THE GENERAL PROPERTY TAX ACT (EXCERPT)
Act 206 of 1893

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

Sec. 7m. Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act. Parks shall be open to the public generally. This exemption shall not apply to property acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the property is located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition.


Popular name: Act 206

TAXATION OF LESSEES OR USERS OF TAX-EXEMPT PROPERTY (EXCERPT)
Act 189 of 1953

211.181 Taxation of lessees or users of tax-exempt real property; business conducted for profit; exceptions.

Sec. 1. (1) Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

(2) Subsection (1) does not apply to all of the following:

(a) Federal property for which payments are made instead of ad valorem property taxes in amounts equivalent to taxes that might otherwise be lawfully assessed or property of a state-supported educational institution, enumerated in section 4 of article VIII of the state constitution of 1963.

(b) Property that is used as a concession at a public airport, park, market, or similar property and that is available for use by the general public.

(c) Property that is used by the lessee or user only in conjunction with a county fair, community fair, 4-H fair, or state fair of this state, or in conjunction with a special event for which the lessee or user pays a fee to the county fair, community fair, 4-H fair, or state fair. As used in this subdivision, “special event” means an event during which property is occupied by the lessee or user for not more than 14 consecutive days.

(d) For tax days before December 31, 1985, property that is used by the lessee or user in such a manner that the city or township in which the property is located receives revenue under section 17 of the horse racing law of 1995, 1995 PA 279, MCL 431.317.

(e) Real property located in a renaissance zone, except a casino, to the extent and for the duration provided in the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, except a special assessment or a tax described in section 7 of the general property tax act, 1893 PA 206, MCL 211.7ff. As used in this subdivision, “casino” means a casino or a parking lot, hotel, motel, or retail store owned or operated by a casino, an affiliate, or an affiliated company, regulated by this state pursuant to the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.216.

Lessee - User Tax

1. Concession:

A concession is a privilege or space granted or leased for a particular use within specified premises and embodies the concept of specific obligations on the part of the concessionaire to maintain particular services under specific terms and standards, which services must be available for use by the general public. Detroit v Tygard, 381 Mich 271 (1968); Kent County v Grand Rapids, 381 Mich 620 (1969).

2. The lessee user tax is not an ad valorem tax but instead a tax on the privilege of using property. United States v Detroit, 345 Mich 610 (1956).

3. The lessee user tax should, according to the State Tax Commission Assessor’s Manual, Volume 3, Page 1-4, be assessed in a separate section of the ad valorem roll.

4. Whether a particular activity, carried out on exempt property is a concession is a question of fact.

A. A concession was found to exist where:

The lease required the lessee to take on "specific obligations" in the day-to-day operation of a golf course on City-owned property, such as organization of related social activities, regulated reasonable times of operation, the maintenance of the course to a specific standard, and to operate food and equipment concessions, with the exception of the overall extensive oversight of the management operation being reserved by the City. Kalamazoo v Richland Township, 221 Mich 531 (1997).

B. A concession was not found to exist where the duties set forth in this were stated as follows:

A lessee is granted the right to operate an air cargo and general freight transportation operation on airport premises. The lease states the lessee is restricted in its use to an airfreight business, it must furnish its services in a fair, equal and not unjust discretionary basis while charging fair and reasonable prices for its services, is required to observe and obey all reasonable rules and regulations as promulgated by the FAA and any other regulatory agency regarding airport facilities, safety and security, environmental concerns, has the duty to make prescribed improvements to the leased land; and must maintain the premises in good condition. Emery Worldwide v Cascade Township, (MTT #26904 & 2798041), affirmed in unpublished opinion cited as not reported in NW2d 2005, WL 563323.
C. The Tribunal Judge made the following factual finding in the Emery case.

In essence, to qualify as a concession, a lessee must have specific obligations imposed upon it, maintain particular services under specified terms of the concession or lease agreement, these services must themselves have a reasonable relationship to the purposes of the operation being conducted by the lessor/grantor, and the lessee must conduct its business in a manner incidentally related to a public-oriented operation. Seymour v Dalton Township, 177 Mich App 403, 408; 442 NW2d 655 (1989).

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In reviewing the lease in this case, Petitioner’s Brief Exhibit A and Respondent’s Brief Exhibit A, the Tribunal finds the Lease does nothing to either provide for or impose standards of service, minimum hours of operation, or any oversight of Petitioner’s airfreight operation by the County; the Lease actually contains language to the contrary.

The lease does not impose any specific obligation or restrictions such as minimum hours, standards of service, or operational oversight by the leasing/granting authority. Instead, the Lease states that Petitioner may use the leased property for “all purposes on connection with the conduct of its air cargo and general freight transportation operation, including without limitation any incidental, administrative or ancillary uses, at the Airport and for no other purpose.” It is the Tribunal’s opinion that this does not impose a standard of service beyond the normal scope of customer or employee relations, such as laid out in the Standard Covenants for Airport Agreements, § 1, Exhibit A, at Exhibit A-1, A-2. Petitioner argues that in Exhibit F, referenced in its Brief, pg. 4, specific obligations exist and are outlined in § 3, § 15, § 20, and § 25, of the Lease. The Tribunal, in reviewing these clauses, realizes that while these clauses impose restrictions and obligations on Petitioner, they do not rise beyond the ordinary scope of what would be expected from leasing property at a municipal, county-owned and operated public airport. Nothing exists in these terms that are particularly restrictive or harsh in nature, and a duty or restriction of any right is not imposed other than what is imposed upon any of the other lessees at the airport engaged in the same business for profit. As no specific obligations are imposed, this agreement does not rise beyond what would be considered a standard lease.
5. What constitutes being open to the public?

In order to discern whether Petitioner’s operation fits the element of being open to the general public, the Tribunal must look at the documentary evidence submitted to support this position. The Tribunal, in reviewing the evidence, finds it seriously lacking in weight or credibility. No evidence or testimony is given to support the argument that the subject property is open to the general public for any use at all. The evidence submitted by Petitioner stating that the subject property is an “aircraft hangar” and that the general public can “arrange to have [freight] shipped by [Petitioner]” does not lend any veracity to the argument the facility is open for use by the general public. Petitioner, due to its lack of credible and adequate evidence, fails to prove that the subject property is open to the general public, and as such, fails in proving the second element of MCL 211.181(2)(b). Emery Worldwide v Cascade Township, (MTT #26904 & 2798041).

6. The issue of whether an activity is public commission is a question of fact.

Airfreight providers sometimes feel discriminated against because they claim to do with freight what passenger carriers do for passengers. The facts of each claim for exemption under 211.181(2)(b) must be carefully examined.

7. What to do when there is a close call on the facts?

It is sometimes possible to compromise by reaching agreement on the ratio of the premises claimed as a concession compared to the total area under lease.
EXEMPTIONS

It is essential that all descriptions of exempt real property be included in the assessment roll and listed as "Exempt" in the assessment column. It is also essential that partially exempt real descriptions be so noted in the assessment roll along with the reason for the exemption and the amount of exemption, if applicable. In some cases, such as non-consideration of normal repairs, replacement and maintenance, under MCL 211.27, the statute requires that the value excluded from the true cash value be indicated on the assessment roll. Partial exemptions on personal property need not be noted, since they are based on net valuation after all applicable exemptions have been deducted in computations made on the personal property return form filed by the taxpayer. An exception to this might be where part of the personal property is assessed in an Industrial Facilities Tax roll or Commercial Facilities Tax roll. If normally assessable personal property is completely exempt, it is suggested that the property owner's name be listed on the assessment roll with the reason for the exemption. (Please consult the chapter on Exemptions.)

OTHER ROLLS

Roll preparation also includes the assessment of property taxable under the following Acts. These specific tax rolls are subject to addition, revision or repeal by legislation and may change subsequent to the printing date of this chapter.

Act 189, P.A. 1953 (MCL 211.181 and 211.182).

This Act provides for the taxation of lessees and users of tax-exempt property.

It is recommended that one or more pages from the assessment roll be segregated as a separate roll and identified by the heading "Act 189 of 1953, as amended." Act 189 valuations are included as part of the applicable class of real
property for purposes of equalization and the state equalized valuation factors applicable to the class of real property assessed will apply to the Act 189 assessments. For this reason, it is recommended that the Act 189 roll be located between the real property roll and the personal property roll.


This Act provides for the establishment of commercial forests and for the administration and taxation of them.

It is recommended that one or more pages from the assessment roll be segregated as a separate roll at a location following the personal property roll and be identified by the heading "Commercial Forest Act, Act 94 of 1925, as amended." The descriptions should be arranged in the same sequence as they are located in the regular assessment roll. This would facilitate cross-checking between the Commercial Forest Reserve Roll and those descriptions in the regular real property roll which are exempt and are explained by the initials "C.F.R." Commercial Forest Reserve lands are not subject to equalization, and the assessments are not totaled with the real assessments on the standard assessment roll.


This Act provides for the establishment of plant rehabilitation districts and industrial development districts in local government units.

It is recommended that one or more pages from the assessment roll be segregated as a separate roll at a location following the real and personal property assessment rolls and identified by the heading "Industrial Facilities Tax Assessment Roll." The industrial facilities assessments are not included with the assessments of the standard assessment roll and are not subject to equalization. (For further information, see the chapter on Act 198 and Act 255 in Volume 4.)


This Act provides for the establishment of commercial redevelopment districts in local governmental units; to provide for the exemption from certain taxes. A new exemption shall not be granted under this Act after December 31, 1985, but an exemption then in effect shall continue until the expiration of the exemption certificate.

It is recommended that one or more pages from the assessment roll be segregated as a separate roll at a location following the real and personal property assessment rolls and be identified by the heading "Commercial Facilities Tax Assessment Roll." The commercial facilities assessments are not included with the assessments of the standard assessment roll and are not subject to equalization. (For further information, see chapter on Act 198 and Act 255 in Volume 4.)


This Act provides for the establishment of technology park districts in local governmental units with population of 800,000 or more and with specific restrictions regarding proximity to certain four-year universities.

It is recommended that one or more pages from the assessment roll be segregated as a separate roll at a location following the real and personal property assessment rolls and identified by the heading "Technology Park Facilities Tax Assessment Roll." The technology park facilities assessments are not included with the assessments of the standard assessment roll and are not subject to equalization.