

HOUSE BILL No. 5503

January 27, 1998, Introduced by Reps. McNutt, Voorhees, Goschka and Geiger and referred to the Committee on Tax Policy.

A bill to amend 1899 PA 188, entitled "Michigan estate tax act," by amending sections 40, 41, 43, 50, and 56 (MCL 205.240, 205.241, 205.243, 205.250, and 205.256), sections 40, 41, 43, and 50 as added by 1993 PA 54 and section 56 as amended by 1994 PA 372.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 40. (1) Penalties and interest provided for under sec-
2 tions 23 and 24 of ~~Act No. 122 of the Public Acts of 1941, being~~
3 ~~sections 205.23 and 205.24 of the Michigan Compiled Laws~~ 1941 PA
4 122, MCL 205.23 AND 205.24, shall be calculated on the balance of
5 the tax due.

6 (2) Interest on refunds shall accrue ~~from 45 days after the~~
7 ~~date the tax was paid or the due date of the tax excluding~~

1 ~~extensions, whichever is later~~ IN ACCORDANCE WITH SECTION 30 OF
2 1941 PA 122, MCL 205.30.

3 Sec. 41. Upon payment of the tax under this act, the
4 department shall issue to the personal representative receipts in
5 triplicate, each of which is sufficient evidence of payment and
6 entitles the personal representative to be credited and allowed
7 that amount by the probate court having jurisdiction. If the
8 personal representative files a complete return and makes a writ-
9 ten application to the department for determination of the amount
10 of the tax and discharge from personal liability for the tax, the
11 department as soon as possible, but not later than 1 year after
12 receipt of the application, shall notify the personal representa-
13 tive of the amount of the tax. Upon payment of the tax, the per-
14 sonal representative is discharged from personal liability for
15 any additional tax found to be due and is entitled to receive
16 from the department a receipt in writing showing the discharge.
17 THE DEPARTMENT SHALL PREPARE THE DISCHARGE OF LIABILITY RECEIPT
18 IN A FORM RECORDABLE BY THE REGISTER OF DEEDS. However, a dis-
19 charge does not operate to release the gross estate of the lien
20 of any additional tax subsequently found to be due while the
21 title to the gross estate remains in the personal representative
22 or in the heirs, devisees, or distributees. If after a discharge
23 is given the title to any portion of the gross estate has passed
24 to a bona fide purchaser for value, that portion of the gross
25 estate is not subject to a lien or any claim or demand for the
26 tax.

1 Sec. 43. The tax imposed under section 32 is a lien upon
2 the gross estate of the decedent until paid in full. Any part of
3 the gross estate used for the payment of claims against the
4 estate and expenses of its administration is divested of any lien
5 for taxes. Any part of the gross estate, other than real estate,
6 of a resident decedent transferred to a bona fide purchaser,
7 mortgagee, or pledgee for an adequate and full consideration in
8 money or money's worth is divested of the lien, and the lien
9 ~~shall~~ then ~~attach~~ ATTACHES to the consideration received for
10 the property from the purchaser, mortgagee, or pledgee. Any real
11 estate that is part of the gross estate of a decedent transferred
12 to a bona fide purchaser or mortgagee ~~shall be~~ IS divested of
13 the lien, the lien ~~shall attach~~ ATTACHES to the consideration
14 received for the real property, and the department shall issue a
15 waiver releasing the property from the lien IN A FORM RECORDABLE
16 WITH THE REGISTER OF DEEDS if 1 OR MORE of the following
17 ~~applies~~ APPLY:

18 (a) The transfer of the real estate is necessary for payment
19 of claims against the estate and expenses of administration even
20 though other assets are then available for sale or mortgage.

21 (b) The department is satisfied that no tax liability exists
22 or that the tax liability of an estate has been fully discharged
23 or provided for.

24 (c) Except when the department has filed a notice of tax
25 lien with the county in which the real estate is located, ~~there~~
26 ~~is made~~ a partial payment IS MADE with the department of an

1 amount equal to either of the following, whichever is
2 applicable:

3 (i) If the transfer occurs before the due date for the
4 filing of the return including extensions, 8% of the net cash
5 proceeds payable at closing to the seller ~~in the case of~~ FOR a
6 sale or to the mortgagor ~~in the case of~~ FOR a mortgage.

7 (ii) If the transfer occurs after the due date for the
8 filing of the return including extensions, 16% of the net cash
9 proceeds payable at closing to the seller ~~in the case of~~ FOR a
10 sale or to the mortgagor ~~in the case of~~ FOR a mortgage, or the
11 amount of the unpaid tax as reflected on the return filed with
12 the department, whichever is less.

13 (d) The seller, purchaser, or mortgagee makes a partial pay-
14 ment of an amount determined by the department to be sufficient
15 to ensure payment of the tax.

16 (e) The seller, purchaser, or mortgagee makes a partial pay-
17 ment of an amount determined by the probate court to be suffi-
18 cient to ensure payment of the tax.

19 (f) The seller or mortgagor is a person who holds the real
20 property as a surviving joint tenant or tenant by the
21 entirety.

22 Sec. 50. If it appears to the department that an estate is
23 not subject to any tax under this act, the department shall issue
24 to the personal representative OR, IF SO REQUESTED, TO HIS OR HER
25 LEGAL REPRESENTATIVE, or to the heirs, devisees, or distributees
26 of the decedent a certificate in writing to that effect, showing
27 nonliability to tax. The certificate of nonliability has the

1 same force and effect as a receipt showing payment. The
2 certificate of nonliability shall be in a form recordable with
3 the register of deeds and admissible in evidence in the same
4 manner as receipts showing payment of taxes.

5 Sec. 56. As used in this act:

6 (a) "Decedent" means a deceased person and includes, but is
7 not limited to, a testator, grantor, bargainor, vendor, donor, or
8 person who dies intestate.

9 (b) "Department" means the BUREAU OF revenue ~~division~~ of
10 the department of treasury.

11 (c) "Federal generation-skipping transfer tax" means the tax
12 imposed by chapter 13 of subtitle B of the internal revenue
13 code.

14 (d) "Federal return" means any United States transfer tax
15 return including federal estate tax returns and
16 generation-skipping tax returns unless the context indicates a
17 similar Michigan tax return.

18 (e) "Generation-skipping transfer" means every transfer
19 subject to the federal generation-skipping transfer tax in which
20 the original transferor is a resident of this state at the date
21 of the transfer by the original transferor or the property trans-
22 ferred is real or personal property situated in this state.

23 (f) "Gross estate" means the gross estate determined under
24 the internal revenue code.

25 (g) "Internal revenue code" means the United States internal
26 revenue code of 1986, in effect on ~~January 1, 1993~~ NOVEMBER 1,

1 1997 OR, AT THE OPTION OF THE PERSONAL REPRESENTATIVE, IN EFFECT
2 ON THE DATE OF THE DECEDENT'S DEATH.

3 (h) "Intangible personal property" means incorporeal per-
4 sonal property including, but not limited to, deposits in banks,
5 negotiable instruments, mortgages, debts, receivables, shares of
6 stock, bonds, notes, credits, evidences of an interest in proper-
7 ty, evidences of debt, and choses in action generally.

8 (i) "Nonresident" means an individual who is not a
9 resident.

10 (j) "Original transferor" means any grantor, donor, trustor,
11 testator, or person who by grant, gift, trust, will, or other-
12 wise, makes a transfer of real or personal property that results
13 in a federal generation-skipping transfer tax.

14 (k) "Person" means an individual, firm, partnership, joint
15 venture, association, corporation, limited liability company,
16 company, estate, or any other group or combination acting as a
17 unit. Person does not include public corporations.

18 (l) "Personal representative" means the personal representa-
19 tive appointed by the probate court, including an independent
20 personal representative, or, if a personal representative is not
21 acting, then any person who is in the actual or constructive pos-
22 session of any property included in the gross estate of the dece-
23 dent or any other person who is required to file a return or pay
24 the taxes due under any provision of this act. A safe and col-
25 lateral deposit company, trust company, corporation, bank, or
26 other institution is not the personal representative of property
27 held in a safe deposit box or of money or property on deposit if

1 the indicated ownership or registered title denotes ownership by
2 right of survivorship. A safe and collateral deposit company,
3 trust company, corporation, bank, or other institution is the
4 personal representative of property that it is holding if it is a
5 court-appointed personal representative, including an independent
6 personal representative, or, if a personal representative is not
7 acting, if it is holding property in a fiduciary capacity as a
8 trustee or successor trustee.

9 (m) "Resident" means that term as defined in section 18 of
10 the income tax act of 1967, ~~Act No. 281 of the Public Acts of~~
11 ~~1967, being section 206.18 of the Michigan Compiled Laws~~ 1967 PA
12 281, MCL 206.18. However, nothing in this act diminishes the
13 settling of domiciles of decedents under ~~Act No. 173 of the~~
14 ~~Public Acts of 1956, being sections 205.601 to 205.607 of the~~
15 ~~Michigan Compiled Laws~~ 1956 PA 173, MCL 205.601 TO 205.607.

16 (n) "Tangible personal property" means corporeal personal
17 property.

18 (o) "Transfer" means the passing of property or any interest
19 in property, in possession or enjoyment, present or future, by
20 inheritance, descent, devise, succession, bequest, grant, deed,
21 bargain, sale, gift, or appointment.

22 (p) "Transfer tax" includes an estate, generation-skipping,
23 inheritance, legacy, or succession tax for residents and nonresi-
24 dents, including aliens.

25 (q) "United States" when used in a geographical sense
26 includes only the 50 states and the District of Columbia.

1 Enacting section 1. This amendatory act takes effect
2 January 1, 1998.