

Act No. 539
Public Acts of 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senator Hammerstrom

ENROLLED SENATE BILL No. 930

AN ACT to amend 1899 PA 188, entitled "An act to provide for the taxation of estates and generation-skipping transfers of property; to prescribe the powers and duties of certain personal representatives and state departments; to provide for the assessment and collection of the tax; and to provide for the administration and enforcement of this act," by amending section 3 (MCL 205.203), as amended by 1993 PA 54.

The People of the State of Michigan enact:

Sec. 3. (1) The tax and the interest on the tax provided for in this act shall become a lien upon the property transferred until paid, unless payment of the tax has been deferred as permitted by this section or section 2d. If a deferral of payment is granted under this section or section 2d, the lien provided by this section shall attach at the end of the deferral period granted by this section or section 2d.

(2) The person to whom the property is transferred and the administrator, executor, and trustee of every estate transferred, shall be personally liable for the tax until its payments; except that the executor or administrator shall not be personally liable for the tax upon a reversion or remainder consisting of real estate where the election provided for in section 7 or the deferral in this section or section 2d is made. The tax shall be paid to the state.

(3) When the inheritance tax, administration fee, and penalty and interest, if applicable, for the estate are paid, the revenue commissioner shall provide notice, on a form prescribed by the department, to the judge of probate who shall file and preserve it in that office. It shall be a voucher in settlement of the accounts of the executor, administrator, or trustee of the estate upon which the tax is paid. The preparation and mailing of the receipts shall not prejudice the right of the state to a review of the determination fixing the tax. The receipts issued under this section shall show whether the amount paid is a payment of the tax upon any beneficial interest or upon the entire transfer. An executor, administrator, or trustee of an estate, in settlement of which a tax is due under this act, shall not be discharged and the estate or trust closed by a decree of the court, unless there is produced a receipt signed by the revenue commissioner.

(4) All taxes imposed by this act shall accrue and be due and payable at the time of transfer, which is the date of death, except that taxes upon the transfer of any estate, property, or interest limited, conditioned, dependent, or determinable upon the happening of a contingency or future event, by reason of which the clear market value cannot be ascertained at the time of the transfer, shall accrue and become due and payable when the persons or corporations beneficially entitled shall come into actual possession or enjoyment.

(5) The tax and the interest on the tax provided for in this act may be deferred for reasonable cause shown by the executor, administrator, or trustee of the estate of a decedent who was a professional artist at the date of his or her death for not more than 10 years without penalty or interest. The executor, administrator, or trustee of the estate may make the deferral provided by this subsection by filing an affidavit with the judge of probate, which shall be made in the time and manner and with the content prescribed by the judge of probate. The judge of probate shall determine

whether there is reasonable cause shown to grant a deferral, the length of time for the deferral, and the manner of payment of the tax.

(6) A proceeding to enforce a lien against any property under this act shall be instituted by information, in the name of the people of this state, addressed to the circuit court for the county in which the property is situated. It shall be signed by the attorney general and need not be otherwise verified. A person owning the property or an interest in the property as shown by the record in the office of the register of deeds, or by the records of the probate court, at the time of the commencement of the proceedings, shall be made a party to the action, and all other persons having a right or interest in the property, may make themselves parties to the proceeding, on motion to the court, and notice to complainant, and may file their intervening or cross-claims, or answers claiming the benefit of cross-claims, and notices of lis pendens therein. Intervening or cross-claims shall be made on oath.

(7) The information shall show the name of the deceased, the date of death, the place of residence at the time of death, the county in which the estate was probated, the description of the property transferred, whether by will or under the intestate laws, and against which the lien exists, the name of the person or persons to whom it was transferred, the amount of taxes determined by the probate court upon the transfer, the date of the determination and whether the property is owned by the person or persons to whom it was transferred by will or under the intestate laws or by a subsequent purchaser, naming that purchaser. The information shall also show that the taxes determined upon the transfer of the property have not been paid and the amount of interest due upon the date of the filing of the information. In those cases in which the property upon which the lien exists is owned by the person or persons to whom it was transferred by will or under the intestate laws, the petition for relief shall be that the court determine the amount due; that the defendant pay to the county treasurer of the county, in which the estate was probated, for and in behalf of this state, whatever sum shall appear to be due, together with the costs of the proceeding, and that in default of that payment the property upon which the lien exists, may be sold in the manner provided in this act, to satisfy the taxes, interest, and cost.

(8) In those cases in which the property upon which the lien exists is owned by a subsequent purchaser, the petition for relief shall be that the court determine the amount due and that the property upon which the lien exists may be sold in the manner provided in this act to satisfy the taxes, interest, and costs of the proceeding.

(9) The information may contain other and further allegations and petitions considered material and permitted by the rules and practice of the court.

(10) A certified copy of the order of determination of the inheritance tax, for which the lien exists, certified by either the judge or register of probate of the court that determined the tax or by the revenue commissioner, may be attached to the information. When attached, the copy shall be considered a part of the information and shall be prima facie evidence of the determination of the inheritance tax and the accruing of the lien against the property. A certificate of the revenue commissioner stating that the inheritance tax, or any part of the tax determined upon the transfer of the property upon which the lien exists, has not been paid, may be attached to the information. When attached, the certificate shall be considered a part of the information and shall be prima facie evidence of the nonpayment of the amount of the tax and interest shown to be unpaid by the certificate.

(11) If an infant, insane, or otherwise mentally incompetent person has an interest in the property upon which the lien exists, service of process shall be made upon that person in the same manner and with the same effect as upon persons not under a disability, whether the infant, insane, or otherwise mentally incompetent person is within or without the jurisdiction.

(12) After the issuing and service of process against the infant, insane, or otherwise incompetent person, a guardian ad litem may be appointed for the infant, insane, or otherwise incompetent person by the court upon motion of the attorney general, or the guardian ad litem may be appointed by the court upon the request of the infant, and in the case of an insane or otherwise incompetent person, at the request of the person's general guardian.

(13) If upon the hearing of the cause it appears that the inheritance taxes or interest, or both, upon the transfer of the property upon which the lien exists have not been paid, the court shall decree the amount of taxes and interest on the taxes found to be due, together with costs to be determined by the court, to be paid by the person or persons owning the property, or any interest in the property, within 3 months after the entry of the decree and that in default of payment that the property upon which the lien exists, be sold to satisfy the taxes, interest, and costs. If it appears that the person or persons to whom was transferred the property by will or under the intestate laws have parted with their interest before the institution of the proceedings provided for in this section, and that the property is owned by a subsequent purchaser, the court shall decree that the property be sold to satisfy the taxes, interest, and costs, unless the owner satisfies the taxes, interest, and costs within 3 months after the entry of the decree.

(14) In cases in which it appears that 2 or more pieces or parcels of land were transferred by will or under the intestate laws to 1 person, and that that person, before the institution of the proceedings provided for in this section, has parted with any or all of the pieces or parcels of land, and that the court can ascertain from the order of determination the amount of inheritance tax determined upon the transfer of each piece or parcel, and that the lien against all of the pieces or parcels is being foreclosed in 1 proceeding, the court may decree the sale of that piece or parcel to satisfy the amount of tax determined upon the transfer of that piece or parcel, together with the interest

thereon and pro rata costs of the proceeding. A piece or parcel of property shall not be sold to satisfy taxes, interest, and costs within 3 months after the entry of the decree.

(15) If the person or persons owning the property or an interest in the property, or the person's heirs, executors, administrators, or a person lawfully claiming under that person, within 6 months after the date of the sale redeems the entire premises sold, by paying to the register of deeds in whose office the deed is deposited, as provided by subsection (20), for the benefit of the purchaser, or the purchaser's executors, administrators, or assigns the sum which was bid on the date of sale, with interest, at the rate of 6%, together with the sum of \$1.00 as a fee for the care and custody of the redemption money, and the fee paid by the purchaser for recording his or her deed, then the deed is void. If a distinct lot or parcel separately sold is redeemed leaving a portion of the premises unredeemed, then the deed shall be void only to the parcel or parcels redeemed.

(16) The register of deeds shall not determine the amount necessary for redemption. The purchaser shall attach an affidavit with the deed to be recorded that states the exact amount required to redeem the property under subsection (15), including any daily per diem amounts, and the date by which the property must be redeemed shall be stated in the certificate of the commissioner or other person making the sale. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee as stated in the affidavit and may be authorized by the purchaser to receive redemption funds. The purchaser shall accept the amount computed by the designee.

(17) If it appears to the court after the expiration of 3 months from the date of entry of the decree from a certificate of the state of Michigan to whom the taxes, interest, penalties, and costs were to be paid, attached to a petition of the attorney general for an order of sale of the property, that the same have not been paid, the court shall enter an order directing the circuit court commissioner, or some other person duly authorized by the order of the court, to sell the property. The sale shall be at public vendue between the hours of 9 a.m. and 6 p.m. at the courthouse or at another place as the court directs, within 60 days after the date of the order and on the date specified on the order. The court may, if necessary, by further order adjourn the sale from time to time. The circuit court commissioner, or other person authorized to make the sale, may, if bids are not received equal to the amount of taxes, interest, and costs, adjourn the sale from time to time, but the sale shall not be adjourned for more than 60 days at any 1 time.

(18) Upon receipt of a certified copy of the order of sale the circuit court commissioner, or other person duly authorized by the order of the court to conduct the sale, shall publish the sale in some newspaper printed in the county or another paper as the court may direct, once in each week, for 3 weeks in succession. If the sale is adjourned by order of the court, or by the circuit court commissioner, or other person duly authorized by the order of the court, to conduct the sale the same publication shall be had of the order or notice adjourning the sale as is provided in this section for publishing the order of sale. Proof of publication shall be filed with the court before the sale.

(19) The circuit court commissioner, or other person authorized to make the sale shall make and file a report of the sale. The report shall be entitled in the court and cause, and shall be certified and filed with the court.

(20) Deeds shall thereupon be executed by the circuit court commissioner or other person making the sale, specifying the names of the parties in the action, the date of the determination of the inheritance tax, the name of the deceased, the county in which the estate was probated, with a description of the premises and the amount for which each parcel of land described was sold. The commissioner, or other person making the sale, shall indorse upon each deed when the deed shall become operative, if the premises are not redeemed according to law. The deed or deeds, as soon as practicable and within 20 days after the sale, shall be deposited with the register of deeds of the county in which the land described is situated, and the register shall indorse on the deed the time the deed was received, shall record the deed at length in a book to be provided for in his or her office for that purpose, and shall index the deed in the regular index of deeds. The fees for recording the deed shall be paid by the purchaser and be included among the other costs and expenses. If the premises or a parcel of the premises shall be redeemed, the register of deeds shall write on the face of the record the word "Redeemed", stating at what date the entry is made and signing the entry with his or her official signature. Unless the premises described in the deed, or a parcel of the premises, is redeemed within the time limited for redemption, as provided in this section, the deed shall thereupon as to all parcels not redeemed, become operative and shall vest in the grantee named in the deed, the grantee's heirs or assigns all the right, title, and interest therein which the person or persons received either from the deceased by reason of the transfer to them by will or under the intestate laws, or as subsequent purchasers.

(21) The proceeds of each sale provided for in this section shall be paid to the treasurer of the county where the estate was probated, to be applied to the discharge of the tax, interest, penalty, and costs, and if there is any surplus, it shall be brought into court for the use of the defendant, or the person entitled to the money, subject to the order of the court.

(22) The circuit court commissioner, or other person authorized by the court to make the sale, shall be entitled to only the following fees: For attending and adjourning a sale, \$1.00; for attending and making a sale, \$1.50; mileage, 1 way, 10 cents per mile; executing deed or deeds on real estate sales, 25 cents for each deed necessarily executed; making and filing a report of sale, \$1.00. The cost of publishing any legal notices required to be published shall be at the rate of 70 cents

per folio for the first insertion, and 35 cents per folio for each subsequent insertion. The fees which are provided for in this act shall be added by the circuit court commissioner, or other person duly authorized to make the sale, to the tax, interest, penalties, and costs awarded by the court as charges against the land.

(23) The amount stated in any affidavits recorded under this section shall be the amount necessary to satisfy the requirements for redemption under this section.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor