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PROPERTY MANAGEMENT ASSOCIATION OF MICHIGAN: LEGISLATIVE COMMITTEE REPORT

October 2007

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I. PRIORITY ISSUES

A. BUDGET CRISIS RESOLVED – FOR NOW. The Legislature solved the state's 2008 fiscal year deficit as follows:

- \$600M **Income Tax Increase** from 3.9% to 4.35%.
- \$700M **Expansion of Use Tax** to Consulting and Personal Services.
- Multiple **Government Reforms** including competitive pooling of teacher healthcare insurance
- Passage of a **30 day Continuation Budget**.
- Agreement on **\$430M in spending cuts**. Work on the bills to implement these cuts have run into some difficulties as the October 31 deadline on the continuation budget fast approaches.

B. BUSINESS GROUPS UP IN ARMS ABOUT “SERVICE TAX” – PROPERTY MANAGEMENT SERVICES NOT TAXED BUT MANY “B to B” PURCHASES ARE SUBJECT TO TAX. In the early morning hours of October 1, 2007, the Legislature passed with little scrutiny what many are now labeling the largest business tax increase in state history. By the clever use of so-called NAICS codes the Legislature agreed to extend the existing 6% state use tax (a form of sales tax) to a host of business-to-business service transactions. Please see Attachment A and B for a more detailed analysis. Thanks in part to our lobbying property management services are not subject to the new use tax. However, the tax will affect PMAM members are purchaser of landscaping and consulting services. Many business groups are launching an effort to repeal the new tax but are meeting with great resistance in the House and the Governor's office.

C. AT-RISK PROPERTY PROTECTION ACT/INSPECTION REFORM.
UPDATE: The following bills have been introduced: **HB 4958** by Rep. Green and referred to House Intergovernmental, Urban and Regional Affairs;

SB 635 introduced by Sen. Garcia and referred to Senate Economic Development/Regulatory Affairs; and **HB 5206** introduced by Rep. Sak and referred to House Urban Affairs Committee. **UPDATE:** HB 4958 and SB 635 were introduced at the request of PMAM and prospects for a quick hearing in the Senate look good pending some resolution of the state budget crisis. HB 5206 was introduced at the request of the RPOA and would increase the maximum length between inspections from 2 to 4 years and permit a local government to adopt a 6 year ordinance if the most recent inspection uncovered no code violations. **TO DO:**

- Make assignments for committee testimony/support cards; contact other interested groups.
- Set a timeline for committee contacts by association execs and members including additional letters, phone calls and e-mails.
- Committee Members (4/3 R): Senators **Sanborn** ((C)/Macomb/DMAA), **Richardville** ((VC)/Monroe/Washtenaw (part)/Jackson (part)/DMAA/WAA [Seitz]/PMAMM), **Allen** (Grand Traverse/Northern Michigan/KC), **Gilbert** (Port Huron/Thumb/DMAA), **Thomas** ((MVC)/Detroit/DMAA), **Hunter** (Detroit/DMAA) and **Jacobs** (Huntington Woods/Oakland/DMAA [Miller]).

D. DOMESTIC VIOLENCE TERMINATION/SB 103. UPDATE: Various interest groups met with Sen. Garcia several weeks ago to discuss Draft 4. We reached partial agreement on several issues. Moreover, all parties agreed in concept regarding the need for written documentation which is “self-evident” to entry level employees and not subject to interpretation. The difficult part will be reaching agreement on the details regarding what documentation meets this standard and does not expose property owners and managers to undue liability. The State Domestic Violence Prevention Board housed within the DHS has also weighed in on this issue.

E. LICENSURE. UPDATE: As previously reported MHC is considering seeking the re-introduction of a bill similar to HB 6554 from last term which would create a new licensure class. We have spoken directly to MAR which has taken a largely hands-off position qualified by the statement that its members would marginally prefer separate licensure to an “exemption” approach. MAR has informed us that it will not take a formal position until such time as it reviews actual bill language. **TO DO:**

- Contact MHC to the effect that PMAM position statement has not changed. We will only support clarifying legislation at this time.

II. OTHER ISSUES FOR DISCUSSION & MONITORING

- A. **ABANDONED BUILDINGS – BLIGHT COURT. HB 5319** would make an abandoned building order the Housing Code eligible for adjudication in a blight court for municipalities which have established such tribunals. As previously reported, the City of Detroit is pursuing this statutory change. The bill is in the House Urban Affairs Committee.
Abandoned
- B. **CHANGE ADDRESS NOTICE. HB 4394** introduced by **Rep. Steil (R-Cascade)** and referred to the Regulatory Reform Committee would require a tenant to use registered or certified mail/return receipt requested. In May we received calls from RPOA’s consultant suggesting that bill will come up for a committee hearing in the near future.
- C. **DUMPSTERS/CITY OF DETROIT**
- D. **EVICTION REFORM.** Two (2) bill drafts received back from Senator Garcia’s office.
- E. **LANDLORD-TENANT/NOTICE REGARDING REPAIRS/SB 379. Sen. Gretchen Whitmer (D-East Lansing)** introduced a bill which would require that a rental agreement provide that a tenant has a right to a 24 hour notice for non-emergency repairs or maintenance. Referred to Local, State and Urban Affairs Committee.
- F. **LEAD CONTAMINATION NOTICE.** Sen. Martha Scott (D-Detroit) introduced SB 509 (referred to Judiciary). The bill would amend the Truth in Renting Act to require a landlord to provide notice to a tenant within 10 days of receiving notice that a rental unit rests on soil that is contaminated with lead. See Attachment C for bill text.
- G. **LEASING RESTRICTIONS/ANN ARBOR ORDINANCE.** Kelley Cawthorne is reviewing legal opinion issued by outside firm to WAAA for possible attorney general opinion request. **UPDATE:** To be provided verbally at meeting.
- H. **LOW INCOME HOUSING ISSUES. Sen. Ron Jelinek (R-Three Oaks)** has introduced **SB 80** which would exempt a transfer of “eligible nonprofit housing property from charitable nonprofit housing organization to a low-income person” from the definition of a “transfer” under the General Property Tax Act. **Rep. Joel Sheltroun (D-West Branch)** has introduced **HB 4338** dealing with withholding taxes for entities with regulatory agreements with HUD and MSHDA.
- I. **INCLUSIONARY ZONING BILLS.**
- J. **DEATH OF TENANT/PROBATE AMENDMENT**

K. SOURCE OF INCOME.

L. TAX CREDITS/MSHDA PROJECTS. Rep. LaJoy (R-Canton) has introduced a technical bill regarding the use of homestead credits for MSHDA projects. **HB 5183** referred to Commerce.

M. VACANCY LOSS REFORM. UPDATE: A new commercial property specific tax act (HB 4375/Condino) previously passed the House and remains in Senate Finance Committee. The Senate version of the bill was discharged (SB 312/Jacobs) from committee and remains on the Senate general orders calendar.

N. NON-ATTORNEY REPRESENTATION**O. FUND-RAISING/PAC.****P. LEGISLATOR/PUBLIC OFFICIAL-OF-THE YEAR AWARD**

ATTACHMENT A

USE TAX ON SERVICES H.B. 5198: ENACTED SUMMARY

House Bill 5198 (as enacted) **PUBLIC ACT 93 of 2007** Sponsor: Representative Steve Tobocman

House Committee: Tax Policy

Senate Committee: Finance

Date Completed: 10-4-07

CONTENT

The bill amends the Use Tax Act to add certain services to the list of property and services taxed under the Act, and to appropriate \$100,000 to the Department of Treasury for the implementation of the bill's requirements.

The bill will take effect on December 1, 2007. It is described in detail below.

Services Subject to Tax

DESCRIPTION OF SERVICES TAXED UNDER H.B. 5198 (PUBLIC ACT 93 of 2007)

Service	NAICS Code	Description
Business service centers	56143	Mailbox rental, copy centers, office support (mailing, copying, on-site PC rental)
Carpet & upholstery cleaning	56174	Cleaning and dyeing used rugs, carpets, and upholstery
Miniwarehouse/self storage	53113	Renting/Leasing space for self-storage
Security system	56162	Services related to selling security systems and remote monitoring of electronic alarm systems
Investigation, guard & armored car	56161	Providing investigation and detective services
Investment advice	52393	Providing customized investment advice to clients on a fee basis
Janitorial	56172	Cleaning building interiors, interiors of transportation equipment or windows
Landscaping	56173	Providing landscape care/maintenance along with design/construction of landscaped exteriors
Office administration	5611	Providing day-to-day administrative services (billing/record-keeping, personnel, financial planning)
Service contracts	----	Optional warranties sold with tangible personal property
Personal care (no haircuts)	8121	Appearance care services except hair cutting and styling (nails, diet and weight management)
Other personal services	----	See footnote below.
Other travel & reservation	56159	Travel arrangements and reservation services provided other than travel agents/tour operators
Scenic transportation	487	Using transportation to provide recreation and entertainment (steam trains/charter boats)
	71392	Operating downhill, cross-country, or related skiing areas and ski lifts and tows

Tour operators	56152	Arranging and assembling tours sold through travel agencies or tour operators
Couriers & messengers	482	Providing intercity and/or local delivery of parcels
Transit & ground passenger	4853	Taxi and limousine services
Specialized design (interior design)	5414	Planning, designing, and administering projects in interior spaces
Consulting	5416	Providing assistance on management, financial, marketing, environmental, scientific & technical issues
Packaging & labeling	56191	Packaging client-owned materials and labeling and/or imprinting packages
Document preparation	56141	Letter/resume writing, editing/proofreading, typing/word processing, transcription
Warehousing & storage	4931	Operating warehousing and storage facilities for general items/refri

Services included in Other Personal Services are astrology, baby shoe bronzing, bail bonding, balloon-o-grams, coin-operated personal service machines, comfort station operations, concierge, consumer buying, credit card notification, dating, discount buying, social escort, fortune telling, genealogical investigation, house sitting, social introduction, coin-operated rental lockers, numerology, palm reading, party planning, pay telephone, personal fitness trainer, personal shopping, coin-operated photographic machines, phrenology, porter, psychic, rest room operations, shoeshine, singing telegram, wedding chapel (not churches), and wedding planning services.

Senate Fiscal Agency 10/1/2007

The Act imposes a specific tax for the privilege of using, storing, or consuming tangible personal property in the State at a rate of 6% of the price of property or services specified in the Act. Penalties and interest are added to the tax if applicable and as provided in the Act.

Under the bill, the tax is extended to the use or consumption of the following services, as described in the North American Industry Classification System (NAICS), 2002 as produced by the United States Office of Management and Budget:

Each of these services is subject to tax under the bill based on the description of that service in the applicable NAICS code and not the classification of the establishment providing that service.

In addition, the bill extends the use tax to service contract services in which the seller, in exchange for the buyer's single payment, agrees to provide repair, maintenance, or replacement of one or more items of tangible personal property during a specified period of time, which services the buyer is not required to buy in connection with the purchase of tangible personal property.

Registration

Under the Use Tax Act, except as otherwise provided, a person engaged in the business of selling tangible personal property for storage, use, or other consumption in the State must register with the Department of Treasury and give the name and address of each agent operating in this State, the location of all distribution or sales houses or offices

or other places of business in the State, and any other information that the Department requires relevant to the enforcement of the Act. A seller holding a sales tax license obtained under the General Sales Tax Act is not required to register separately with the Department.

Under the bill, these provisions apply to a person subject to the tax under the Use Tax Act, rather than a person engaged in the business of selling tangible personal property.

Sourcing Requirements

The Act requires every seller to source sales in accordance with Section 20 and collect the use tax from the consumer. Under the bill, this applies to every person subject to the tax under the Act. Additionally, the services set forth in the bill must be sourced as products as provided in Section 20.

(Under Section 20, for sourcing a sale subject to the use tax, the following apply: -- If a product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

-- If a product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or the purchaser's designee, including the location indicated by instructions for delivery to the purchaser, known to the seller.

-- If either of the above provisions does not apply, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of the seller's business, provided use of the address does not constitute bad faith.

-- If none of the above provisions apply, the sale is sourced to the location indicated by an address for the purchaser obtained at the completion of the sale, including the address of the purchaser's payment instrument if no other address is available, provided use of the address does not constitute bad faith.

-- If none of the above provisions apply or the seller has insufficient information to apply any of the above provisions, the sale will be sourced to the location indicated by the address from which the tangible personal property was shipped or from which computer software delivered electronically was first available for transmission by the seller.)

BACKGROUND

Currently Taxed Services

The use or consumption of the following services is taxed under the Act under certain conditions:

-- Intrastate telephone, telegraph, leased wire, and other similar communications.

-- Interstate telephone communications that either originate or terminate in the State and for which the charge for the service is billed to a service address in this State or phone number by the provider either within or outside the State.

-- Rooms or lodging furnished by hotelkeepers, motel operators, and others furnishing accommodations that are available to the public on the basis of a commercial and business enterprise.

-- The laundering or cleaning of textiles under a sale, rental, or service agreement with a term of at least five days.

-- The transmission and distribution of electricity, if the sale is made to the consumer or user of the electricity for consumption or use rather than for resale.

-- For a manufacturer that affixes its product to real estate and maintains an inventory of its product that is available for sale to others by publication or price list, the direct and indirect production costs that are incident to and necessary for production or manufacturing operations or processes.

-- For a manufacturer that affixes its product to real estate but does not maintain an inventory available for sale to others or make its product available for sale to others by publication or price list, the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property.

-- Mobile telecommunications services.

Exemptions

Under the Act, to the extent that the property or services are used for the exempt purpose, the following are exempt from the use tax:

-- Property or services sold to the United States, an unincorporated agency or instrumentality of the United States, an incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters or branches, the State, a department or institution of this State, or a political subdivision of the State.

-- Property or services sold to a school, hospital, or home for the care and maintenance of children or aged individuals, operated by an entity of government, a regularly organized church, religious, or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of this State, if not operated for profit, and if the income or benefit from the operation does not inure to an individual or private shareholder, and the activities of the entity or agency are carried on exclusively for the benefit of the public at large.

-- Property or services sold to a regularly organized church or house of religious worship except when prohibited.

-- Property or services sold to an organization not operated for profit and exempt from Federal income tax under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, or to a health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit and meeting other requirements.

In addition, the use tax does not apply to a transaction or a portion of a transaction if the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian, of the transferor.

The Act also exempts a transaction or a portion of a transaction if the transfer is a gift to a beneficiary in the administration of an estate.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

The bill will generate an estimated \$613.8 million in FY 2007-08, based on the effective date of December 1, 2007. Of this amount, \$409.2 million will go to the General Fund and \$204.6 million will go to the School Aid Fund. For FY 2008-09, it is estimated that expanding the use tax to selected services will generate \$751.3 million, which reflects a full fiscal year impact. Of this amount, \$500.9 million will go to the General Fund and \$250.4 million to the School Aid Fund. This bill will not have any direct fiscal impact on local government.

ATTACHMENT B**2002 NAICS CODE****5416 Management, Scientific, and Technical Consulting Services**

- **COMMENT:** The Department of Treasury has indicated verbally that cross-referenced codes ARE NOT SUBJECT TO THE USE TAX if they start with a 4 digit code other than “5416.”

54161 Management Consulting Services

This industry comprises establishments primarily engaged in providing advice and assistance to businesses and other organizations on management issues, such as strategic and organizational planning; financial planning and budgeting; marketing objectives and policies; human resource policies, practices, and planning; production scheduling; and control planning.

Cross-References.

- Establishments primarily engaged in providing a range of day-to-day office administrative services, such as financial planning, billing and recordkeeping, personnel, and physical distribution and logistics, are classified in [Industry 561110](#), Office Administrative Services;
- Establishments primarily engaged in administering, overseeing, and managing other establishments of the company or enterprise (except government establishments) are classified in [Industry 55111](#), Management of Companies and Enterprises;
- Government establishments primarily engaged in administering, overseeing, and managing governmental programs are classified in Sector 92, Public Administration;
- Establishments primarily engaged in professional and management development training are classified in [Industry 611430](#), Professional and Management Development Training;
- Establishments primarily engaged in listing employment vacancies and in selecting, referring, and placing applicants in employment are classified in [Industry 561310](#), Employment Placement Agencies;
- Establishments primarily engaged in developing and implementing public relations plans are classified in [Industry 541820](#), Public Relations Agencies;
- Establishments primarily engaged in developing and conducting marketing research or public opinion polling are classified in [Industry 541910](#), Marketing Research and Public Opinion Polling;
- Establishments primarily engaged in planning and designing industrial processes and systems are classified in [Industry 541330](#), Engineering Services;
- Establishments primarily engaged in planning and designing computer systems are classified in [Industry 54151](#), Computer Systems Design and Related Services; and
- Establishments primarily engaged in providing financial investment advice services are classified in [Industry 523930](#), Investment Advice.

541611 Administrative Management and General Management Consulting Services

This U.S. industry comprises establishments primarily engaged in providing operating advice and assistance to businesses and other organizations on administrative management issues, such as

financial planning and budgeting, equity and asset management, records management, office planning, strategic and organizational planning, site selection, new business startup, and business process improvement. This industry also includes establishments of general management consultants that provide a full range of administrative; human resource; marketing; process, physical distribution, and logistics; or other management consulting services to clients.

Cross-References.

- Establishments primarily engaged in providing a range of day-to-day office administrative services, such as financial planning, billing and recordkeeping, personnel, and physical distribution and logistics, are classified in [Industry 561110](#), Office Administrative Services;
- Establishments primarily engaged in administering, overseeing, and managing other establishments of the company or enterprise (except government establishments) are classified in U.S. [Industry 551114](#), Corporate, Subsidiary, and Regional Managing Offices;
- Government establishments primarily engaged in administering, overseeing, and managing governmental programs are classified in Sector 92, Public Administration; and
- Establishments primarily engaged in providing investment advice are classified in [Industry 523930](#), Investment Advice.

541612 Human Resources and Executive Search Consulting Services

This U.S. industry comprises establishments primarily engaged in providing advice and assistance to businesses and other organizations in one or more of the following areas: (1) human resource and personnel policies, practices, and procedures; (2) employee benefits planning, communication, and administration; (3) compensation systems planning; (4) wage and salary administration; and (5) executive search and recruitment.

Cross-References. Establishments primarily engaged in--

- Professional and management development training--are classified in [Industry 611430](#), Professional and Management Development Training; and
 - Listing employment vacancies and in selecting, referring, and placing applicants in employment--are classified in [Industry 561310](#), Employment Placement Agencies.
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541613 Marketing Consulting Services

This U.S. industry comprises establishments primarily engaged in providing operating advice and assistance to businesses and other organizations on marketing issues, such as developing marketing objectives and policies, sales forecasting, new product developing and pricing, licensing and franchise planning, and marketing planning and strategy.

Cross-References. Establishments primarily engaged in--

- Developing and implementing public relations plans--are classified in [Industry 541820](#), Public Relations Agencies; and
- Developing and conducting marketing research or public opinion polling--are classified in [Industry 541910](#), Marketing Research and Public Opinion Polling.

541614 Process, Physical Distribution, and Logistics Consulting Services

This U.S. industry comprises establishments primarily engaged in providing operating advice and assistance to businesses and other organizations in areas, such as: (1) manufacturing operations improvement; (2) productivity improvement; (3) production planning and control; (4) quality assurance and quality control; (5) inventory management; (6) distribution networks; (7) warehouse use, operations, and utilization; (8) transportation and shipment of goods and materials; and (9) materials management and handling.

Cross-References. Establishments primarily engaged in--

- Planning and designing industrial processes and systems--are classified in [Industry 541330](#), Engineering Services; and
- Providing computer systems integration design services--are classified in U.S. [Industry 541512](#), Computer Systems Design Services.

541618 Other Management Consulting Services

This U.S. industry comprises establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.

Cross-References. Establishments primarily engaged in--

- Providing administrative and general management consulting services--are classified in U.S. [Industry 541611](#), Administrative Management and General Management Consulting Services;
- Providing human resources and executive search consulting services--are classified in U.S. [Industry 541612](#), Human Resources and Executive Search Consulting Services;
- Providing marketing consulting services--are classified in U.S. [Industry 541613](#), Marketing Consulting Services; and
- Providing process, physical distribution, and logistics consulting services--are classified in U.S. [Industry 541614](#), Process, Physical Distribution, and Logistics Consulting Services.

54162 Environmental Consulting Services

See industry description for 541620 below.

541620 Environmental Consulting Services

This industry comprises establishments primarily engaged in providing advice and assistance to businesses and other organizations on environmental issues, such as the control of environmental contamination from pollutants, toxic substances, and hazardous materials. These establishments identify problems (e.g., inspect buildings for hazardous materials), measure and evaluate risks, and recommend solutions. They employ a multidisciplinary staff of scientists, engineers, and other technicians with expertise in areas, such as air and water quality, asbestos contamination, remediation, and environmental law. Establishments providing sanitation or site remediation consulting services are included in this industry.

Cross-References. Establishments primarily engaged in--

- Environmental remediation--are classified in [Industry 562910](#), Remediation Services; and
- Providing environmental engineering services--are classified in [Industry 541330](#), Engineering Services.

54169 Other Scientific and Technical Consulting Services

See industry description for 541690 below.

541690 Other Scientific and Technical Consulting Services

This industry comprises establishments primarily engaged in providing advice and assistance to businesses and other organizations on scientific and technical issues (except environmental).

Cross-References. Establishments primarily engaged in environmental consulting are classified in [Industry 541620](#), Environmental Consulting Services.