

INTERNAL POLICY DIRECTIVE 2008-2

July 29, 2008

SINGLE BUSINESS TAX (SBT) INDUSTRIAL PERSONAL PROPERTY TAX CREDIT – 2006 and 2007

This Internal Policy Directive (IPD) is intended to provide additional guidance for the administration of the credit against the SBT equal to 15% of taxes paid on industrial personal property in tax years beginning in 2006 and 2007. For initial guidance on the administration of this credit see IPD 2006-5.

POLICY ISSUES

1. The credit on industrial personal property for the tax year beginning on and after January 1, 2006 and before January 1, 2007 is available only “for taxes levied after December 31, 2005.” For the 2007 calendar year, is the credit available for taxes levied prior to January 1, 2007?
2. What will the Department require as substantiation for the Industrial Personal Property Tax Credit? Are there additional proofs that must be submitted to substantiate taxes paid under 1974 PA 198, MCL 207.551 to 207.572 (Industrial Facility Tax)?
3. The credit is available only for taxes paid on industrial personal property. What appeal rights exist if a taxpayer believes his property is incorrectly classified?
4. When a company leases personal property to another company, which entity is entitled to claim the SBT Industrial Personal Property Tax Credit?

POLICY DETERMINATIONS

1. For the 2007 calendar year, the credit is available for a percentage of taxes paid in 2007. Such taxes could include the 2007 summer and winter taxes paid in 2007 and taxes levied in 2006 but paid in the 2007 tax year.
2. To substantiate the credit, the instructions for the 2006 Form C-8000MC, captioned “Miscellaneous Credits,” direct the person claiming the Industrial Personal Property Credit to: “Attach a copy(s) of the Summer and/or Winter Tax Statement (bill) upon which the credit is based indicating date levied and classification of the property.”

For the 2007 tax year, proof that the tax was paid in 2007 is also required. In an audit situation, proofs of payment such as cancelled checks; and documentation that the personal property is classified as industrial; and that the Statement of Personal Property was filed timely, may be required.

In addition, for taxes levied under the Industrial Facility Tax, the personal property must be situated on land classified as industrial real property under section 34c of the General

Property Tax Act, 1893 PA 206 (Act 206), MCL 211.34c. Submissions must also include copies of the tax statements identifying the classification as industrial for the real property upon which the personal property is located.

It is possible in some instances involving the Industrial Facility Tax that the taxpayer may have a tax bill evidencing that personal property at the same location which is subject to ad valorem assessment is classified as industrial personal property under section 34c, but the real property is not classified as industrial real.

3. The definition of industrial personal property for SBT purposes in sections 35d and 35f incorporates and is the same as for classification purposes in section 34c of Act 206. Thus, personal property tax paid on any property which is classified as "industrial personal property" on the local assessment roll qualifies for the credit.

Sections 19 and 34c(1) of Act 206 grant the local taxing unit the power to ascertain what property is taxable in the assessing district; and to whom it should be assessed. These determinations will be controlling as to the classifications of parcel and property and liability for the property tax in the administration of the SBT Industrial Personal Property Tax Credit.

If a taxpayer disagrees with an assessor's classification of property, the taxpayer may appeal the current year's proposed assessment through the Board of Review in March, and then the State Tax Commission in June. Act 206 provides no other process for a taxpayer to appeal its property's classification.

4. The Department will determine who qualifies for the credit in a leasing situation by using the same proofs required in a non-lease situation, among others, the Summer and/or Winter Tax Statement, which will show to whom the property was assessed. It is the person the local taxing jurisdiction has named in the bill as liable for the tax who may claim the credit, provided all the other qualifiers are met.

The Single Business Tax Act permits a person to claim the credit in an amount equal to 15% "of the property taxes paid in the tax year by the person on industrial personal property." It further directs that, "[a] person that is otherwise eligible to claim the credit allowed under this section shall file within the time required the statement of personal property described in section 19 of the general property tax act, MCL 211.19, . . . for the location at which the tangible personal property that is the basis of the credit allowed under this section is located."

To be eligible, property must be classified industrial personal property on the local assessment roll. Because a leasing company is considered a commercial activity, its general classification would be commercial. Therefore, it is possible that neither the lessor nor the lessee will be eligible for the Industrial Personal Property Tax Credit.

In any case, the terms of the lease agreement concerning who is responsible for paying the personal property tax are not determinative for purposes of claiming the credit, but rather, remain a contract issue between lessor and lessee. Instructions for the 2007 Form C-8000MC direct that, "A lessee of property may not claim credit for taxes it is paying on behalf of the owner/lessor."

DISCUSSION

The amendment to the Single Business Tax Act (SBTA) adding section 208.35d first established the personal property tax refundable credit against the SBT, limiting it to tax years beginning on and after January 1, 2006 and before January 1, 2007. The credit is equal to 15% of the property taxes paid by the person, in the tax year, on industrial personal property. The credit is available only “for taxes levied after December 31, 2005.”

Tie barred to the amendment adding section 35d were amendments adding sections to the SBTA which provide the same credit for subsequent tax years. Section 35f covers tax years beginning on and after January 1, 2007 and before January 1, 2008. Although the sections covering subsequent tax years do not repeat the language from section 35d that the credit is available only “for taxes levied after December 31, 2005,” the Department interprets the section 35d instruction that the credit is available for taxes levied after December 31, 2005 as also applying to section 35f.

The replacement for the SBTA, the Michigan Business Tax Act, provides for an industrial personal property tax credit similar to the SBTA's but at the higher rate of 35%.

IPD 2006-5 addressed the issues of when a property tax is “levied” and the “time required” within which a taxpayer must file the Statement of Personal Property to qualify for the credit provided by section 35d for tax paid on industrial personal property in a tax year beginning in 2006.

Sections 35d and 35f prescribe in subsection (6)(a) that, “[i]ndustrial personal property” means personal property classified as industrial personal property under section 34c of the general property tax act.” Section 34c(3)(c)(i) instructs that industrial personal property includes, “[a]ll machinery and equipment, furniture and fixtures, and dies on industrial parcels, and inventories not exempt by law.”

The definition of industrial personal property for SBT purposes in section 35d and 35f incorporates and is the same as for classification purposes in section 34c of Act 206. Thus, personal property tax paid on any property which is classified as “industrial personal property” on the local assessment roll qualifies for the credit. This could include items such as furniture, office equipment, and other types of personal property on the industrial parcel not actually used to carry out industrial production. Whether the item is classified as “industrial personal property” on the local assessment roll is determinative, not how it is used.

Property taxes levied under the Industrial Facility Tax qualify for the credits provided in Section 35d and 35f, if situated on land classified as industrial real property under section 34c of Act 206. The credits would also apply in the instance of the personal property being at the same location where the taxpayer's personal property which is subject to ad valorem assessment is classified as industrial personal property under section 34c.

Sections 19 and 34c(1) of Act 206 grant the local taxing unit the power to ascertain what property is taxable in the assessing district; and to whom it should be assessed. These determinations will be controlling as to classification of parcel and property and liability for the property tax in the administration of the SBT Industrial Personal Property Tax Credit.

If a taxpayer disagrees with an assessor's classification of property, the taxpayer, pursuant to section 34c(6) of Act 206, may appeal the current year's proposed assessment through the local Board of Review in March, and then the State Tax Commission in June. Act 206 provides no other process for a taxpayer to appeal its property's classification. A letter from a local assessor stating there was a misclassification that will be corrected in future years is not sufficient to overcome a classification of property as other than industrial personal.

The Department will determine which entity is entitled to claim the SBT Industrial Personal Property Tax Credit in a leasing situation by using the same proofs required in a non-lease situation, among others, the Summer and/or Winter Tax Statement, which will show to whom the property was assessed. It is the person the local taxing jurisdiction has named in the bill as liable for the tax who may claim the credit, provided all the other qualifiers are met. To that end:

- The SBTA instructs that a person may claim the credit in an amount equal to 15% "of the property taxes **paid** in the tax year **by the person** on industrial personal property."
- It further directs that, "[a] person that is otherwise eligible to claim the credit allowed under this section shall file within the time required the statement of personal property described in section 19 of the general property tax act, MCL 211.19, . . . for the location at which the tangible personal property that is the basis of the credit allowed under this section is located."

The deadline by which the taxpayer must file the Statement to qualify for the credit under section 208.35f of the SBTA is February 20, 2007. The Statement filed on or before February 20, 2007 relates to property taxes that were levied on industrial personal property on July 1, 2007 and December 1, 2007.

- To be eligible, property must be classified industrial personal property on the local assessment roll. Because a leasing company is considered a commercial activity, its general classification would be commercial. It is possible that neither the lessor nor the lessee will be eligible for the Industrial Personal Property Tax Credit.

State Tax Commission Bulletin 7 of 2007 explains that leasing is a commercial activity and not an industrial activity:

Assessors are advised that the personal property of a leasing company is Commercial Personal and the classification is not related to the classification of the real property where the leased equipment is located. . . . The leasing company is properly classified as a commercial business. The classification property owned by the leasing company is not determined by the lessees of the property using the equipment. Property owned by the leasing company shall not be classified as industrial in whole, or in part.

Pursuant to MCL 211.13, all property is assessable to the owner, if known, except in three specific situations where the property is assessable to the lessee. Those situations include 'qualified property' of a 'qualified business', as provided in MCL 211.8a, bank-owned personal property, as provided in MCL 211.9(m) and Industrial Facilities Tax personal

property, which is exempt from ad valorem taxation, as provided in MCL 211.7k. In these three instances, procedures exist which result in the property being assessed to the lessee.

However, in these three instances as in all others, the Department will abide by the local taxing unit's determination as to whom the tax should be assessed, which will be reflected on the Summer and/or Winter Tax Statement.

The language directing that the credit is available for "property taxes paid in the tax year" would permit payment by a fiscal year filer in tax years beginning after December 31, 2005 to qualify for the credit. However, this is conditioned on the property tax bills being in the name of the fiscal year filer, and that person being required to file the Statement of Personal Property pursuant to section 19, and timely doing so.

The instructions for the 2006 Form C-8000MC, captioned "Miscellaneous Credits," direct the person claiming the Industrial Personal Property Credit to: "Attach a copy(s) of the Summer and/or Winter Tax Statement (bill) upon which the credit is based indicating date levied and classification of the property."

For the 2007 tax year, proof that the tax was paid in 2007 is also required. In an audit situation, proofs of payment such as cancelled checks; and documentation that the personal property is classified as industrial; and that the Statement of Personal Property was filed timely, may be required.