial real property

$1,000,000 Taxable Value before; "new" improvements add $1,200,0000 in Taxable Value							
	Taxes w/o certificate			**Taxes with certificate**			
	Taxable Value	Millage	Tax	Value	Millage	Tax	Levy difference
Improvements	$2,200,000	60.00000	$132,000	$2,200,000	31.50000	$69,300	$62,700

The residential abatement found in the Neighborhood Enterprise Zone Act (NEZ) for new construction operates with a different approach to millage rates. Rather than use the levy found locally, it computes the specific tax based upon a state average. A state average residential tax rate is influenced by the abundance of rural, or other taxing units, with relatively low millage rates. Because of their proliferation, an "average residential tax rate" is significantly lower than millage rates used in municipal and certain other areas. They can range to over 90 mills. NEZ legislation takes advantage of mathematical averaging.

The next table demonstrates the difference between the previously used 42 mill homestead rate and a typical average residential rate. The law provides for a similar calculation for NEZ properties that do not meet the definition of "principal residence". Instead of the average residential rate, the average rate for commercial, industrial and utility property is used.

At M.C.L. 207.779(3)a the NEZ act orders a computation of principle residence taxes for qualifying NEZ properties: "for property that would otherwise meet the definition of a principal residence under section 7dd of the general property tax act" … "1/2 of the average rate of taxation levied in this state in the immediately preceding calendar year on a principal residence and qualified agricultural property". Remember, the land value remains on the ad valorem roll and is not part of the calculation showing on the specific tax roll for the NEZ act.

Example calculation – (NEZ) New Qualified Residential or Agricultural Property

$0 Taxable Value before new construction; $200,000 Taxable Value after construction							
	Taxes w/o certificate			**Taxes with certificate**			
	Taxable Value	Millage	Tax	Value	Millage	Tax	Levy difference
Improvements	$100,000	42.00000	$4,200	$50,000	16.00000	$800	$3,400

Summary

In summary, a tax abatement provides an immediate and specific tax savings for the taxpayer. It does this by freezing an assessment at the value of the property prior to any renovations and applying the local millage rate to the property; or for new construction, by valuing the property at its true cash value, but applying a millage rate which is lower than the prevailing rate in the jurisdiction granting the

abatement. More information in the form of frequently asked questions is available http://www.michigan.gov/taxes/0,1607,7-238-43535_53197---,00.html

Taxes on abated properties are collected from two tax rolls: land remains on the ad valorem roll and is taxed in the same way that all other ad valorem properties are; taxes levied against values placed on a "specific" tax roll use a millage rate or value which deviates from alternative ad valorem taxation. Abatements reduce immediate tax burdens and are short term incentives expiring in a time frame of 15 years or less.

It should be noted that in the case of abated properties, tax collections are distributed to each local jurisdiction on a proportional basis which replicates the ad valorem distribution. Until recently, under some abatements, the 1993 school operating millage, not the contemporary rate, was used to calculate the specific tax. The school operating millage share of the specific tax is paid to the state school aid fund. The state, in turn, indemnifies school entities from a loss.

Questions about levying special assessments on a "specific tax roll" were answered by Michigan's Director of the Tax Analysis Division (Department of Treasury) in an e-mail. Director, Howard Heideman, wrote on November 20, 2007 that special assessments do not apply to specific tax rolls. *Any specific tax roll, including abatements, would not have a special assessment levy applied*. Special assessments would apply to land remaining on the ad valorem roll.

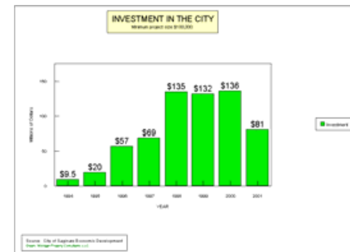
Tax capturing authority Introduction and history

The idea of creating geographic areas in which a local economy can be stimulated is not unique to Michigan nor the United States. It may be surprising for some to learn that shortly after Michigan's first tax capturing authority was codified (DDA Act 1975) the People's Republic of China "launched its 'Open Door' economic reforms (1978). During the past three decades, China's merchandise exports have increased 125-fold and its real gross domestic product (GDP) has grown nearly 15-fold.[32] In a pioneering initiative, the city of Porto Alegre, Brazil, is using the property tax as an instrument for simultaneously capturing land value increments, deterring land speculation, promoting rational urban development and promoting "social fairness and economic growth." The program was instituted in 1993 at a time when inflation was rising at the astonishing rate of 7000 percent annually.[33] Examples of similar uses of government and private incentives focused on locally designated geographic areas and designed for economic stimulus can be found around the world.

[32] Sahling, Leonard, China's Special Economic Zones and National Industrial Parks – Door Openers to Economic Reform, (2008) ProLogis Research Bulletin, Winter, pg 3.
[33] De Cesare, Claudia M., (1998), Using the Property Tax for Value Capture: A Case Study from Brazil, Land Lines, January 1998, Volume 10, Number 1

Michigan's tax capturing authorities, known as "TIFs," are premised, in part, on the idea that if improvements made to real property correspond to market demand, property prices will go up; in the workforce there will be either job retention or job creation, or both.

TIFs constitute a broad pattern of government response to widespread economic malaise. In areas where there is great need, there may not be enough resources to cure all the ills. However, by focusing existing resources on small areas, it is possible to create pockets of prosperity which foster growth. A chart illustrates, private investment in the city of Saginaw, Michigan during the 1990s following widespread use of tax incentive programs.



The economic mechanism TIF laws utilize are known by economists as "externalities." Externalities are economic forces real estate appraisers consider in an analysis of neighborhoods. They are forces that can drive market value either up (private benefit) or down (private cost).[34] Intuitively, most people recognize this influence; seeing that well kept neighborhoods hold steady or increase property values and poorly maintained areas negatively impact value.

Substantial academic research documenting the geographic distribution of a market value influence on public and private properties from an externality now exists. For example, studies of foreclosed homes show reduced nearby property values for up to one half mile.[35] Parks, water features and well groomed neighborhoods are examples of positive externalities which often increase property values within geographic areas extending to one-half mile from the source.[36]

Tax capturing authority defined and mechanism described

Tax capturing authorities are forms of legislation designed to capture new property tax revenue generated from both inflation and from rising property values within specific geographic areas. A tax capturing authority attempts to (1) preserve an existing tax base and (2) foster growth to finance public projects. All tax capturing authorities have a requirement for a financing and development

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[34] Hubbard, R. Glenn and O'Brien, Anthony Patrick, Microeconomics, Pearson Education Inc., Upper Saddle River, N.J. 070458, pg. 132,(2006)

[35] Immergluck, Dan and Smith, Jeff, (2009)The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values, Housing Policy Debate, The external costs of single-family mortgage foreclosures, Fannie Mae Corporation also see Lin, Zhenguo, Rosenblatt, Eric, Yao, Vincent W., (2009) Spillover effects of neighborhoods on property values, Journal of Real Estate Finance and Economics, Vol. 38, No. 4, Pgs 387 – 407.

[36] Crompton, John L., (2004), The Proximate Principle: The impact of parks, open space and water features on residential property values and the property tax base, National Recreation and Park Association, Ashburn, VA 20148

plan. Some plans have unlimited duration, others are limited by the enabling statute. There is a clear difference between a TIF and a TIFA. The acronym TIF is used to describe a financing tool; specifically, **t**ax **i**ncrement **f**inancing. The acronym TIFA describes one of the currently existing tax capturing authorities, the Tax Increment Financing Act (PA 450 of 1980).

Reason for existence

Each unique law enabling the creation of a tax capturing authority cites slightly differing reasons for the law and activities that may be undertaken. The LDFA Act uses a relatively simple statement to justify the law. It exists: "to encourage local development to prevent conditions of unemployment and promote economic growth" (Preamble to 1986 P.A. 281). Other acts have similar but not identical purposes. Though well intended, these laws have been controversial. In footnote 3 of its 1988 advisory opinion, Michigan's Supreme Court said this:

> Regardless of the relative policy merits of tax increment financing, we are persuaded by the arguments of the Attorney General (in favor of constitutionality) and of various amici curiae, on both sides of the constitutional issue, that tax increment financing is a vital source of funding for communities." ... "We therefore agree that the issues presented are sufficiently important to support the issuance of an advisory opinion.[37]

The court also grappled with what exactly happens … is revenue lost to units of government or not? A companion argument for constitutionality focuses on the idea that *"there is no 'diversion' because the taxing units continue to receive the tax revenue they would have received had the authority not been created, and those units are not required to give up any revenues to which they would otherwise be entitled.*[38] This argument is joined to another important legal premise advanced by Michigan's Attorney General. The legislature has an inherent power to allocate tax revenues. The concept is articulated in Huron-Clinton Metropolitan Authority v Bds. of Supervisors of Five Counties, 300 Mich. 1, 19; 1 N.W. 2d 430 (1942)

What can they do or not do?

Tax capturing authorities do not reduce ad valorem millage rates generated by taxing jurisdictions or reduce a tax burden. In fact, a Downtown Development Authority may even add a new millage rate to the existing ad valorem rates. Tax capturing authorities are geographic areas in which special legislation permits certain taxes to be retained as revenue for exclusive use by the tax capturing authority.

In its advisory opinion, the Supreme Court described the function of tax capturing authorities in this way:

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[37] In RE Request for Advisory Opinion, 430 Mich. 93, 98; 422 N.W. 2d 186 (1988)

[38] I.D. pg 110

> Basically, once a tax increment financing plan has been approved, the property values covered by the tax increment financing plan are, in effect, frozen. Future ad valorem tax revenues that are attributable to any subsequent increase in value above the base value are turned over to the authority in order to further implement the development plan.[39]

Tax capturing authorities have one function. That is to capture certain taxes from an ad valorem (and in some cases a "specific tax") levy.

Creating an authority

A tax capturing authority is created by a local unit of government as authorized by legislation. The authority must create *a tax increment financing plan and a project plan*. There is no specific template for the plans and sometimes these two distinct functions are carelessly crafted leading to confusion.

Furthermore, once an authority has been created, a tax increment plan and a project plan have been formulated and time for public hearings and comments has expired; continuing oversight is limited to audits by the state of Michigan to assure compliance with school tax distributions and oversight by the creating entity. The local legislative body benefits from a presumption of validity. Thus, local governance fosters wide variations in form and content for development and financing plans created across the state.

Some consistency may be derived from a Michigan Department of Treasury issued a document. It defined tax increment financing plans and distinguished them from a project area well enough that its language was quoted by the state's Supreme Court and used in opinions by the Attorney General. Treasury said,

> [a] tax increment financing (TIF) plan allows a local government to finance public improvements in a designated area by capturing the property taxes levied on any increase in property values within the area. Under a TIF plan, a base year is established for the project area. In subsequent years, any increase in assessments above the base year level is referred to as the captured value. All, or a portion, of the property taxes levied on the captured value (SEV) is diverted to the area's development plan.[40]

It was shown in A.G. Opinion 6687 that taxes generated from a millage approved by a vote of the electors for some specific purpose may be captured in the same way taxes for the general operation of government may be captured.

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[39] Ibid, pg 100

[40] [5]Michigan Department of Treasury, Analysis of Tax Increment Financing in Michigan for 1986 (April, 1987), p A-2

What capturing taxes means

A key to understanding tax capturing authorities is to realize that, with the exception of the added millage available to a DDA, the process by which taxes are created and computed is not changed in any way. Taxpayers receive tax bills identical to what they would have received if the tax capturing authority had not been created**.** The treasurer collects tax payments in the normal fashion. The unique operation of a tax capturing authority is how the collection is distributed.

In 1991, Michigan's Attorney General was asked to address the issue of whether "voted millages for specific purposes that are levied on the 'captured assessed value' must be kept by the local government unit levying the tax or transmitted to the authorities created by 1980 PA 450 and 1975 PA 197."

The A.G. framed the response by focusing on TIF plans. Quoting a Michigan Department of Treasury document the A.G. stated: "Under a TIF plan, a base year is established for the project area. In subsequent years, any increase in assessments above the base year level is referred to as the captured value. All, or a portion, of the property taxes levied on the captured value (SEV) is diverted to the area's development plan."[41]

The A.G. then went on to refer to specific language in both TIF enabling laws and made the following statement about that language:

> In both instances, the Legislature has plainly commanded that 'the tax levy of all taxing bodies' on the 'captured assessed value' is to be transmitted to the authority. There are no statutory exceptions for special millage levies approved by the voters for limited purposes. There is simply no basis in the text of the statutory provisions in question to determine that these specially voted millages are exempt from capture under these statutes. If the language is plain and unambiguous, there is no room for judicial construction. City of Lansing v Township of Lansing, 356 Mich 641, 648-649; 97 N.W. 2d 804 (1959)" ... "It is my opinion therefore, that voted millages for specific purposes which are levied on the 'captured assessed value' must be transmitted to the authorities created pursuant to 1980 PA 450 and 1975 PA 197.[42]

Unless there is a statutory limitation, or an exception within the authority's Plan, a TIF may capture all ad valorem millage rates. Limitations are common.

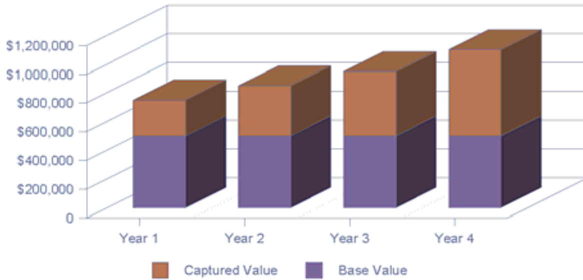
Base and captured value

At the time of creation of an authority, a measure of total property value within the geographic area (district) is made. This is the "base value," also known as the initial taxable value. Taxes generated from the base value may never be captured. Only taxes generated from property values which exceed the base

[41] A.G. Opinion 6687, July 12, 1991, p 1.
[42] Ibid, pgs 2-3.

value may be captured. The base value continues within the tax capturing district for as long as the authority exists or until a permitted modification of the district enables a redetermination of a base value.

Tax capturing authorities examine value in the entire geographic area instead of individual properties. With the exception of Brownfields, all mathematical calculations of tax capture require the manipulation of aggregate taxable values.



The amount of *non-captured taxes* always depends upon the "base" value or initial value. It is established as an "aggregate" for the entire geographic area in which taxes may be captured. This base is by law, the "initial taxable value" existing as of final equalization for the year when the tax capturing authority was created and the base value remains a fixed value.

Aggregated value and value as used within TIFs

Captured taxes are not computed on a property by property basis.[43] They are computed by multiplying the total captured value by an appropriate millage rate. The capturing process depends on the "total" value of all properties within the district and by total values for individual tax rolls.

However, the authority *does use* the captured taxable value of each parcel to arrive at a total "value." No individual parcel may have captured value of less than zero. Because "time" is involved, properties change value during the existence of the plan. Some properties simply disappear (personal property, parcels of real property combined into one parcel for tax purposes, demolitions etc.). Except for Brownfields, the taxable value of all property found within a district is totaled. That total is separated into two components: that part which constitutes the" base value" and that part which constitutes "captured taxable value.

The process requires identifying each property currently existing within the district and comparing that list with properties existing at the inception of the district. A comparison is made based upon each property's identification and based upon each property's "initial taxable value." In some cases, structures may have been demolished, personal property may have been removed, an appellate action may have changed a property value. Over time, it is reasonable to expect such circumstances to develop, so it is critical to maintain accurate records of

[43] See Questions 26 and 27, Michigan Department of Treasury, PTD 3305 (4-01) Frequently Asked Questions About Tax Increment Financing

each property for the initial year and the current year. The total amount of "initial taxable value" must be exceeded by current taxable value or there is no capture. This is best done by creating a spreadsheet with columns identifying: each property, each current property's initial value, the initial value of any property removed from, or exempted from taxation within the district and the class of each original property. Once the *total value of the existing district* exceeds *the total initial value of the district*, a computation of the tax capture can proceed.

Next, individual values of existing property within the district are assigned to their appropriate tax roll. Examples are: ad valorem, real or personal; IFE or NEZ. Finally, the initial value of the district should be subtracted from the current year district total.

As a summary: in each year of the plan, current values for all property are summed to create an aggregated total. From this total an amount equal to the "base value" is subtracted. Any taxable value remaining above the base value, is the "capture taxable value." Its components will be multiplied by a millage rate to compute "captured taxes."

Calculating the captured tax

The aggregated captured value exceeding the base (initial value) is apportioned to the tax roll or rolls from which the total value was derived. The total of the captured value for each roll is multiplied by the millage rate appropriate for that tax roll. The amount of captured tax is the sum of the captured taxes from a roll-by-roll series of calculations. This amount is distributed to the TIF authority.

Reporting

In order to properly capture taxes, certain administrative procedures are mandatory. The must be an accounting of the tax capture, the maintenance of an assessor's worksheet, the filing of an annual report or reports with the state of Michigan (forms 2604/2967). The tax capturing authority is technically required to file these forms but the "assessor, treasurer and other officials may be called upon to assist."[44] The Department of Treasury FAQ provides additional information about commonly asked questions and is recommended to the reader.

Opting Out

In 1993, the legislature amended Michigan's various tax capturing laws to permit an objecting jurisdiction to formally "opt out" of the proposed tax capturing area. A jurisdiction not wishing to lose future tax revenue could pass a resolution within a sixty-day window of opportunity created by the 1993 modifications, and its tax revenue could not be captured by the tax capturing authority. The "opt out"

[44] Michigan Department of Treasury, Frequently Asked Questions About Tax Increment Financing, PTD 3305 (Rev 4-01), question 22 page 7.

provision was predicated on certain public hearings and timetables. Early TIFs had no opt out. However, today any expansion of TIF boundaries or the creation of a new TIF triggers opt out provisions.

In 2005, a dispute arose between several parties resulting in the Village of Holly and the Downtown Development Authority of the Village suing Holly Township and its treasurer. An important issue within the case was at exactly which time does the clock begin ticking on the 60 day window during which a unit of government may exempt its taxes from capture by "opting out"? More than one hearing date is mentioned in the DDA statute. The village of Holly felt the first hearing started the clock, while the township seeking exemption believed it was a later hearing.

The issue was resolved with a published decision by Michigan's Court of Appeals. In it, the court ruled that there is only one hearing which triggers the 60 day time period:

> We therefore conclude that the most reasonable interpretation of these interlocking provisions is that" ... "both refer to one and the same public hearing held to create a DDA authority or modify the boundaries of a DDA authority. Indeed, subsections 2,3, and 4 provide the logical time sequence of establishing a DDA authority or modifying an authority's boundaries: (1) notice to tax payers and taxing jurisdictions of a public hearing, (2) a public hearing, (3) a 60-day time period during which taxing jurisdictions may opt-out and during which the governing body desiring to create or amend a DDA may not act, and (4) adoption of an ordinance creating a DDA authority or amending its boundaries.[45]

Issues of time - looking to future benefit

Tax capturing authorities work in the future. Benefits from authorities may not appear immediately. They may take time to accumulate and the tax capture value can be erased by a downturn in a real estate market or the imposition of some form of exemption (e.g. Renaissance Zone) that decimates values above the initial taxable value. An authority's plan (or plans) may encompass periods of up to 30 years. While reduction in size of a future tax levy is a goal of abatements; reductions in tax levies destroy the ability of authorities to function.

Millage rates and tax capture

Some millage rates may be captured by an authority and others may not. Each law is specific, but the issues can be confusing. Therefore a more detailed discussion of millage rates follows

In addition to the millage rate authorized for use by a DDA, there are three very general forms of ad valorem millage. The first is the **operating millage**

[45] Village of Holly v Holly Twp, 267 Mich App 461; 705 NW2d 532 (2005)

permitted by the constitution or specific statute. The second are millages levied to pay for **debt** properly incurred by a taxing authority. For example, voter approved bond issues. The third is a **voter approved millage** for some special purpose. Examples are millages voted for mosquito control or maintaining a government office to serve veterans or supporting a government owned museum or some other facility. Of these, *tax capturing authorities may capture operating millages, voter approved millages and sometimes debt.*

Taxes from Ad Valorem Special Assessment Millages

In addition to well known ad valorem millage rates, it is becoming increasingly common to see another ad valorem rate — voter approved "ad valorem" **special assessment millages**. In this form of special assessment, electors approve payment of a special assessment based upon the value of property. The levy is created exactly like a property tax is: the (voter approved) millage rate is multiplied by a property's Taxable Value.

Michigan's Supreme court approved the use of an ad valorem millage levy for special assessment purposes back in 1958 with it's decision in St. Joseph Twp. v Municipal Finance Commission.[46] Today, there are over 100 jurisdictions levying special assessments as a millage rate multiplied by a property's taxable value.

The Supreme Courts examined the constitutional limitations on ad valorem millage rates and ruled that special assessments levied with ad valorem rates, did not fall under the 15 mill cap.[47] That ruling did not clarify whether a special assessment's ad valorem millage rate could be captured or whether special assessment millage rates could be levied against "specific tax" rolls?

The issue of whether or not special assessments created by levying an ad valorem millage rate can be captured has been resolved by Mr. Heideman too. In e-mails of July 21, 2008 and August 22, 2008, Mr. Heideman made it clear that "TIF plans may not capture special assessments."[48] Furthermore, ad valorem special are to be levied against land but not improvements assessed pursuant to a specific tax.

Millage limitations by agreement

Ad valorem millage rates may be limited by agreement between jurisdictions levying property taxes within a tax capturing authority. For example, the authority may make an agreement to capture only a limited amount of a specific taxing authority's levy. Perhaps the capture will be based upon a specific millage rate say 2 mills out of 5 being levied. It might be a percentage split of the computed tax, say 40 percent to the authority and 60 percent escapes capture. Treasury's

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[46] . Joseph Twp v Municipal Finance Comm, 351 Mich 524; 88 NW 2d 543 (1958)
[47] See page 7, Local Property Tax Limitations in Michigan cited in footnote 9
[48] Personal correspondence with Joseph Turner

FAQ on Authorities unequivocally states: “the plan may not capture a greater proportion of school operating taxes than the proportion of municipal operating or county operating taxes captured.”[49]

Authorities which enter into an agreement to limit collections must have uniform arrangements with all jurisdictions that have not opted out. Therefore, if the authority only captures 40 percent of the available tax for one taxing entity, it must only capture 40 percent with each of the other taxing units.

Specific Taxes and their millage rates

The chart that follows outlines rules which apply to capturing millages based upon legislative connections between specific taxes and tax capturing authorities. It was supplied by the Michigan Department of Treasury.

Tax Increment Revenue
Specific Taxes Allowable for Capture by Authorities
As of July 20, 2009

		Public Act Year							
		197 1975	450 1980	281 1986	381 1996	530 2004	280 2005	61 2007	94 2008
		DDA	TIFA	LDFA	BRFA	HNTIFA	CIA	NIA	WRITIFA
PA 189 of 1953	Lessees/Tax Exempt Prop	X	X	X	X	X	X	X	X
PA 198 of 1974	Industrial Facility Tax (IFT)	X	X	X	X	X	X	X	X
PA 255 of 1978	Commercial Facility Tax (CFT)	X	X	X	X	X	X	X	X
PA 385 of 1984	Technology Park	X	X	X	X	X	X	X	X
PA 224 of 1985	Enterprise Zone			X	X				
PA 147 of 1992	Neighborhood Enterprise Zone (NEZ)				X			X	
PA 146 of 2000	Obsolete Property Rehabilitation (OPRA)			X	X				
PA 260 of 2003	Eligible Tax Reverted Property Tax				X*				
PA 210 of 2005	Commercial Rehabilitation (CRA)				X			X	

** Limited to amount not reserved for Land Bank Fast Track Authority (PA 258 of 2003)*

Some millage rates levied within authorities

The next table is offered as an illustration of some of the millage rates which an assessment administrator may need to deal with in Michigan. These rates could apply within a tax capturing authority. Some of the rates are typical ad valorem rates found with any local property tax levy. Others are unique rates that are applied based upon some special tax incentive or other property tax law.

[49] Michigan Dept. of Treasury, Frequently Asked Questions About Tax Increment Financing Authorities, PTD 3305 (Rev. 4-01), Question 7

Millage Rate	Variant	Application
Ad Valorem - operating and special voted operating	Non-Homestead	Personalty, real estate improvements and land taxed at unaltered rate
Ad Valorem - operating, specially voted operating	Homestead rate - residential and qualifying agricultural	Land and improvements taxed at Non-Homestead rate minus 18 mills
Debt school	Amount tied to bond issues	Captured sometimes to repay "eligible obligations" and sometimes in Brownfield activities
Debt non-school	Tied to bond issues or other eligible obligations	Eligible for capture sometimes.
MBT derived Personalty Rates	Industrial and Commercial property	Industrial at minus 24 mills; commercial at minus 12 mills
ABATEMENTS		
Neighborhood Enterprise Zone	New Construction	½ State Average Rate
Industrial Facilities Abatement	New Construction	½ rate plus 6 mill SET
OPRA	New Construction	24 mills
Brownfield	Without Remedial Action Plan	School millage excluded from capture
OTHER RATES		
Renaissance Zones	Debt millage levied	Some debt may be captured by DDA, TIFA or Brownfield

Oversight

Except for judicial challenge, oversight of tax capturing plans is limited. The state of Michigan performs audits of plans, but the audit is restricted to only the capture and disbursement of school taxes. Local government units from which tax levies are to be captured may the right to "opt out" of new plans under seven of the TIF acts, but there is a narrow window of opportunity to do so. Also, there may be objections to a plan raised by affected jurisdictions. Again, once the window of opportunity to object passes, a presumption of validity is established.

It is the authority itself, and to some extent, the jurisdiction which created the authority, that retain control over the actions taken pursuant to the authority.

Tax capturing authorities continue to be a common economic development tool, both in Michigan and across the U.S. Chris Biggs, director of operations at Buxton Company, was quoted in Shopping Centers Today, the trade magazine for those involved in the development and operation of shopping centers both nationally and internationally. He said:

> "We've seen some pretty interesting and effective approaches from the local economic development community to entice retailers and entrepreneurs." ... "You hear of cities that do incentives like tax increment financing districts, but some are taking it a step further."[50]

Public purpose

It is critical for the authority to document the "public purposes" which justify the tax increment financing plan and its subsequent "capture" of taxes. Each statute expresses this concept in a slightly different manner. The purposes expressed within the specific statute must be conformed with. These purposes are often to foster a betterment of the community at-large, economic development and specifically publicly owned property.

Examples of the requirement for a public purpose follow. They are expressed in two differing ways. The shortest of the two is from M.C.L. 125.2167(17)(1) the LDFA law. The longer may be found at M.C.L. 125.1653(3)(1) the DDA Act.

> the governing body shall determine whether the development plan or tax increment financing plan, or both, constitutes a public purpose."

> "When the governing body of a municipality determines that it is necessary for the best interests of the public to halt property value deterioration and increase property tax valuation where possible in its business district, to eliminate the causes of that deterioration, and to promote economic growth, the governing body may, by resolution, declare its intention to create and provide for the operation of an authority.

It may be noted that in the distant past, monies captured could only be used on public areas. However, recent modification to the LDFA law for example, has led some jurisdictions to claim privately owned property can benefit from captured funds.

[50] Curt Hazlett, Tapping the Fiscal Stimulus Next Door, Shopping Centers Today, June 2009, page 19

Important dates

Of course, each statute has its own timetable laid out as part of the legislative process. It must be followed. Among the most important rules for administrators are issues related to the original Resolution of Intent (ROI) or Notice of Intent (NOI) to create an authority or abatement. Clearly, judicial disputes emphasize the imperative for adherence to public notices and notices to other units of government, especially windows of opportunity to "opt out" of a tax capture.

Two other distinct times are used to determine these two values. The "initial taxable value" is comprised of property values of record established on the Fourth Monday in May preceding the establishment of the tax capturing plan. Demolition and construction activities, fiscal planning and tax capture projections are based upon the property values which exist on this date.

Municipal treasurers and tax assessors look to changing taxable values in each calendar year. They determine the annual tax capture during the life of the plan by adding up current taxable values as determined on the tax day appropriate to the tax year in which a capture is to be made and then subtracting the base value as described above.

Summary of Distinctions between abatements and authorities

"Specific" and ad valorem taxes are located on separate and distinct tax rolls. Rules regarding property values and millage rates which apply to ad valorem taxation do not apply to tax calculations for a specific tax. A specific tax will sometimes be calculated using a millage rate identical to the ad valorem rate, but with a frozen value. Frequently the applicable millage rates in abatements will be considerably lower than the comparable ad valorem rate.

TIF legislation does not affect property values or millage rates. The one exception is DDA which can levy additional taxes within its corporate bounds. Tax capturing authorities do not provide tax breaks of any kind. A tax capturing authority is a separate entity empowered by law to "capture" current tax levies in a specific geographic area. The amount to be captured is that part of the levy which exceed taxes derived from the application of contemporary millage rates to a fixed taxable value known as the "base" value. Authorities may capture both ad valorem and specific taxes when authorized by appropriate enabling legislation.

CHAPTER 12
SPECIAL ASSESSMENTS

6. Introduction – Special Assessments

The purpose of this section of Chapter 12 is to provide an overview of special assessment administration, definitions, common terms, and a general understanding of the special assessment process.

In order to proceed with the discussion of special assessments, one should first distinguish between a tax, a property tax and a special assessment. A tax is "a portion of the property of the citizen required by the government for its support in the discharge of its various functions and duties, and may be imposed when either person or property is within its jurisdiction."[51] **A tax** is "understood to exact contributions in return for the general benefits of government, and it promises nothing to the person taxed", …[52] An **ad valorem property tax** is a tax created by the product of a millage rate and the whole (or a portion of) the market value of a property. A **special assessment** is "a specific levy designed to recover the cost of improvements that confer local and peculiar benefits upon property within a defined area."[53] *Some special assessments are considered taxes* under the GPTA and others are excluded.[54] Ad valorem special assessments are *not limited by constitutional caps on millage rates nor on duration* of the tax.[55]

It is important to note that special assessment procedures can be very complex. Whereas in ad valorem taxation rules are uniformly applied, special assessments are based upon benefit to a specific parcel rather than uniformity. Applicable special assessment procedures vary fundamentally from statute to statute. Some special assessments come under the purview of the Michigan Tax Tribunal (MTT), others require appearances before a probate court and others, before a circuit court. The window of opportunity for appeal by a taxpayer may be anywhere from 10 to 30 days. Many special assessments are based upon the inherent power of a government to tax. However, some are based upon the police power of government.[56]

Just as economic development statutes affect ad valorem taxation, the state's Drain Code and the state's Natural Resource and Environmental Protection Act affect special assessment administration. Municipalities are given latitude to

[51] Graham v. St. Joseph Twp., 67 Mich 652, 655; 35 N. W. 808 (1888)
[52] Rogoski v city of Muskegon, 101 Mich 786; 300 NW2d , 696, 695 (1980)
[53] Kadzban v City of Grandville, 422 Mich 495, 502; 502 NW2d 299 (1993)
[54] M.C.L. 205.703(3)f and 324.30714(4)
[55] Niles Twp v Berrien Co Bd of Comm'rs, 261 Mich App. 315; 683 NW2d 148 (2004)
[56] 70 Am. Jur. 2d Special or Local Assessments § 5 (1973) and Wikman v Novi, 413 Mich 617, 635-636; 322 NW2d 103 (1982)

develop a portion of the special assessment process in unique ways. In the nearly 200 years since Michigan's statehood, this form of financing based upon "benefit" retains many nuances and regulations infrequently visited by tax administrators. Special assessment administration is a challenging and unique area of property taxation. It is worthwhile to examine the historical development of special assessments in the state.[57]

History

The territorial government authorized the City of Detroit in 1827 to pave the streets and sidewalks of the city.[58] With its initial incorporation in 1815, Detroit had been authorized to erect and maintain drains and sewers and to make regulations necessary for their preservation in addition to sinking wells; erecting pumps; erecting, repairing, and regulating public wharves; and laying out streets, alleys, lanes, highways, water courses, and bridges.

Shortly afterward, the territory gave similar power to the villages of Monroe, Ann Arbor, and Ypsilanti. Only Detroit, however, was given the power to defray a portion of the costs of such improvements by special assessment. The 1827 charter of Detroit, which was approved by the territorial government, provided such powers.[59]

Improvements along the Detroit River, including the drainage of lands and filling of lots, were paid for by special assessment of the benefiting property owners. An alternative financing, "lotteries" were used but never received the popularity here that they enjoyed on the East Coast of the U.S. Lotteries were used sparingly in Michigan throughout the 1800's. In 1908, one act did provide for a road from Detroit to the rapids of the Miami River to be financed by lottery.

Another financing method used in Michigan was that of "forced labor." The Michigan Revenue Statute of 1846 required every male person over 21 and under 50 years of age to provide one day of service on the roads each year. In addition, a specific levy was to be assessed upon the real and personal property of a road district and upon each tract or parcel of land within the district according to the value of that property. The taxpayer could, of course, hire another person to perform his duties for him. The theory of "special benefit" appears to be the basis of this 19th century statute.

Until the early 1950s, Michigan's special assessment law did not permit the levying of a millage rate as a means of special assessing property. However, due to a Supreme Court ruling in 1958, the use of millage rates was implemented. In a concurrent development, special assessments, formerly restricted to a unique geographic area known as the Special Assessment District

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[57] A portion of the history was taken from a paper written by Patrick H. Hynes, Esq., while in Law School

[58] Laws of the Territory of Michigan, Vol. I, p. 540.

[59] Laws of the Territory of Michigan, Vol. 1, p. 347

(S.A.D.) were expanded. As millage rates became implemented, so did the idea of specially assessing every real property within the assessing jurisdiction. Today, more than 100 "unit-wide" special assessments exist across the state.

Creating a special assessment

There are many special assessment laws and many variations of required procedures under those laws. However, generalizations about conditions required to create a special assessment can be made.

All processes contain some version of several requisite conditions for a special assessment to be validly established. The conditions include: (1) picking the act to proceed under; (2) initiating any appropriate studies to estimate costs and the necessity of the project; (3) identifying the *Service District*; (3) establishing a *Special Assessment District* (S.A.D.); (4) presenting costs and holding required hearings; (5) apportioning costs; (6) confirming the special assessment roll; (7) insuring proper notification during each step; (8) and an appeal process.

Attention to detail is important, for even Michigan's courts have noted special assessment processes can be confusing.[60] The process includes following complex laws and making economic judgments. The Supreme Court described the special assessment process in this way: "Making of an assessment roll and apportioning a tax under the ordinances is a ministerial duty, and the confirmation of the assessment partakes more of the character of a judicial than a legislative act."[61] The right to levy a special assessment exists in a local governmental unit only because it is delegated by state law. A local jurisdiction has only power explicitly granted by the enabling legislation.

Steps to an apportionment of costs

First, one must pick the correct law to do the job. This is determined in part by the type of jurisdiction (township, municipality, county et cetera). Enabling legislation is specific to the form of local government. Townships operate under different rules than counties or cities of villages do.

Authorizing a special assessment requires *a finding of necessity*. If the chosen statute does not explicitly provide that under its purview the proposed project is "necessary," then the levy may be successfully attacked. While an attack on the "necessity" of a project is rare, it does happen.[62]

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[60] Citizens for Responsible Government v Cottrellville, unpublished Court of Appeals no 276837 (2008)
[61] Williams v Mayor of Detroit, et al., 2 Mich 560, 5; WL 3638 Mich (1853)
[62] Niles et al v Meeker, 219 Mich 361; 189 NW2d 207 (1922) and Barak v Oakland Co. Drain Commissioner, 246 Mich App. 591, 603-603; 633 NW2d 489 (2001)

Second, the administrative procedures of the enabling statute must be followed explicitly. This includes multiple public hearings, the establishment of a "**Special Assessment District**" (**S.A.D.**) based upon a **"Service District"** and a lawful apportionment of eligible costs. Eligible costs are those costs specifically permitted to be apportioned by the enabling legislation. Timing is important. Expenditures made before the assessment process has been properly initiated may not be apportioned. There are specific statutory limitations on eligible costs.

Because taxpayer's rights are limited and the burden can be so damaging, justice demands government administrators and officials involved in establishing special assessments have a special obligation to assure that special assessment districts, and levies established subsequent to enabling ordinances, are reasonable, fair and lawful.[63] After all, "One's home can be lost just as quickly and finally for non-payment of 'special' assessments as for non-payment of 'general' taxes."[64]

Third, those property owners to be specially assessed must be properly notified of the pending assessment and of hearings during the administrative process. Relevant dates are unique to specific statutes and the window of opportunity for appeal runs from about 10 days to 30 days after the date which triggers the notice and appeal process.

Fourth, it is especially important in the special assessment process to provide a fact based process to determine benefit.[65] Over a hundred years ago the Supreme Court declared an assessment to be unconstitutional "because it did not direct the fact to be found that the property was benefited to the amount of the tax to be imposed."[66] Other cases since then have reinforced that concept. The burden of fact finding falls to the assessor: "The assessors, not the court, weight the benefits, if, in truth, there are benefits to be weighed."[67]

Fifth, unlike ad valorem taxation, the special assessment tax is not equally applied to each property. Instead, a method of apportionment is developed based upon the concept of benefit. The methodology must be applied in a manner that is just and uniform.[68] The "assessment for a local improvement should be apportioned among, and imposed upon, all equally standing in relation."[69]

Sixth, apportionment of costs should consist, at a minimum, of the following: a) a determination of costs eligible under the law to be apportioned; b) identifying all potential benefiting properties by identifying the Service District; c) from the

[63] Reschke, E. and Turner, J., Michigan Assessors Association, Special Assessment Course Text, 64th Anniversary Issue, *Court Decisions, Rulings and Research Text,* 2009, p 11
[64] Lockwood v Nims, 357 Mich 517; 98 NW2d 753 (1959)
[65] Lawrence v City of Grand Rapids, 166 Mich 134, 143; 131 NW2d 581 (1911)
[66] City of Detroit v Chapin, Judge 42 L.R.A. 638; 112 Mich 588; 71 N.W. 149 (1897)
[67] Fluckey v city of Plymouth,
[68] Panfil v city of Detroit, 246 Mich 149; 224 N.W. 616 (1929)
[69] Cramption v City of Royal Oak, 362 Mich , 503; 108 NW2d 16 (1961)

Service District, a determination (*Benefit Analysis*) documenting the geographic distribution of a magnitude of benefit, above which, a parcel or parcels shall be included within the S.A.D.; d) a "benefit" measured *for private property based upon market or True Cash Value*[70] e) a method of apportionment consistently applied and fact based;[71] f) a measure of "benefit" to each *public property* based upon the statutory definition of benefit, if provided, or if not, a benefit identified as an increase in market value, a special adaptability, or relief of a burden.[72] g) an apportionment determined for individual properties (public and private) and any apportionment attributable to the public *at-large*.[73]

The at-large assessment has at least two components: 1) any cost of the improvement which exceeds the total aggregated assessable benefit of the individual parcels assessed, and 2) the cost of "additional capacity" which anticipates some future need and exceeds the capacity necessary to serve those properties initially benefiting from the improvement. Oversized drains, water lines or roadways are examples of over capacity.[74]

In summary, the apportionment consists of several actions: determining the exact cost of the project eligible for apportionment, determining the geographic area linked to the project, identifying specific properties with value influenced by the public project and the apportionment of eligible costs to private properties and to governmental units at-large.

Geographic Distribution of properties connected to a public project

The *entire geographic area influenced in any way* by the project is termed a "**Service District**."[75] Properties within the Service District receive what is known as an "*Indirect Benefit.*" The **Indirect Benefit** is any influence from the public project. A Service District may correspond exactly to the S.A.D. or it may be much larger. For example, a special assessment levied to remove debris from a specific lot would have Service District and S.A.D. boundaries that are congruent and coinciding exactly with the property's lot lines.

However, a popular lake with public access might serve a huge geographic area. The map illustrates a Service District determined for a 300 acre lake in mid-Michigan.

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[70] Ahearn v Bloomfield Twp., 235 Mich App. 486; 597 NW2d 863, 858(1999)
[71] City of Detroit v Chapin, Judge 42 L.R.A. 638, 112 Mich 588; 71 N.W. 149 (1897; Blades v Genesee County Drain Dist. No. 2, 375 Mich 683, 420 Mich 422, 135 (1965)
[72] Soncoff v City of Inkster, 22 Mich App. 358; 177 NW2d 243 (1970)
[73] Stybel Plumbing, Inc. v Oak Park, 40 Mich App. 108; 198 NW2d 782 (1972)
[74] Reschke, E. and Turner, J., Michigan Assessors Association, Special Assessment Course Text, 64th Anniversary Issue, *Court Decisions, Rulings and Research Text,* 2009, p A-5
[75] Reschke, E. and Turner, J., Michigan Assessors Association, Special Assessment Course Text, 64th Anniversary Issue, *Court Decisions, Rulings and Research Text,* Pg A-5, 2009
[75] Lockwood v Nims, 357 Mich 517; 98 NW2d 753 (1959)

The dark spot identifies the county in which the lake is situated. The bright areas represent property in other counties tied in some way to the lake. White and grey areas are not linked to the project. Linkage was based upon legal, economic and scientific facts such as: distribution of tax revenue, surveys of the place of residence of public users of the lake, the watershed, the floodplain, geographic origin of business customers, areas targeted by advertising, the homesteads of lake association non-resident property owners, MDNRE recreation records, testimony in circuit court and other data. In this particular lake, the watershed (an area from which any rainfall can be expected to flow to the lake) is more than 200 times the size of the lake. Similarly, the lake routinely draws people and the money they spend from a very large geographic area. Service districts can be very large compared to the public project.

Special Assessment District

A Special Assessment District (S.A.D.) is carved from the Service District. It consists of properties receiving a benefit that justifies an apportionment of certain costs to them. Such properties are deemed to have received a "Direct Benefit." The first limitation on the boundaries of the S.A.D. is where there is a large service district, S.A.D. boundaries may not exceed the Service District, nor may they exceed the political boundaries of the assessing jurisdiction.[76]

The simple drawing illustrates the relationship between a Service District and an S.A.D. when the two have non-congruent boundaries. For private property, the S.A.D. consists of those properties which have had their true cash value enhanced above a threshold established by other properties within the Service District. All properties in both districts enjoy some form of connection directly to the public project. Those in the S.A.D. however, are enriched by a unique, specific and direct increase in market value. The public (through its government) is entitled to recover the property enrichment, demanding a reimbursement of costs. The recovery is levied as a special assessment. "In order for an improvement to be considered to have conferred a 'special benefit,' it must cause an increase in the market value of the land."[77]

An Apportionment must be based in fact and not opinion

Those responsible for apportioning costs must consider three fundamental circumstances. They must determine the Service District (all affected properties) and select from that district those properties with a benefit exceeding the minimum benefit that justifies a special assessment and then they must apportion "costs" to each specific property based upon that property's unique and direct benefit from the public project from which the costs to be apportioned arise.

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[76] City of Pleasant Ridge v Royal Oak Twp, 328 Mich 672; 44 NW2d 333 (1950)
[77] Ahearn v Bloomfield Twp., 235 Mich App. 486, 493; 597 NW 2d 858 (1999)

L.E.S.

Three fundamental forms of facts are relied upon to identify properties in the Service District and the S.A.D. They are ***legal, economic and scientific facts (L.E.S.)***[78] Property ownership, sales data, rental and vacancy rates, vehicular counts, floodplains, watersheds, demand for parking, soil types, and traffic patterns are just a few examples. For over 100 years Michigan's Supreme Court required special assessments to be based not only on facts known, but also on those that are ascertainable.[79] Knowledge has evolved substantially over the past 50 years. Academic research into economic theory, widespread use of statistics, surveys and computers, the development of geographic information systems, advances in real property appraisal theory, ready access to state, federal and local records and scientific research have made it possible for the professional assessment administrator to gather an abundance of facts. The requirement of a fact based delineation of S.A.D. boundaries and a fact based apportionment process can be met far more easily today than in years past. Using the **L.E.S**. algorithm means more accuracy. Neither the court nor the assessor may substitute opinion for available facts when financially burdening a taxpayer.

Apportionment methods

Special assessment apportionment enjoys a legal "presumption of validity." Wide latitude is given the jurisdiction and assessment administrator when it comes to methods of apportioning costs. Methods of apportionment that have passed the court's tests include using an apportionment based upon "area," "front feet," and water usage rates.[80] The city of Troy is among those communities which have deployed special assessments for sound barriers based upon undulating patterns of vehicular traffic noise.

The primary test is this: the method employed must be defensible as just, uniformly applied within the district and based upon Benefit.[81] The critical feature is measuring benefit as defined by the courts and laws; not simply apportioning based upon some non-benefit based formula. Benefit is based upon a measured change in property value "with" and "without" the public project. The time for the measurement is any time reasonably close to the completion of the public project. An appraisal to determine benefit should not be base upon tax day. The date of the appraisal relates to the public projects influence on value.

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[78] See Reschke, E. and Turner, J., Michigan Assessors Association, Special Assessment Course Text, 64th Anniversary Issue, *Court Decisions, Rulings and Research Text,* 2009
[79] Lawrence v city of Grand Rapids, 166 Mich 134, 143; 131 NW 581 (1911)
[80] Lawrence v city of Grand Rapids, 166 Mich 134; 131 N.W. 581 (1911) also see Cole v Village of Highland Park, 173 Mich 201; 139 N.W. 69 (1912)
[81] Loomis v Rogers, 197 Mich 265; 163 N.W. 1018 (1917)

It is also critical the apportionment does not discriminate based upon property class. In the past it was not uncommon to see special assessments involving lakes, where the analysis considered only residential property and recreational second homes. Commercial properties benefiting from tourism and visitor expenditures were completely ignored.

The determination of dollar costs must be reasonably applicable to the benefit. The Supreme Court ruled in Dixon Road Group v Troy (1986) that an apportionment need not be a dollar for dollar ratio between benefit and costs, but that where the ratio was Two Dollars and Sixty Cents of cost for every dollar of benefit, the assessment would not be valid. The MTT also examines the issue of a reasonable apportionment when that issue is properly raised before it.

The method employed to apportion costs must also be appropriate to the measure of benefit. Apportionments based only on area have been overturned[82] as have those based only on frontage.[83] Contemporary requirements for apportioning costs are most clearly expressed in Dixon Road (1986) and Kadzban (1993).[84] Guidance for apportioning ad valorem (millage rate) special assessments is found in St. Joseph Twp. v Municipal Finance Commission (1958).[85]

Summary of apportionment

An area which illustrates the geographic distribution of all properties affected by a public improvement is identified and is called a "Service District." From the Service District, an area or areas are identified, within which properties receive a measurable and "Direct Benefit" arising uniquely and specifically from the public project. To be used as the basis for an apportionment of a special assessment, the Direct Benefit must exceed the general benefit to other property. For private property, a Direct Benefit means one thing, an increase in the true cash value or "market value." The area encompassing Directly Benefiting properties defines the boundaries of the *S.A.D*. *Eligible* costs (based upon the authorizing statute) constitute the amount to be apportioned. These costs are apportioned to individual properties, and to the public at-large when appropriate. The apportionment is made based upon "Benefit" *with and without* the public improvement. To determine benefit, judgment is permitted; facts are required.

In general, a special assessment is levied upon the land and not upon the total property value. However, an exception would be when a law specifically provides for an assessment levied "on the land and premises" to be benefited.[86]

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[82] Lawrence v city of Grand Rapids, 166 Mich 134; 131 N.W. 581 (1911) and Auditor General v O'Neil, 143 Mich 343; 106 N.W. 895 (1906)
[83] Spear v Fenton Twp., 17 Mich App. 682; 170 NW2d 312 (1969)
[84] Dixon Road Group v Novi, 426 Mich 390; 395 NW2d 211 (1986) and Kadzban v city of Grandville, 442 Mich 495; 502 NW2d 299 (1993)
[85] St. Joseph Township v Municipal Finance Commission 351 Mich. 524; 88 N.W. 2d 543 (1958)
[86] M.C.L. 41.801(3) and (4)

A special assessment based upon property value rather than "benefit" requires a vote of the people and uses a millage rate.

An apportionment should consider all affected "classes" of property. For example, road improvements, such as widening for commercial traffic, and lake level special assessments may benefit multiple classes of property (residential, recreational, commercial and industrial uses).

Assessment administrators must consider facts, both "known and ascertainable." They include, but are not limited to: legal, economic and scientific facts. A proportional apportionment of eligible costs cannot be made without facts. The Supreme Court said: "Of course, the question whether and how much the value of the land has increased as the result of certain improvements is factual, determined on the basis of evidence presented by the parties"[87]. Facts were required 100 years ago and they are required today. It is the assessor not the courts who determine benefit.

Accounting for a change in value

If the impact of a public project is to increase the market value of a property, how does that increase get treated on the ad valorem roll? Some speculation exists that an ECF could be applied to a geographic area to reflect the changes in value. An ECF considers "economic obsolescence." Economic obsolescence is a lessening in value caused by factors external to the property such as economic forces which affect supply-demand relationships or proximity to noxious elements which case a lessening in value." (STC Assessor's Manual, p 14-1)

However, an ECF compares the value determined by the assessor and compares it to sales in a search for a consistent pattern of variation. When a consistent variation is found, an Economic Condition Factor can be calculated which applies uniformly to all properties within a specific geographic area (neighborhood). Through a factor, an ECF uniformly modifies assessments in a way that adjusts the individual assessment to market value.

However, public improvements do not modify each property value in exactly the same way. In Crampton v City of Royal Oak (1961) the court acknowledged this necessary inconsistency. The court said that two properties lying side by side, one being a vacant parcel and the other improved, could have identical benefits. An example would be the installation of drinking water. Each affected parcel might see an increase of say, One Thousand Dollars resulting from the availability of water. However, the properties all equally affected might range from a vacant lot worth $40,000 to land and improvements worth $300,000. The example's variation, while uniform from parcel to parcel as fixed dollar amount, makes it impossible to multiply a uniform "factor" from parcel to parcel. Even if

[87] Kadzban v city of Grandville, 442 Mich 495; 502 NW2d 299 (1993)

the ECF were applied to each lot without considering improvements, there usually are variations in the value of lots within a general area.

If values are to be adjusted for ad valorem taxation based upon an increased market value due to a public improvement, the increase should reflect the specific change in value for each parcel. While it might not impossible for a situation to arise where a single factor could be multiplied against every parcel so that the individual property values could be properly increased, it is not likely.

Miscellaneous rulings

The whole justification of the special assessment is the measure of the *contributive value of an external influence* (the public project) on a specific parcel of land which exceeds the corresponding benefits to the public.[88] Cost cannot be apportioned if there is a nominal change in value (de minimus).[89] Costs cannot be apportioned simply because a property lies close to the public project (proximity).[90]The apportionment is based upon benefit to the land and not market value. This means two properties lying side by side, one improved, one not, one of greater value than the other may both have equal special assessments.[91] With some exceptions, it also means Benefit, and the test for proportionality, are measured against the land and not improvements to the land. There is no requirement of a dollar-for-dollar cost to benefit apportionment. The Dixon Road ruling was that an apportionment of 2.6 times the benefit was unreasonable and invalid. Costs cannot be apportioned where the damage was caused by the public and not "specially and peculiarly" related to the needs or use of persons residing in the special assessment district.[92]The measure of the benefit for private property is the value of the property with and without the influence of the public improvement. The appraisal principle used to apportion is "contribution." Consequently, the court will reject a "before and after appraisal" because that measurement includes influences such as "time."[93] Thus, the date for determining benefit is not tax day. It is any date reasonably close to when the improvement was completed. The measure of benefit must consider previously existing conditions. For example, in the case of a previously paved road, the cost of widening it may not justify a special assessment.[94] It is appropriate for a jurisdiction to give credit to property owners for earlier contributions to a new project. For example, when a sewer line is installed and some previously assessed existing infrastructure is being retained, the taxpayers may be credited

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[88] City of Detroit v Chapin, Judge 42 L.R.A. 638, 112 Mich 588, 590; 71 N.W. 149 (1897)
[89] Fluckey et al v city of Plymouth, 358 Mich 455, 447; 100 NW2d 486 (1960)
[90] Johnson v city of Inkster, 401 Mich 269, 263; 258 NW2d 24 (1977)
[91] Crampton v city of Royal Oak, 362 Mich 522, 503; 108 NW2d 16 (1961) quoting Hoyt v City of East Saginaw, 19 Mich 39 (2 Am Rep 76)
[92] Johnson v city of Inkster, 401 Mich 269, 263; 258 NW2d 24 (1977)
[93] Ahearn v Bloomfield Twp., 235 Mich App 486; 597 NW 2d 863, 858 (1999)
[94] Fluckey v city of Plymouth, 358 Mich 447, 452; 100 NW2d 486 (1960)

with prior payments.[95] While the author has not found a Michigan case on point, the reader may want to be aware that where a property owner has paid for a public project, the taxpayer has a continuing right to the benefit. A village in Illinois denied a plat based upon lack of available sewer service even though the property owner paid for the benefit (but never connected) years earlier. The Illinois court ruled the plaintiff could not be denied a connection "merely because of changed circumstances."[96] A Benefit must be real and not speculative.[97] Notwithstanding the existence of ad valorem special assessment millage rates, it is the land that is to be assessed. The "amount of the benefit to a particular parcel of property is not to be determined by the buildings on it or the use being made of the property at the time of the charge.[98] The S.A.D. may not exist outside the jurisdiction of the assessing authority.[99] However, it may consist of two or more non-contiguous areas.[100] An assessment must be supported by competent, material, and substantial evidence on the record.[101] "Substantial evidence" is "more than a scintilla of evidence, though it may be substantially less than a preponderance of the evidence necessary in most civil cases."[102] It is "the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion."[103]

Statutory requirements

Procedures for Establishing and Administering Special Assessment Districts

Procedures required to establish an S.A.D. and to apportion costs based upon benefit vary from statute to statute. The tax administrator of a special assessment district should become intimately familiar with the enabling statute being employed and seek competent legal and professional counsel during the process.

From time-to-time Michigan's courts have articulated a series of standardized steps that reasonably illustrate commonly used special assessment statutes. The most commonly used are those established under Public Act 188 of 1945 (Townships) and in municipalities processes established in their respective city charters pursuant to enabling legislation (both fourth class and home rule cities). Villages may proceed with special assessments pursuant to Michigan Compiled

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[95] Kuick v city of Grand Rapids, 200 Mich 585, 582; 166 NW2d 979 (1918)
[96] LaSalle National Bank v Riverdale, 16 Ill 2d 151 (1959)
[97] Blades v Genesee County Drain District No. 2, 375 Mich 683; 135 NW2d 420 (1965)
[98] Cote v Village of Highland Park, 173 Mich 201; 139 N.W. 69 (1912)
[99] City of Pleasant Ridge v Township of Royal Oak, 328 Mich 672; 44 NW2d 333 (1950)
[100] 14 E. McQuillin, The Law of Municipal Corporations, ch. 38 § 52 (3d ed. Rev. vol. 1970)
[101] J C Penney Co, Inc v Dep't of Treasury, 171 Mich App 30, 37; 429 NW2d 631 (1988); see also Const 1963, art 6, § 28.
[102] Keith v Dep't of Treasury, 165 Mich App 105, 107; 418 NW2d 691 (1987)
[103] Inter CoopCouncil v Dep't of Treasury, 257 Mich App 219, 668 NW2d 181 (2003), quoting In re Payne, 444 Mich 679, 692; 514 NW2d 121 (1994).

Laws Chapter 68. Counties possess the ability to levy special assessments to a lesser degree than city, villages or townships. Authority is found in Michigan's compiled laws Chapters 41 and 247 (road commissions) and in Chapter 280 (Drain Code).

Most jurisdictions are directed by law to follow a sequence consisting of several basic steps: 1) establishing a district; 2) estimating the cost to be apportioned; 3) determining the necessity of the project or some decision to proceed; 4) creating a special assessment roll; and 5) confirming the roll based upon estimated costs. Overviews have been described in court decisions. In a 2008, unpublished decision, Michigan's Court of Appeals described the special assessment process in this way:

> "The creation of special assessment districts is a complex process that is notorious among township officials and township attorneys for being fraught with potential difficulty. At the risk of oversimplification, a township must make the following decisions during the process of establishing a special assessment district for a public improvement (though the steps are not always done in this exact order, and are often mixed together and repeated.) First, the township must receive any petition circulated by the property owners (usually residents), or receive other information (such as bank erosion) indicating a need for a public improvement (storm drain, water main, etc.) Next, the township must decide what parcels should be included in the proposed SAD roll, by judging which parcels will receive a direct benefit from the proposed improvement. MCL 41.723(4). Third the township reviews the petitions and determines whether the owners of more than 50 percent of the land area in the proposed district approved the petition. MCL 41.723. Finally, the township must establish the cost of the improvement and create a special assessment roll to indicate the amount of the assessment for a parcel is 'the relative portion of the whole sum to be levied against all parcels of land in the special assessment district[,] as the benefit to the parcel of land bears to the total benefit to all parcels of land' in the SAD. MCL 41.725(d).[104]

Procedures under the Drain Code, M.C.L. Chapter 280, are more irregular than those of other statutes. No cost estimate is needed prior to the determination of necessity. A Board of Determination and the Drain Commission can decide to move ahead with a project without knowing its cost. The Drain Commission expends funds or otherwise financially encumbers the project and tallies those obligations to prepare a special assessment roll. According to some experts, it would be possible for final costs to exceed benefit. The Drain Code also provides an apportionment of costs to government units based upon property valuation.

Statutory authorization to specially assess exempt property

It is not just the Drain Code that permits a special assessment to be placed against property exempt from ad valorem taxation. In general, property may be specially assessed that is exempt from the ad valorem tax. This includes railroad

[104] Citizens for Responsible Improvements et al v Cottrellville Twp., unpublished Mich App. No. 276837 (2008)

property, property used for charitable or religious purposes, some cemeteries and properties held by educational institutions.[105] Property allotted to Native Americans is exempt from special assessment levies.[106]

Methods of Initiating

An assessing authority may, without receiving a petition of property owners, proceed with a special assessment unless the authorizing statute prohibits such action.[107] When a statute or ordinance requires that a petition be signed and submitted by property owners, the jurisdiction lacks authority to proceed on its own. Petitions may be signed by owner of the property in fee simple or by all parties where there is more than one owner. Tenants may not sign a petition. Statutes and ordinances must direct methods and temporal requirements of petitions. Once initiated, there are generally at least two public hearings on a special assessment. One will be held for a determination of necessity or to proceed with a project. The other is following the apportionment and before confirmation of the roll. Property owners may have no right to a separate public hearing on necessity.[108]

Appeal procedures

Special assessment appeals fall into two general categories: those that are considered to be levied under the tax laws and those that are excluded from the tax laws.[109] Most special assessments may be appealed under the GPTA and therefore are heard by the Michigan Tax Tribunal. [110]

However, special assessments levied under the Drain Code M.C.L. Chapter 280, and those levied pursuant to the Part 307 (Lake Level) of the Natural Resources and Environmental Protection Act (NREPA) (M.C.L. Chapter 324), are appealed to Michigan's courts. Interestingly, NREPA directs Part 309 (Lake Improvement) special assessments to the Michigan Tax Tribunal. This one act contains both forms of special assessment appeal procedures. The Drain Code contains a provision which directs an appeal to the Probate court.

Townships

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[105] MCL 211.7; In re Auditor General's Petition as to 1938 Tax Sale, 300 Mich 80; 1 NW2d 461 (1942); Auditor General v MacKinnon Boiler and Machine Co., 199 Mich 489; 165 N.W. 771 (1917); city of Royal Oak v Roseland Park Cemetery Association, 22 Mich App. 651; 177 NW2d 702 (1970)
[106] United States v Southern Surety Co., 9 F.2d 664 (E.D. Okla. 1925)
[107] 70 Am. Jur. Special or Local Assessments, at § 117, p. 935.
[108] Gaut v Southfield, 34 Mich App. 646; 192 NW2d 123 (1971) aff'd, 388 Mich 189, 200 NW2d 76 (1972)
[109] *Wikman v City of Novi*, 413 Mich 617, 635-636; 322 NW2d 103 (1982) and Kasberg et al v Ypsilanti Twp., Docket No. 287682, released for publication March 16, 2010
[110] Seebeck v Gladwin County Drain Commissioner, MTT Docket No. 312853 Finding 5, (2005)

Protests to special assessments are first filed at the second hearing of the township board. If the property owner is not in agreement with the decision of the board after appearing at the second hearing, s/he may file a written appeal with the Michigan Tax Tribunal within thirty days after the roll is confirmed [M.C.L. 211.746].

Villages and cities

Public Acts 4 and 345 of 1974, respectively, provide for the establishment of appeal procedures for special assessments by ordinance adopted by council resolution. Some cities have created special boards or committees to specifically address appeals. Others handle complaints during council meetings.

Relief from the financial burden of a special assessment exists in the law for individual taxpayers. Relief from the burden of a special assessment is provided as a loan by the state of Michigan in Public Act 225 of 1976; MCL 211.764. This provision applies to persons over age 65 and those who are disabled. They must have limited incomes and pay an interest rate to relieve the lien created by the deferment.

Individual statutes may contain relief from the burden of the special assessment. PA 188 of 1954 (Townships) contains the following language: "An owner of property who by reason of hardship is unable to contribute to the cost of an assessment for an improvement authorized in section 2(1)(a), (b), (c), (g), (h), or (n) may have the assessment deferred by application to the assessing officer."[111]

Collection and Liens

Once confirmed, a special assessment generally becomes a lien against the property. The lien may continue until it is paid in full or discharged in some other lawful way. Sometimes a special assessment can become a lien against an individual. M.C.L. 211.501 provides that special assessments which cannot be made a lien against the property will become the personal obligation of the owner. M.C.L. 68.33 (Villages) and M.C.L. 104A.3 (4th Class Cities) contain provisions for special assessments to collected through a lawsuit against the owner.

[111] M.C.L. 41.729a(1)