

SENATE BILL No. 189

March 14, 1991, Introduced by Senator V. SMITH and referred to the Committee on Finance.

A bill to amend section 1 of Act No. 188 of the Public Acts of 1899, entitled

"An act to provide for the taxation of inheritances, transfers of property by will, transfer of property by the intestate laws of this state or transfers of property by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death,"

as amended by Act No. 351 of the Public Acts of 1982, being section 205.201 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1 of Act No. 188 of the Public Acts of
2 1899, as amended by Act No. 351 of the Public Acts of 1982, being
3 section 205.201 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 1. (1) A tax ~~shall be and~~ is hereby imposed upon the
6 transfer of any ~~property,~~ real or personal PROPERTY, INCLUDING

1 FOR A DECEDENT WHO DIES AFTER DECEMBER 31, 1992, LIFE INSURANCE
2 PROCEEDS, of the value of \$100.00 or over, or of any interest
3 ~~therein~~ IN or income ~~therefrom~~ FROM THE PROPERTY, in trust or
4 otherwise, to persons or corporations, not exempt by law in this
5 state from taxation on real or personal property, ~~or~~ not
6 ~~heretofore~~ PREVIOUSLY or hereafter existing within this state
7 as incorporated foundations, or not ~~heretofore~~ PREVIOUSLY
8 existing within this state as established nonprofit unincorpor-
9 ated foundations operated exclusively for benevolent, charitable,
10 or educational purposes, in the following cases:

11 (a) ~~When~~ IF the transfer is by will or by the intestate
12 laws of this state from any person dying seized or possessed of
13 the property while a resident of this state.

14 (b) ~~When~~ IF the transfer is by will or intestate law of
15 property within the state, and the decedent was a nonresident of
16 the state at the time of his or her death.

17 (c) ~~When~~ IF the transfer is of property made by a resident
18 or by A nonresident, ~~when~~ IF the nonresident's property is
19 within this state, by deed, grant, bargain, sale, or gift made in
20 contemplation of the death of the grantor, vendor, or donor or
21 intended to take effect, in possession or enjoyment at or after
22 ~~such~~ THE death. Any transfer of a material part of this prop-
23 erty in the nature of a final disposition or distribution made by
24 the decedent within 2 years ~~prior to~~ BEFORE his or her death,
25 except ~~in case of~~ THAT a bona fide sale for a fair considera-
26 tion in money or money's worth, ~~shall,~~ unless shown to the
27 contrary, ~~be deemed~~ IS CONSIDERED to have been made in

1 contemplation of death within the meaning of this section. The
2 tax ~~shall~~ IS also ~~be~~ imposed ~~when~~ IF any such grantee,
3 vendee, or donee becomes beneficially entitled in possession or
4 expectancy to any property or the income of the property by ~~any~~
5 such A transfer. ~~—, whether made before or after the passage of~~
6 ~~this act.~~

7 (d) ~~Whenever~~ IF any person or persons, corporation, or
8 association, whether voluntary or organized pursuant to law,
9 ~~shall exercise~~ EXERCISES a power of appointment derived from
10 any disposition of property, ~~made either before or after the~~
11 ~~passage of this act,~~ the appointment when made shall be ~~deemed~~
12 CONSIDERED a transfer taxable under this act in the same manner
13 as though the property to which the appointment relates belonged
14 absolutely to the donee of the power and had been bequeathed or
15 devised to the donee by will. ~~—, and whenever~~ IF any person or
16 persons, corporation, or association, whether voluntary or orga-
17 nized pursuant to law, possessing ~~such~~ a power of appointment
18 ~~so~~ derived ~~shall omit or fail~~ FROM ANY DISPOSITION OF PROP-
19 ERTY OMITS OR FAILS to exercise the power of appointment within
20 the time provided, in whole or in part, a transfer taxable under
21 this act shall be ~~deemed~~ CONSIDERED to take place to the extent
22 of the omission or failure ~~—~~ in the same manner as though the
23 person or persons, corporation, or association ~~thereby~~ becoming
24 entitled to the possession or enjoyment of the property to which
25 the power related had succeeded ~~thereto~~ by a will of the donee
26 of the power failing to exercise the power ~~—~~ taking effect at
27 the time of the omission or failure.

1 (E) IF THE TRANSFER OF LIFE INSURANCE PROCEEDS IS PURSUANT
2 TO TERMS OF A LIFE INSURANCE CONTRACT INSURING THE LIFE OF A
3 DECEDENT WHO DIES AFTER DECEMBER 31, 1992 WHILE A RESIDENT OF
4 THIS STATE.

5 (2) Notwithstanding subsection (1), a tax shall not be
6 imposed ~~in respect~~ ON THE TRANSFER of personal property, except
7 tangible personal property having an actual situs in this state
8 ~~—~~ OR LIFE INSURANCE PROCEEDS PURSUANT TO TERMS OF A LIFE INSUR-
9 ANCE CONTRACT INSURING THE LIFE OF A DECEDENT WHO DIES AFTER
10 DECEMBER 31, 1992 WHILE A RESIDENT OF THIS STATE if 1 of the fol-
11 lowing ~~apply~~ APPLIES:

12 (a) The transferor at the time of the transfer was a resi-
13 dent of a state or territory of the United States, or of any for-
14 eign country, which at the time of the transfer did not impose a
15 transfer tax or death tax of any character in respect ~~of~~ TO
16 personal property of residents of this state, except tangible
17 personal property having an actual situs in that state or terri-
18 tory or foreign country.

19 (b) If the laws of the state, territory, or country of resi-
20 dence of the transferor at the time of the transfer contained a
21 reciprocal exemption provision under which nonresidents were
22 exempted from transfer taxes or death taxes of every character in
23 respect ~~of~~ TO personal property, except tangible personal prop-
24 erty having an actual situs therein, ~~provided~~ IF the state,
25 territory, or country of residence of ~~such~~ THE nonresidents
26 allowed a similar exemption to residents of the state, territory,
27 or country of residence of the transferor. For the purposes of

1 this section the District of Columbia and possessions of the
 2 United States ~~shall be~~ ARE considered territories of the United
 3 States. As used in this subsection, "foreign country" and
 4 "country" mean both any foreign country and any political subdi-
 5 vision of that country, and either of them ~~of~~ IN which the
 6 transferor was domiciled at the time of his or her death. For
 7 the purposes of this section, "tangible personal property" ~~shall~~
 8 ~~be~~ IS construed to exclude all property commonly classed as
 9 intangible personal property, such as deposits in banks, mort-
 10 gages, debts, receivables, shares of stock, bonds, notes, cred-
 11 its, evidences of an interest in property, evidences of debt, and
 12 like incorporeal personal property.

13 (3) Notwithstanding subsection (1), a tax ~~shall~~ IS not
 14 ~~be~~ imposed ~~in respect~~ ON THE TRANSFER of property passing to
 15 a trustee or trustees of any trust agreement or trust deed
 16 ~~heretofore~~ PREVIOUSLY or hereafter executed by a resident or
 17 nonresident decedent by virtue of or under the terms and provi-
 18 sions of any contract or contracts of insurance ~~heretofore~~
 19 PREVIOUSLY or hereafter in force ~~—~~ insuring the life of such
 20 decedent ~~—~~ and paid or payable at or after the death of the
 21 decedent to the trustee or trustees for the benefit of a benefi-
 22 ciary or beneficiaries having any present or future, vested, con-
 23 tingent, or defeasible interest under ~~such~~ THE trust deed or
 24 trust agreement. THIS SUBSECTION APPLIES FOR DECEDENTS WHO DIE
 25 BEFORE JANUARY 1, 1993.

26 (4) If an unincorporated foundation provided tax exempt
 27 status by subsection (1) ceases to operate, if its funds are

1 diverted from the lawful purposes of its organization, or if it
2 becomes unable to lawfully serve its purposes, the legislature
3 may by law provide for the winding up of its affairs and for the
4 conservation and disposition of its property, in ~~such~~ A way ~~as~~
5 ~~may~~ THAT best ~~promote~~ PROMOTES and ~~perpetuate~~ PERPETUATES
6 the purposes for which the unincorporated foundation was origi-
7 nally organized.

8 (5) Every transfer to any corporation, society, institution,
9 or person or persons, or association of persons for benevolent,
10 charitable, religious, or educational purposes, organized, exist-
11 ing, or operating under the laws of or within a state or terri-
12 tory of the United States, other than this state, or of the
13 District of Columbia, also shall be exempt from taxation under
14 this act, if at the date of the transfer ~~which, excepting~~ THAT,
15 EXCEPT as to gifts by living persons, ~~shall be deemed~~ IS
16 CONSIDERED to be the date of decedent's death, the laws of the
17 state or territory or of the District of Columbia, under which
18 ~~such~~ THE corporation, society, institution, person or persons,
19 or association of persons was organized, existing, or operating
20 did not impose a death tax of any character in respect to prop-
21 erty transferred to such a corporation, society, institution,
22 person or persons, or association of persons organized, existing,
23 or operating under the laws of or within this state, or if at the
24 date of the transfer the laws of the state or territory or of the
25 District of Columbia contained a reciprocal provision under which
26 such a transfer to such a corporation, society, institution,
27 person or persons, or association of persons organized, existing,

1 or operating under the laws of or within another state or
2 territory or of the District of Columbia were exempted from death
3 taxes of every character, if the other state or territory or of
4 the District of Columbia allowed a similar exemption to such a
5 corporation, society, institution, person or persons, or associa-
6 tion of persons organized, existing, or operating under the laws
7 of another state or territory or of the District of Columbia.

8 The exemption provided in this subsection shall be effective with
9 respect to transfers from decedents whose death occurred on or
10 after May 1, 1950. Any tax previously paid on transfers made
11 exempt by this subsection shall be refunded.

12 (6) Notwithstanding subsection (1), but subject to subsec-
13 tion (7), if the decedent dies after December 31, 1982 ~~and~~ if
14 the decedent makes or has made a transfer otherwise subject to
15 tax under this act to the surviving spouse of the decedent or to
16 the surviving spouse of the decedent and another person or per-
17 sons; ~~—~~ and if this transfer qualifies for the marital deduc-
18 tion for purposes of the federal estate tax in the estate of the
19 decedent or if this transfer would have qualified for the federal
20 estate tax marital deduction if the transfer had been included in
21 the gross estate of the decedent for purposes of the federal
22 estate tax, the transfer, using values as finally determined for
23 purposes of this act, ~~shall be~~ IS exempt from taxation under
24 this act.

25 (7) The exemption provided by subsection (6) ~~shall be~~ IS
26 subject to the following:

1 (a) On the death of the first spouse to die, if the executor
2 properly elects to treat a transfer or specific portion of a
3 transfer as qualified terminable interest property, then on the
4 death of the surviving spouse, the transfer of qualified ter-
5 minable interest property, using values on the death of the sur-
6 viving spouse, ~~shall be~~ IS considered a transfer of the surviv-
7 ing spouse subject to subsection (1). For purposes of determin-
8 ing tax rates and exemptions applicable to ~~such~~ THIS transfer,
9 the relationship of each successor on the death of the surviving
10 spouse shall be to the spouse to which the successor bears the
11 closer relationship, and other transfers from the surviving
12 spouse to ~~such~~ THOSE successors shall be taken into account
13 first. If the executor is not required by federal law to file a
14 federal estate tax return, the provisions in this subsection
15 ~~will~~ apply if the executor makes an irrevocable election to
16 have them apply on or before the date on which tax under this
17 act, if any, is due, and files ~~such~~ AN election on or before
18 that date with the revenue division of the department of
19 treasury.

20 (b) If a transfer to the surviving spouse ~~or~~ or to the sur-
21 viving spouse and other persons ~~is~~ is of an interest in a group
22 of assets not all of which are subject to tax under this act, for
23 purposes of the application of subsection (6), on the death of
24 the first spouse to die, the surviving spouse or the surviving
25 spouse and ~~others~~ OTHER persons ~~shall be~~ ARE considered to
26 have received a pro rata portion of the group of assets in the
27 same proportion that the value of that portion of the group of

1 assets not subject to tax under this act bears to the value of
2 the entire group of assets.

3 (8) For purposes of subsections (6) and (7):

4 (a) "Executor" means that term as defined by section 2203 of
5 the internal revenue code.

6 (b) "Qualified terminable interest property" means a trans-
7 fer or a specific portion of a transfer ~~which~~ THAT the executor
8 elects to treat as qualified terminable interest property, as
9 that term is defined by section 2056(b)(7) of the internal reve-
10 nue code, for purposes of the federal estate tax or for purposes
11 of subsection (7), to the extent subsections (6) and (7) apply to
12 the transfer or specific portion of the transfer.

13 (c) The inheritance tax imposed on the estate of the surviv-
14 ing spouse with respect to qualified terminable interest property
15 shall be paid from qualified terminable interest property unless
16 the surviving spouse's will specifically provides otherwise.

17 (9) FOR PURPOSES OF THIS SECTION, "LIFE INSURANCE PROCEEDS"
18 MEANS ANY BENEFITS PAID PURSUANT TO TERMS OF A LIFE INSURANCE
19 CONTRACT INSURING THE LIFE OF A DECEDENT NAMED IN THE LIFE INSUR-
20 ANCE CONTRACT.