

MICHIGAN ESTATE TAX ACT (EXCERPT)
Act 188 of 1899

205.201 Inheritance tax; taxable transfers; residents; nonresidents; transfer in contemplation of death; presumption; power of appointment; personal property exemption; conditions; exception; exemption of property passing to trustee of trust agreement or deed under terms of contract of insurance; unincorporated foundation; winding up; exemption of foreign benevolent, charitable, religious, or educational entities; reciprocity; effective date of exemption; refund; exemption of transfer to surviving spouse; conditions; definitions.

Sec. 1. (1) A tax is imposed upon the transfer of any property, real or personal, of the value of \$100.00 or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, not exempt by law in this state from taxation on real or personal property or not heretofore or hereafter existing within this state as incorporated foundations or not heretofore existing within this state as established nonprofit unincorporated foundations operated exclusively for benevolent, charitable, or educational purposes, in the following cases:

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

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

(c) When the transfer is of property made by a resident or by nonresident, when the nonresident's property is within this state, 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. Any transfer of a material part of this property in the nature of a final disposition or distribution made by the decedent within 2 years prior to his or her death, except in case of a bona fide sale for a fair consideration in money or money's worth, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section. The tax shall also be imposed when any such grantee, vendee, or donee becomes beneficially entitled in possession or expectancy to any property or the income of the property by any such transfer, whether made before or after the passage of this act.

(d) Whenever any person or persons, corporation or association, whether voluntary or organized pursuant to law, shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, the appointment when made shall be deemed a transfer taxable under this act in the same manner as though the property to which the appointment relates belonged absolutely to the donee of the power and had been bequeathed or devised to the donee by will; and whenever any person or persons, corporation or association, whether voluntary or organized pursuant to law, possessing such a power of appointment so derived shall omit or fail to exercise the power of appointment within the time provided, in whole or in part, a transfer taxable under this act shall be deemed to take place to the extent of the omission or failure, in the same manner as though the person or persons, corporation or association thereby becoming entitled to the possession or enjoyment of the property to which the power related had succeeded thereto by a will of the donee of the power failing to exercise the power, taking effect at the time of the omission or failure. This subdivision is construed so that the exercise of a power of appointment or the omission or failure to exercise a power of appointment does not constitute a taxable transfer under this act if the transfer, by the donor of the power, of the property to which the appointment relates is not described within subdivision (a), (b), or (c).

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

(a) The transferor at the time of the transfer was a resident of a state or territory of the United States, or of any foreign country, which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state, except tangible personal property having an actual situs in that state or territory or foreign country.

(b) If the laws of the state, territory, or country of residence of the transferor at the time of the transfer contained a reciprocal exemption provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect of personal property, except tangible personal property having an actual situs therein, provided the state, territory, or country of residence of such nonresidents allowed a similar exemption to residents of the state, territory, or country of residence of the transferor. For the purposes of this section the District of Columbia and possessions of the United States shall be considered territories of the United States. As used in this subsection, "foreign country" and "country" mean both any foreign country and any political subdivision of that country, and either of them of which the transferor was domiciled at the

time of his or her death. For the purposes of this section, "tangible personal property" shall be construed to exclude all property commonly classed as intangible personal property, such as deposits in banks, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt, and like incorporeal personal property.

(3) Notwithstanding subsection (1), a tax shall not be imposed in respect of property passing to a trustee or trustees of any trust agreement or trust deed heretofore or hereafter executed by a resident or nonresident decedent by virtue of or under the terms and provisions of any contract or contracts of insurance heretofore or hereafter in force, insuring the life of such decedent, and paid or payable at or after the death of the decedent to the trustee or trustees for the benefit of a beneficiary or beneficiaries having any present or future, vested, contingent, or defeasible interest under such trust deed or trust agreement.

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

(5) Every transfer to any corporation, society, institution, or person or persons, or association of persons for benevolent, charitable, religious, or educational purposes, organized, existing, or operating under the laws of or within a state or territory of the United States, other than this state, or of the District of Columbia, also shall be exempt from taxation under this act, if at the date of the transfer which, excepting as to gifts by living persons, shall be deemed to be the date of decedent's death, the laws of the state or territory or of the District of Columbia, under which such corporation, society, institution, person or persons, or association of persons was organized, existing, or operating did not impose a death tax of any character in respect to property transferred to such a corporation, society, institution, person or persons, or association of persons organized, existing, or operating under the laws of or within this state, or if at the date of the transfer the laws of the state or territory or of the District of Columbia contained a reciprocal provision under which such a transfer to such a corporation, society, institution, person or persons, or association of persons organized, existing, or operating under the laws of or within another state or territory or of the District of Columbia were exempted from death taxes of every character, if the other state or territory or of the District of Columbia allowed a similar exemption to such a corporation, society, institution, person or persons, or association of persons organized, existing, or operating under the laws of another state or territory or of the District of Columbia.

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

(6) Notwithstanding subsection (1), but subject to subsection (7), if the decedent dies after December 31, 1982 and if the decedent makes or has made a transfer otherwise subject to tax under this act to the surviving spouse of the decedent or to the surviving spouse of the decedent and another person or persons, and if this transfer qualifies for the marital deduction for purposes of the federal estate tax in the estate of the decedent or if this transfer would have qualified for the federal estate tax marital deduction if the transfer had been included in the gross estate of the decedent for purposes of the federal estate tax, the transfer, using values as finally determined for purposes of this act, shall be exempt from taxation under this act.

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

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

(b) If a transfer to the surviving spouse, or to the surviving spouse and other persons, is of an interest in a group of assets not all of which are subject to tax under this act, for purposes of the application of subsection (6), on the death of the first spouse to die, the surviving spouse or the surviving spouse and others persons, shall be considered to have received a pro rata portion of the group of assets in the same proportion that the value of that portion of the group of assets not subject to tax under this act bears to the value of the entire group of assets.

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

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

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

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

History: 1899, Act 188, Eff. Sept. 23, 1899;—Am. 1903, Act 195, Imd. Eff. June 9, 1903;—CL 1915, 14524;—Am. 1919, Act 148, Eff. Aug. 14, 1919;—Am. 1923, Act 257, Eff. Aug. 30, 1923;—Am. 1929, Act 231, Imd. Eff. May 21, 1929;—CL 1929, 3672;—Am. 1941, Act 302, Eff. Jan. 10, 1942;—CL 1948, 205.201;—Am. 1949, Act 177, Eff. Sept. 23, 1949;—Am. 1951, Act 75, Imd. Eff. May 28, 1951;—Am. 1962, Act 168, Eff. Mar. 28, 1963;—Am. 1982, Act 351, Imd. Eff. Dec. 21, 1982;—Am. 1992, Act 65, Imd. Eff. May 28, 1992.

Compiler's note: For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax