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**House
Legislative
Analysis
Section**

INHERITANCE TAX REFUND

**House Bill 5725 (Substitute H-1)
Revised First Analysis (5-13-98)**

**Sponsor: Rep. Burton Leland
Committee: Tax Policy**

THE APPARENT PROBLEM:

According to testimony before the House Tax Policy Committee, when Bernard Kaplowitz died at the age of 72 on April 22, 1992, he had been living in a "meager and dilapidated room" above a garage in Lansing and yet he left behind an estate valued at \$1.2 million, mostly in United States Savings Bonds found in his room by a nephew. Mr. Kaplowitz had never married and was survived by nieces and nephews. According to representatives of the estate, the state inheritance tax return was filed on May 4, 1993, and the final inheritance tax order was signed on February 4, 1994. At that time, the law said that any petitions for redetermination of the tax had to be filed within 90 days of the final order. Nearly three months after that deadline had passed, according to committee testimony, the estate became aware that a computational error had overvalued the savings bonds, resulting in an overpayment of inheritance taxes of \$28,403. Estate representatives say that they then notified the Department of Treasury of the overvaluation, but the state refused to redetermine the tax. They say that while the state was not legally obligated to repay any taxes, because the 90-day petitioning for a redetermination of taxes had passed, neither was it precluded from voluntarily refunding taxes paid in error. Estate representatives also claim that the law at that time was unfair in that it imposed the 90-day requirement on taxpayers but allowed the state to seek a redetermination at any time until allowance of the final account, months or even years later. The estate was unsuccessful in seeking a refund before the probate court and court of appeals. (The estate was able to receive a refund on its federal death taxes, according to committee testimony.)

[The department, however, says the law does not permit the probate court or the department to redetermine taxes if the petition for redetermination is filed after the 90-day deadline and cites a 1986 Michigan Court of Appeals decision -- Matter of Estate of Johnson -- and a 1988 letter ruling on the issue.]

This situation could not occur today because the state's inheritance tax has been replaced by the Michigan

Estate Tax Act, which applies to the estates of those dying after September 30, 1993. The new act permits a claim for refund up to one year after the date of the final determination of the federal transfer tax. However, the provisions of the old law applied to those dying before October 1, 1993, including Bernard Kaplowitz. Legislation has been introduced that will address the problem faced by the estate of Bernard Kaplowitz (and perhaps others) under the old inheritance tax statute.

THE CONTENT OF THE BILL:

Section 13 of the Michigan Estate Tax Act, a section that applies to people dying before October 1, 1993, says that the judge of probate may grant a rehearing on the determination of death taxes "upon the written application of any person interested, filed with him or her within 90 days after the final determination by him or her of any tax under this act." The bill would add, "or any time prior to the allowance of the final account."

MCL 205.213

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill would result in an indeterminate revenue decrease to the state. (Fiscal Note dated 4-22-98)

ARGUMENTS:

For:

The bill would correct an alleged injustice in a case where an estate overpaid state death taxes by more than \$28,000 but cannot get a refund because it missed the deadline for petitioning for a re-determination of taxes. The state has refused to refund the overpayment voluntarily. The bill has limited scope: it would apply to a section of law that only applies to deaths occurring before October 1, 1993. Further, it would only apply to cases where the final account has

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not been allowed and where there has been an erroneous overpayment of taxes to the state. It addresses a situation that could not occur under today's statute.

Response:

Department of Treasury officials say they do not have the authority to voluntarily "refund" inheritance taxes. They point to court rulings stating that the probate court cannot redetermine the inheritance tax when a petition is filed more than 90 days after the final inheritance tax order has been entered. The department operates under the order of the probate court in this kind of matter.

Against:

The bill carves out a narrow exception for a taxpayer who missed the standard deadline for redetermining death taxes.

POSITIONS:

Representatives of the Estate of Bernard Kaplowitz testified in support of the bill. (4-22-98)

The Department of Treasury is opposed to the bill. (4-27-98)

Analyst: C. Couch

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.