



HOUSE BILL No. 5305

October 25, 1995, Introduced by Rep. Bodem and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend sections 2d and 21 of Act No. 188 of the Public Acts of 1899, entitled as amended "Michigan estate tax act," section 2d as amended by Act No. 65 of the Public Acts of 1992 and section 21 as amended by Act No. 54 of the Public Acts of 1993, being sections 205.202d and 205.221 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2d and 21 of Act No. 188 of the Public
2 Acts of 1899, section 2d as amended by Act No. 65 of the Public
3 Acts of 1992 and section 21 as amended by Act No. 54 of the
4 Public Acts of 1993, being sections 205.205d and 205.221 of the
5 Michigan Compiled Laws, are amended to read as follows:

6 Sec. 2d. (1) The transfer of qualified farm real property
7 to the qualified heir shall be exempt in the amount of 50% of the

1 clear market value from all taxation under this act if the
2 qualified heir executes a farmland development rights agreement
3 pursuant to ~~Act No. 116 of the Public Acts of 1974, as amended,~~
4 ~~being sections 554.701 to 554.719~~ PART 361 (FARMLAND AND OPEN
5 SPACE PRESERVATION) OF THE NATURAL RESOURCES AND ENVIRONMENTAL
6 PROTECTION ACT, ACT NO. 451 OF THE PUBLIC ACTS OF 1994, BEING
7 SECTIONS 324.36101 TO 324.36117 of the Michigan Compiled Laws.
8 The qualified heir who is party to an executed farmland develop-
9 ment rights agreement may elect to defer the balance of the taxes
10 due under this act on the transfer of qualified farm real prop-
11 erty for a period of 10 years without penalty or interest. The
12 executor, administrator, or trustee of the estate and the quali-
13 fied heir may make the election provided by this subsection by
14 filing an affidavit with the judge of probate, which shall be
15 made in the time and manner and with the content prescribed by
16 the judge of probate. The judge of probate shall consider all of
17 the following:

18 (a) Whether both the executor, administrator, or trustee of
19 the estate and the qualified heir have made the election provided
20 by this subsection by filing an affidavit within the prescribed
21 time and manner.

22 (b) Whether the proposed transfer is to a qualified heir as
23 defined in section 21.

24 (c) Whether the proposed transfer is of qualified farm real
25 property as defined in section 21.

26 (2) The judge of probate may request assistance from either
27 the soil conservation district agency or the state land use

1 agency in finding if the real property in question is farmland.
2 If the judge of probate finds all of the factors described in
3 subsection (1), the judge of probate shall issue an order which
4 shall suspend for a period of 6 months the payment of any tax
5 imposed by this act, authorize the transfer of the qualified farm
6 real property to the qualified heir, and require the qualified
7 heir of the qualified farm real property to apply for a farmland
8 development rights agreement pursuant to ~~Act No. 116 of the~~
9 ~~Public Acts of 1974, as amended,~~ PART 361 OF ACT NO. 451 OF THE
10 PUBLIC ACTS OF 1994 within 30 days after the date of the order.
11 The judge of probate shall notify the state land use agency in
12 the department of natural resources of this order. If the quali-
13 fied heir fails to apply for a farmland development rights agree-
14 ment, the tax imposed by this act shall be immediately due and
15 there shall be added the maximum penalty and interest allowed in
16 section 4 and any costs the judge of probate considers appropri-
17 ate for this failure. The procedures, provisions and terms of a
18 farmland development rights agreement shall be consistent with
19 ~~Act No. 116 of the Public Acts of 1974, as amended~~ PART 361 OF
20 ACT NO. 451 OF THE PUBLIC ACTS OF 1994. If the state land use
21 agency either executes on behalf of the state a farmland develop-
22 ment rights agreement or rejects an application for that agree-
23 ment, it shall notify the judge of probate. Beginning 10 years
24 after the effective date of the farmland development rights
25 agreement, the 50% exemption for qualified farm real property
26 provided by subsection (1) shall be a permanent exemption if the
27 requirements of the farmland development rights agreement are

1 satisfied under ~~Act No. 116 of the Public Acts of 1974, as~~
2 ~~amended~~ PART 361 OF ACT NO. 451 OF THE PUBLIC ACTS OF 1994. If
3 the owner of record of real property subject to a farmland devel-
4 opment rights agreement either sells the real property or ceases
5 to use the real property for an agricultural use, the owner of
6 record shall immediately notify the state land use agency and the
7 commissioner of revenue of the sale or the nonagricultural use in
8 form and content as prescribed by each.

9 (3) If real property subject to a farmland development
10 rights agreement is sold by the owner of record within 5 years
11 after the effective date of the agreement, the following amount
12 shall be immediately due to the state by the seller:

13 (a) Taxes shall not be due if the successor in title is
14 another qualified heir of the decedent and the successor in title
15 complies with the provisions contained in the farmland develop-
16 ment rights agreement. The exempt and deferred tax liability
17 shall be transferred to the successor in title.

18 (b) The total amount of otherwise exempt and deferred taxes
19 shall be due without penalty or interest if the successor in
20 title is not a qualified heir of the decedent and the successor
21 in title complies with the provisions contained in the farmland
22 development rights agreement.

23 (c) The total amount of otherwise exempt and deferred taxes
24 shall be due with interest at the rate of $3/4$ of 1% per month
25 compounded from the time the exemption was received until the
26 taxes are paid if the request by the owner of record for
27 relinquishment of the farmland development rights agreement is

1 approved pursuant to section ~~12(2)(b) of Act No. 116 of the~~
2 ~~Public Acts of 1974, being section 554.712~~ 36111(2)(B) OF PART
3 361 OF ACT NO. 451 OF THE PUBLIC ACTS OF 1994, BEING SECTION
4 324.36111 of the Michigan Compiled Laws.

5 (d) The total amount of otherwise exempt and deferred taxes
6 shall be due without penalty or interest, in a case where the
7 farmland development rights agreement is relinquished by the
8 state pursuant to either section ~~11(2) or 12(2)(a) of Act~~
9 ~~No. 116 of the Public Acts of 1974, as amended, being section~~
10 ~~554.711 or 554.712~~ 36110(2) OR 36111(2)(A) OF PART 361 OF ACT
11 NO. 451 OF THE PUBLIC ACTS OF 1994, BEING SECTIONS 324.36110 AND
12 324.36111 of the Michigan Compiled Laws.

13 (4) If real property subject to a farmland development
14 rights agreement is sold by the owner of record not less than 6
15 but not more than 10 years after the effective date of the agree-
16 ment, a proration of the remaining months multiplied by the fol-
17 lowing amount shall be immediately due to the state by the
18 seller:

19 (a) Taxes shall not be due if the successor in title is
20 another qualified heir of the decedent and the successor in title
21 complies with the provisions contained in the farmland develop-
22 ment rights agreement. The exempt and deferred tax liability
23 shall be transferred to the successor in title.

24 (b) The total amount of otherwise exempt and deferred taxes
25 shall be due without penalty or interest if the successor in
26 title is not a qualified heir of the decedent and the successor

1 in title complies with the provisions contained in the farmland
2 development rights agreement.

3 (c) The total amount of otherwise exempt and deferred taxes
4 shall be due with interest at the rate of 3/4 of 1% per month
5 compounded added to this amount from the time this exemption was
6 received until the taxes are paid if the request by the owner of
7 record for relinquishment of the farmland development rights
8 agreement is approved pursuant to section ~~12(2)(b) of Act~~
9 ~~No. 116 of the Public Acts of 1974~~ 36111(2)(B) OF PART 361 OF
10 ACT NO. 451 OF THE PUBLIC ACTS OF 1994.

11 (d) The total amount of otherwise exempt and deferred taxes
12 shall be due without penalty or interest if the farmland develop-
13 ment rights agreement is relinquished by the state pursuant to
14 either section ~~11(2) or 12(2)(a) of Act No. 116 of the Public~~
15 ~~Acts of 1974, as amended~~ 36110(2) OR 36111(2)(A) OF PART 361 OF
16 ACT NO. 451 OF THE PUBLIC ACTS OF 1994.

17 (5) If the owner of record ceases to use real property
18 subject to a farmland development rights agreement for an agri-
19 cultural use, the total amount of otherwise and deferred taxes
20 shall be due with interest at the rate of 3/4 of 1% per month
21 compounded added to this amount from the time the exemption was
22 received until the taxes are paid.

23 (6) Subsections (1) through (5) apply to a transfer of a
24 decedent who dies before January 1, 1993. Subsection (7) applies
25 to a transfer of a decedent who dies after December 31, 1992.

26 (7) For the estate of a decedent who dies after December 31,
27 1992, the transfer of qualified farm real and personal property

1 or the transfer of the ownership of qualified farm real and
2 personal property to a qualified heir is exempt from taxation
3 under section 2.

4 Sec. 21. As used in this act:

5 (a) "Estate" or "property" means the property or interest in
6 property of the testator, intestate, grantor, bargainor, or
7 vendor, passing or transferred to those not specifically exempted
8 from this act, and not as the property or interest in property
9 passing or transferred to the individual legatees, devisees,
10 heirs, next of kin, grantees, donees, or vendees, and includes
11 all property or interest in property whether situated within or
12 without this state and including all property represented or evi-
13 denced by note, certificate, stock, land, contract, mortgage or
14 other kind or character of evidence thereof, and regardless of
15 whether that evidence of property is owned, kept or possessed
16 within or without this state.

17 (b) "Transfer" includes the passing of property or an inter-
18 est in property in possession or enjoyment, present or future, by
19 inheritance, descent, devise, bequest, grant, deed, bargain,
20 sale, or gift in the manner prescribed in this act.

21 (c) "County treasurer" or "prosecuting attorney" means the
22 county treasurer or prosecuting attorney of the county having
23 jurisdiction pursuant to section 10.

24 (d) "Qualified farm real and personal property" means real
25 and personal property located in this state that on the date of
26 the decedent's death was devoted primarily to an agricultural
27 use, and, for a decedent who dies before January 1, 1993, meets

1 all the following conditions or, for a decedent who dies after
2 December 31, 1992, meets the conditions in either subparagraph
3 (ii) or (iii):

4 (i) The real property is eligible as farmland pursuant to
5 ~~the farmland and open space preservation act, Act No. 116 of the~~
6 ~~Public Acts of 1974, as amended, being sections 554.701 to~~
7 ~~554.719~~ PART 361 (FARMLAND AND OPEN SPACE PRESERVATION) OF THE
8 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, ACT NO. 451
9 OF THE PUBLIC ACTS OF 1994, BEING SECTIONS 324.36101 TO 324.36117
10 of the Michigan Compiled Laws.

11 (ii) Fifty percent or more of the adjusted value of the
12 estate consists of the adjusted value of real or personal prop-
13 erty that on the date of the decedent's death, was devoted pri-
14 marily to an agricultural use, and that was acquired from or
15 transferred from the decedent to a qualified heir.

16 (iii) Twenty-five percent or more of the adjusted value of
17 the estate consists of the adjusted value of real property that
18 was acquired from or transferred from the decedent to a qualified
19 heir and that meets the requirements of subparagraph (iv).

20 (iv) During the 8-year period ending on the date of the
21 decedent's death, there have been periods aggregating 5 years or
22 more during which the real property was owned by the decedent or
23 a qualified heir in the operation of the farm and there was mate-
24 rial participation by the decedent or a qualified heir in the
25 operation of the farm.

26 (v) The real property is designated in the agreement
27 referred to in section 2d.

1 (e) "Adjusted value" as used in subdivision (d) means:

2 (i) For the estate, the clear market value of the estate for
3 purposes of this act, reduced by any proper deductions consisting
4 of unpaid mortgages, debts, or liens on the property.

5 (ii) For real or personal property, the clear market value
6 of that property for purposes of this act, reduced by any proper
7 deductions consisting of unpaid mortgages, debts, or liens on the
8 property.

9 (f) "Agricultural use" means property that is substantially
10 devoted to the production of plants and animals useful to people,
11 including forages and sod crops; grains and feed crops; dairy and
12 dairy products; poultry; livestock, including breeding and graz-
13 ing; fish; timber; fruits; vegetables; flowers; Christmas trees;
14 plants or trees grown in an agricultural nursery; and other simi-
15 lar uses and activities.

16 (g) "Qualified heir" means an individual entitled to any
17 beneficial interest in property who is the grandfather, grand-
18 mother, father, mother, husband, wife, child, legally adopted
19 child, stepchild, brother, sister, wife or widow of a son, or
20 husband or widower of a daughter of the decedent grantor, donor,
21 or vendor, or for the use of a person to whom the decedent grant-
22 or, donor, or vendor stood in the mutually acknowledged relation
23 of a parent, if the relationship began at or before the child's
24 seventeenth birthday and continued until the death of the dece-
25 dent grantor, donor, or vendor, or to or for the use of a lineal
26 descendant of or a lineal descendant of a stepchild of the
27 decedent grantor, donor, or vendor, or farm business partner, or

1 to or for the use of any person to whom the decedent grantor,
2 donor, or vendor stood in the mutually acknowledged relation of a
3 farm business partner.

4 (h) "Soil conservation district agency" means the agency of
5 the district where the real property is located created pursuant
6 to ~~the soil conservation districts law, Act No. 297 of the~~
7 ~~Public Acts of 1937, as amended, being sections 282.1 to 282.16~~
8 PART 93 (SOIL CONSERVATION DISTRICTS) OF THE NATURAL RESOURCES
9 AND ENVIRONMENTAL PROTECTION ACT, ACT NO. 451 OF THE PUBLIC ACTS
10 OF 1994, BEING SECTIONS 324.9301 TO 324.9313 of the Michigan
11 Compiled Laws.

12 (i) "State land use agency" means the land use agency within
13 the department of natural resources.

14 (j) "Material participation" shall be determined in the same
15 manner as used in section 2032a of the internal revenue code and
16 in any federal regulations relating to that section.

17 (k) "Family-owned" means participation by the decedent or a
18 qualified heir in the operation of the business for not less than
19 500 hours in 5 out of the 8 years immediately preceding the
20 decedent's death and either of the following:

21 (i) The business is 100% owned by the decedent and qualified
22 heirs, or for a corporation, 100% of the stock is owned by the
23 decedent and qualified heirs.

24 (ii) The business is 49% or more owned by the decedent, or
25 for a corporation, 49% or more of the stock is owned by the
26 decedent.