

HOUSE BILL No. 6189

May 19, 2010, Introduced by Rep. LeBlanc and referred to the Committee on Tax Policy.

A bill to amend 1899 PA 188, entitled
"Michigan estate tax act,"
by amending section 1 (MCL 205.201), as amended by 1992 PA 65.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) A tax ~~is~~ **SHALL BE** imposed upon the transfer of any
2 property, real or personal, of the value of \$100.00 or over, or of
3 any interest ~~therein~~ **IN THAT PROPERTY** or income ~~therefrom~~ **FROM THAT**
4 **PROPERTY**, in trust or otherwise, to persons or corporations, not
5 exempt by law in this state from taxation on real or personal
6 property or not ~~heretofore or hereafter~~ existing within this state
7 as incorporated foundations or not ~~heretofore~~ existing within this
8 state as established nonprofit unincorporated foundations operated
9 exclusively for benevolent, charitable, or educational purposes, in

1 the following cases:

2 (a) When the transfer is by will or by the intestate laws of
3 this state from any person dying seized or possessed of the
4 property while a resident of this state.

5 (b) When the transfer is by will or intestate law of property
6 within the state, and the decedent was a nonresident of the state
7 at the time of his or her death.

8 (c) When the transfer is of property made by a resident or by
9 nonresident, when the nonresident's property is within this state,
10 by deed, grant, bargain, sale, or gift made in contemplation of the
11 death of the grantor, vendor, or donor or intended to take effect,
12 in possession or enjoyment at or after ~~such~~ death. Any transfer of
13 a material part of this property in the nature of a final
14 disposition or distribution made by the decedent within 2 years
15 prior to his or her death, except in case of a bona fide sale for a
16 fair consideration in money or money's worth, shall, unless shown
17 to the contrary, be ~~deemed~~ **CONSIDERED** to have been made in
18 contemplation of death within the meaning of this section. The tax
19 shall also be imposed when any ~~such~~ grantee, vendee, or donee
20 becomes beneficially entitled in possession or expectancy to any
21 property or the income of the property by any ~~such~~ transfer,
22 whether made before or after the passage of this act.

23 (d) Whenever any person or persons, corporation or
24 association, whether voluntary or organized pursuant to law, shall
25 exercise a power of appointment derived from any disposition of
26 property made either before or after the passage of this act, the
27 appointment when made shall be ~~deemed~~ **CONSIDERED** a transfer taxable

1 under this act in the same manner as though the property to which
2 the appointment relates belonged absolutely to the donee of the
3 power and had been bequeathed or devised to the donee by will; and
4 whenever any person or persons, corporation or association, whether
5 voluntary or organized pursuant to law, possessing such a power of
6 appointment so derived shall omit or fail to exercise the power of
7 appointment within the time provided, in whole or in part, a
8 transfer taxable under this act shall be ~~deemed~~ **CONSIDERED** to take
9 place to the extent of the omission or failure, in the same manner
10 as though the person or persons, corporation or association ~~thereby~~
11 becoming entitled to the possession or enjoyment of the property to
12 which the power related had succeeded ~~thereto~~ by a will of the
13 donee of the power failing to exercise the power, taking effect at
14 the time of the omission or failure. This subdivision is construed
15 so that the exercise of a power of appointment or the omission or
16 failure to exercise a power of appointment does not constitute a
17 taxable transfer under this act if the transfer, by the donor of
18 the power, of the property to which the appointment relates is not
19 described within subdivision (a), (b), or (c).

20 (2) Notwithstanding subsection (1), a tax shall not be imposed
21 in respect of personal property, except tangible personal property
22 having an actual situs in this state, if 1 of the following apply:

23 (a) The transferor at the time of the transfer was a resident
24 of a state or territory of the United States, or of any foreign
25 country, which at the time of the transfer did not impose a
26 transfer tax or death tax of any character in respect of personal
27 property of residents of this state, except tangible personal

1 property having an actual situs in that state or territory or
2 foreign country.

3 (b) If the laws of the state, territory, or country of
4 residence of the transferor at the time of the transfer contained a
5 reciprocal exemption provision under which nonresidents were
6 exempted from transfer taxes or death taxes of every character in
7 respect of personal property, except tangible personal property
8 having an actual situs therein, provided the state, territory, or
9 country of residence of such nonresidents allowed a similar
10 exemption to residents of the state, territory, or country of
11 residence of the transferor. For the purposes of this section the
12 District of Columbia and possessions of the United States shall be
13 considered territories of the United States. As used in this
14 subsection, "foreign country" and "country" mean both any foreign
15 country and any political subdivision of that country, and either
16 of them of which the transferor was domiciled at the time of his or
17 her death. For the purposes of this section, "tangible personal
18 property" shall be construed to exclude all property commonly
19 classed as intangible personal property, such as deposits in banks,
20 mortgages, debts, receivables, shares of stock, bonds, notes,
21 credits, evidences of an interest in property, evidences of debt,
22 and like incorporeal personal property.

23 (3) Notwithstanding subsection (1), a tax shall not be imposed
24 in respect of property passing to a trustee or trustees of any
25 trust agreement or trust deed ~~heretofore or hereafter~~ executed by a
26 resident or nonresident decedent by virtue of or under the terms
27 and provisions of any contract or contracts of insurance ~~heretofore~~

1 ~~or hereafter~~ in force, insuring the life of ~~such~~ **THE** decedent, and
2 paid or payable at or after the death of the decedent to the
3 trustee or trustees for the benefit of a beneficiary or
4 beneficiaries having any present or future, vested, contingent, or
5 defeasible interest under ~~such~~ **A** trust deed or trust agreement.

6 (4) If an unincorporated foundation provided tax exempt status
7 by subsection (1) ceases to operate if its funds are diverted from
8 the lawful purposes of its organization, or if it becomes unable to
9 lawfully serve its purposes, the legislature may by law provide for
10 the winding up of its affairs and for the conservation and
11 disposition of its property, in ~~such~~ **A** way as may best promote and
12 perpetuate the purposes for which the unincorporated foundation was
13 originally organized.

14 (5) Every transfer to any corporation, society, institution,
15 or person or persons, or association of persons for benevolent,
16 charitable, religious, or educational purposes, organized,
17 existing, or operating under the laws of or within a state or
18 territory of the United States, other than this state, or of the
19 District of Columbia, also shall be exempt from taxation under this
20 act, if at the date of the transfer which, excepting as to gifts by
21 living persons, shall be ~~deemed~~ **CONSIDERED** to be the date of
22 decedent's death, the laws of the state or territory or of the
23 District of Columbia, under which such corporation, society,
24 institution, person or persons, or association of persons was
25 organized, existing, or operating did not impose a death tax of any
26 character in respect to property transferred to ~~such~~ **a** corporation,
27 society, institution, person or persons, or association of persons

1 organized, existing, or operating under the laws of or within this
2 state, or if at the date of the transfer the laws of the state or
3 territory or of the District of Columbia contained a reciprocal
4 provision under which such a transfer to such a corporation,
5 society, institution, person or persons, or association of persons
6 organized, existing, or operating under the laws of or within
7 another state or territory or of the District of Columbia were
8 exempted from death taxes of every character, if the other state or
9 territory or of the District of Columbia allowed a similar
10 exemption to such a corporation, society, institution, person or
11 persons, or association of persons organized, existing, or
12 operating under the laws of another state or territory or of the
13 District of Columbia.

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

18 (6) Notwithstanding subsection (1), but subject to subsection
19 (7), if the decedent dies after December 31, 1982 and if the
20 decedent makes or has made a transfer otherwise subject to tax
21 under this act to the surviving spouse of the decedent or to the
22 surviving spouse of the decedent and another person or persons, and
23 if this transfer qualifies for the marital deduction for purposes
24 of the federal estate tax in the estate of the decedent or if this
25 transfer would have qualified for the federal estate tax marital
26 deduction if the transfer had been included in the gross estate of
27 the decedent for purposes of the federal estate tax, the transfer,

1 using values as finally determined for purposes of this act, shall
2 be exempt from taxation under this act.

3 (7) The exemption provided by subsection (6) shall be subject
4 to the following:

5 (a) On the death of the first spouse to die, if the executor
6 properly elects to treat a transfer or specific portion of a
7 transfer as qualified terminable interest property, then on the
8 death of the surviving spouse, the transfer of qualified terminable
9 interest property, using values on the death of the surviving
10 spouse, shall be considered a transfer of the surviving spouse
11 subject to subsection (1). For purposes of determining tax rates
12 and exemptions applicable to ~~such~~^A transfer, the relationship of
13 each successor on the death of the surviving spouse shall be to the
14 spouse to which the successor bears the closer relationship, and
15 other transfers from the surviving spouse to ~~such~~ successors shall
16 be taken into account first. If the executor is not required by
17 federal law to file a federal estate tax return, the provisions in
18 this subsection will apply if the executor makes an irrevocable
19 election to have them apply on or before 9 months after the date of
20 decedent's death, and files such election on or before that date
21 with the revenue division of the department of treasury.

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

1 the group of assets in the same proportion that the value of that
2 portion of the group of assets not subject to tax under this act
3 bears to the value of the entire group of assets.

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

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

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

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