**Industrial Processing Exemption for Machinery & Equipment Used in Aggregate Production**

**Reason for Legislative Action**

**Background**

The aggregate industry in Michigan includes crushed stone and sand and gravel products, industrial and recycled material producers as well as suppliers of equipment and other goods needed to produce mineral products. Aggregate makes up approximately 95% of every ton of asphaltic concrete, and 80% of each cubic yard of Portland cement concrete used in Michigan. It is also used as a filter medium in water and sewage treatment plants. The aggregate industry directly employs over 8,000 people in Michigan, and employee wages are 35% higher than the average wage for industry.

Concrete and asphalt may be 1) processed for incorporation into new concrete and asphalt pavement and sold at retail, or 2) sold to a third party for further processing and incorporation into new product. The end product may be sold at retail or used by a contractor on a road project. Some contractors may both produce and lay aggregate. The equipment used to produce aggregate includes Loaders, Feeders, Crushers, Screens, Conveyors, Dust Control Equipment and Generators.

Historically, producers have provided sellers of their equipment with an exemption certificate indicating that the equipment is exempt from sales tax under the industrial processing exemption. Recent audit activity has disputed the application of the industrial processing exemption to this equipment.

**Audit Interpretation**

Both the Sales Tax Act and the Use Tax Act exempt from tax the sale (or use) of equipment used by an industrial processor in performing industrial processing. There is no dispute that producers of aggregate perform industrial processing activities, which specifically includes recycling of used materials for ultimate sale or use. However, the Department contends that in order to purchase their equipment exempt from tax, the final end product must be 1) sold at retail (and sales tax paid), or 2) affixed to realty out of state.[[1]](#footnote-1) However, many users of aggregate pay use tax on the product, rather than sales tax. Even though use tax is imposed at the same rate as sales tax, the Department insists that if use tax, rather than sales tax, is paid on the use of the product, the equipment cannot be purchased using the industrial processing exemption, or that the aggregate producer must apportion the exemption to only that percentage of the equipment that produces product which is sold at retail (or affixed out-of-state). Such limitation is unworkable, and does not support the intent of the Legislature to permit an exemption for machinery and equipment used in the production of aggregate.

**Clarification**

HB 5255 would clarify that the industrial processing exemption for machinery and equipment used in aggregate production is applicable as long as either sales or use tax is paid on the product.

1. The “out-of-state” language was added by 474 PA 2012 in response to attempts by the Department to impose tax on tangible personal property that was shipped out of state and installed at an out-of-state location. [↑](#footnote-ref-1)