

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4173

A bill to amend 1993 PA 330, entitled
"State real estate transfer tax act,"
by amending sections 3 and 6 (MCL 207.523 and 207.526), as amended
by 2008 PA 473.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) There is imposed, in addition to all other taxes,
2 a tax upon the following written instruments executed within this
3 state when the instrument is recorded:

4 (a) Contracts for the sale or exchange of property or any
5 interest in the property or any combination of sales or exchanges
6 or any assignment or transfer of property or any interest in the
7 property.

8 (b) Deeds or instruments of conveyance of property or any

1 interest in property, for consideration.

2 (c) Contracts for the transfer or acquisition of a controlling
3 interest in any entity only if the real property owned by that
4 entity comprises 90% or more of the fair market value of the assets
5 of the entity determined in accordance with generally accepted
6 accounting principles which shall be recorded.

7 (2) The person who is the seller or grantor of the property is
8 liable for the tax imposed under this act.

9 (3) The tax imposed under this act shall be paid to the county
10 treasurer where the real property is located not later than 15 days
11 after the delivery of the instrument effecting the conveyance by
12 the seller or grantor to the buyer or grantee or not later than 15
13 days after the transfer of a controlling interest in any entity
14 with an interest in the real property. For purposes of this
15 section, the date of the instrument effecting the transfer is
16 presumed to be the date of delivery of the instrument.

17 (4) AFTER THE TAX IS PAID, IF THE SELLER OR THE BUYER WHO HAS
18 PAID THE TAX ON BEHALF OF THE SELLER BELIEVES THAT THE PROPERTY WAS
19 ELIGIBLE FOR AN EXEMPTION UNDER SECTION 6 AT THE TIME OF THE
20 TRANSFER, THE SELLER OR THE BUYER WHO HAS PAID THE TAX ON BEHALF OF
21 THE SELLER MAY REQUEST A REFUND FROM THE DEPARTMENT OF TREASURY IN
22 A FORM AND MANNER DETERMINED BY THE DEPARTMENT OF TREASURY. THE
23 DEPARTMENT OF TREASURY SHALL PAY THE REFUND IF IT DETERMINES THAT
24 THE PROPERTY WAS ELIGIBLE FOR THE EXEMPTION UNDER SECTION 6 AT THE
25 TIME OF THE TRANSFER. THIS SUBSECTION IS INTENDED TO BE RETROACTIVE
26 AND APPLIES TO A SALE, EXCHANGE, ASSIGNMENT, OR TRANSFER BEGINNING
27 4 YEARS IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF THE AMENDATORY

1 **ACT THAT ADDED THIS SUBSECTION.**

2 Sec. 6. The following written instruments and transfers of
3 property are exempt from the tax imposed by this act:

4 (a) A written instrument in which the value of the
5 consideration for the property is less than \$100.00.

6 (b) A written instrument evidencing a contract or transfer
7 that is not to be performed wholly within this state only to the
8 extent the written instrument includes land lying outside of this
9 state.

10 (c) A written instrument that this state is prohibited from
11 taxing under the United States constitution or federal statutes.

12 (d) A written instrument given as security or an assignment or
13 discharge of the security interest.

14 (e) A written instrument evidencing a lease, including an oil
15 and gas lease, or a transfer of a leasehold interest.

16 (f) A written instrument evidencing an interest that is
17 assessable as personal property.

18 (g) A written instrument evidencing the transfer of a right
19 and interest for underground gas storage purposes.

20 (h) Any of the following written instruments:

21 (i) A written instrument in which the grantor is the United
22 States, this state, a political subdivision or municipality of this
23 state, or an officer of the United States or of this state, or a
24 political subdivision or municipality of this state, acting in his
25 or her official capacity.

26 (ii) A written instrument given in foreclosure or in lieu of
27 foreclosure of a loan made, guaranteed, or insured by the United

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1 States, this state, a political subdivision or municipality of this
2 state, or an officer of the United States or of this state, or a
3 political subdivision or municipality of this state, acting in his
4 or her official capacity.

5 (iii) A written instrument given to the United States, this
6 state, or 1 of their officers acting in an official capacity as
7 grantee, pursuant to the terms or guarantee or insurance of a loan
8 guaranteed or insured by the grantee.

9 (i) A conveyance from a ~~<husband or wife or husband and wife~~
SPOUSE OR MARRIED COUPLE>>

10 creating or disjoining a tenancy by the entireties in the grantors
11 or the grantor and his or her spouse.

12 (j) A conveyance from an individual to that individual's
13 child, stepchild, or adopted child.

14 (k) A conveyance from an individual to that individual's
15 grandchild, step-grandchild, or adopted grandchild.

16 (l) A judgment or order of a court of record making or
17 ordering a transfer, unless a specific monetary consideration is
18 specified or ordered by the court for the transfer.

19 (m) A written instrument used to straighten boundary lines if
20 no monetary consideration is given.

21 (n) A written instrument to confirm title already vested in a
22 grantee, including a quitclaim deed to correct a flaw in title.

23 (o) A land contract in which the legal title does not pass to
24 the grantee until the total consideration specified in the contract
25 has been paid.

26 (p) A conveyance that meets 1 of the following:

27 (i) A transfer between any corporation and its stockholders or

1 creditors, between any limited liability company and its members or
2 creditors, between any partnership and its partners or creditors,
3 or between a trust and its beneficiaries or creditors when the
4 transfer is to effectuate a dissolution of the corporation, limited
5 liability company, partnership, or trust and it is necessary to
6 transfer the title of real property from the entity to the
7 stockholders, members, partners, beneficiaries, or creditors.

8 (ii) A transfer between any limited liability company and its
9 members if the ownership interests in the limited liability company
10 are held by the same persons and in the same proportion as in the
11 limited liability company prior to the transfer.

12 (iii) A transfer between any partnership and its partners if
13 the ownership interests in the partnership are held by the same
14 persons and in the same proportion as in the partnership prior to
15 the transfer.

16 (iv) A transfer of a controlling interest in an entity with an
17 interest in real property if the transfer of the real property
18 would qualify for exemption if the transfer had been accomplished
19 by deed to the real property between the persons that were parties
20 to the transfer of the controlling interest.

21 (v) A transfer in connection with the reorganization of an
22 entity and the beneficial ownership is not changed.

23 (q) A written instrument evidencing the transfer of mineral
24 rights and interests.

25 (r) A written instrument creating a joint tenancy between 2 or
26 more persons if at least 1 of the persons already owns the
27 property.

(s) A transfer made pursuant to a bona fide sales agreement made before the date the tax is imposed under sections 3 and 4, if the sales agreement cannot be withdrawn or altered, or contains a fixed price not subject to change or modification.

(t) A written instrument evidencing a contract or transfer of property to a person sufficiently related to the transferor to be considered a single employer with the transferor under section 414(b) or (c) of the internal revenue code of 1986, 26 USC 414.

(u) A written instrument conveying an interest in property for which an exemption is claimed under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, if the state equalized valuation of that property is equal to or lesser than the state equalized valuation on the date of purchase or on the date of acquisition by the seller or transferor for that same interest in property **AND THE TRANSACTION WAS FOR A PRICE AT WHICH A WILLING**

BUYER AND A WILLING SELLER WOULD ARRIVE THROUGH AN ARMS-LENGTH NEGOTIATION. ~~If after an exemption is claimed under this~~

~~subsection, the sale or transfer of property is found by the treasurer to be at a value other than the true cash value, then a penalty equal to 20% of the tax shall be assessed in addition to the tax due under this act to the seller or~~

~~transferor.~~ **NOTWITHSTANDING SECTION 22 OF 1941 PA 122, MCL 205.22, AND SECTION 3(4) OF THIS ACT, IF THE SELLER OR THE BUYER WHO HAS PAID THE TAX ON BEHALF OF THE SELLER BELIEVES THAT THE PROPERTY WAS ELIGIBLE FOR AN EXEMPTION UNDER THIS SUBDIVISION AT THE TIME OF TRANSFER, THE SELLER OR THE BUYER WHO HAS PAID THE TAX ON BEHALF OF THE SELLER MAY REQUEST A REFUND FROM THE DEPARTMENT IN A FORM AND**

1 MANNER DETERMINED BY THE DEPARTMENT. THIS SUBDIVISION IS
2 RETROACTIVE AND APPLIES TO A SALE, EXCHANGE, ASSIGNMENT, OR
3 TRANSFER ON OR AFTER JUNE 24, 2011.

4 (v) A written instrument transferring an interest in property
5 pursuant to a foreclosure of a mortgage including a written
6 instrument given in lieu of foreclosure of a mortgage. This
7 exemption does not apply to a subsequent transfer of the foreclosed
8 property by the entity that foreclosed on the mortgage.

9 (w) A written instrument conveying an interest from a
10 religious society in property exempt from the collection of taxes
11 under section 7s of the general property tax act, 1893 PA 206, MCL
12 211.7s, to a religious society if that property continues to be
13 exempt from the collection of taxes under section 7s of the general
14 property tax act, 1893 PA 206, MCL 211.7s.