

MICHIGAN ESTATE TAX ACT (EXCERPT)
Act 188 of 1899

205.202d Tax on transfer of qualified farm real property to qualified heir; exemption conditioned on execution of farmland development rights agreement; election to defer taxes due; affidavit; powers and duties of probate judge; sale of real property or ceasing to use real property for agricultural use; notice; amount due state; applicability of subsections (1) to (5) and (7); exemption under MCL 205.202.

Sec. 2d. (1) The transfer of qualified farm real property to the qualified heir shall be exempt in the amount of 50% of the clear market value from all taxation under this act if the qualified heir executes a farmland development rights agreement pursuant to part 361 (farmland and open space preservation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.36101 to 324.36117 of the Michigan Compiled Laws. The qualified heir who is party to an executed farmland development rights agreement may elect to defer the balance of the taxes due under this act on the transfer of qualified farm real property for a period of 10 years without penalty or interest. The executor, administrator, or trustee of the estate and the qualified heir may make the election provided by this subsection by filing an affidavit with the judge of probate, which shall be made in the time and manner and with the content prescribed by the judge of probate. The judge of probate shall consider all of the following:

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

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

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

(2) The judge of probate may request assistance from either the soil conservation district agency or the state land use agency in finding if the real property in question is farmland. If the judge of probate finds all of the factors described in subsection (1), the judge of probate shall issue an order which shall suspend for a period of 6 months the payment of any tax imposed by this act, authorize the transfer of the qualified farm real property to the qualified heir, and require the qualified heir of the qualified farm real property to apply for a farmland development rights agreement pursuant to part 361 of Act No. 451 of the Public Acts of 1994 within 30 days after the date of the order. The judge of probate shall notify the state land use agency in the department of natural resources of this order. If the qualified heir fails to apply for a farmland development rights agreement, the tax imposed by this act shall be immediately due and there shall be added the maximum penalty and interest allowed in section 4 and any costs the judge of probate considers appropriate for this failure. The procedures, provisions and terms of a farmland development rights agreement shall be consistent with part 361 of Act No. 451 of the Public Acts of 1994. If the state land use agency either executes on behalf of the state a farmland development rights agreement or rejects an application for that agreement, it shall notify the judge of probate. Beginning 10 years after the effective date of the farmland development rights agreement, the 50% exemption for qualified farm real property provided by subsection (1) shall be a permanent exemption if the requirements of the farmland development rights agreement are satisfied under part 361 of Act No. 451 of the Public Acts of 1994. If the owner of record of real property subject to a farmland development rights agreement either sells the real property or ceases to use the real property for an agricultural use, the owner of record shall immediately notify the state land use agency and the commissioner of revenue of the sale or the nonagricultural use in form and content as prescribed by each.

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

(a) Taxes shall not be due if the successor in title is another qualified heir of the decedent and the successor in title complies with the provisions contained in the farmland development rights agreement. The exempt and deferred tax liability shall be transferred to the successor in title.

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

(c) The total amount of otherwise exempt and deferred taxes shall be due with interest at the rate of 3/4 of 1% per month compounded from the time the exemption was received until the taxes are paid if the request by the owner of record for relinquishment of the farmland development rights agreement is approved pursuant to section 36111(2)(b) of part 361 of Act No. 451 of the Public Acts of 1994, being section 324.36111 of the Michigan Compiled Laws.

(d) The total amount of otherwise exempt and deferred taxes shall be due without penalty or interest, in a case where the farmland development rights agreement is relinquished by the state pursuant to either section

36110(2) or 36111(2)(a) of part 361 of Act No. 451 of the Public Acts of 1994, being sections 324.36110 and 324.36111 of the Michigan Compiled Laws.

(4) If real property subject to a farmland development rights agreement is sold by the owner of record not less than 6 but not more than 10 years after the effective date of the agreement, a proration of the remaining months multiplied by the following amount shall be immediately due to the state by the seller:

(a) Taxes shall not be due if the successor in title is another qualified heir of the decedent and the successor in title complies with the provisions contained in the farmland development rights agreement. The exempt and deferred tax liability shall be transferred to the successor in title.

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

(c) The total amount of otherwise exempt and deferred taxes shall be due with interest at the rate of 3/4 of 1% per month compounded added to this amount from the time this exemption was received until the taxes are paid if the request by the owner of record for relinquishment of the farmland development rights agreement is approved pursuant to section 36111(2)(b) of part 361 of Act No. 451 of the Public Acts of 1994.

(d) The total amount of otherwise exempt and deferred taxes shall be due without penalty or interest if the farmland development rights agreement is relinquished by the state pursuant to either section 36110(2) or 36111(2)(a) of part 361 of Act No. 451 of the Public Acts of 1994.

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

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

(7) For the estate of a decedent who dies after December 31, 1992, the transfer of qualified farm real and personal property or the transfer of the ownership of qualified farm real and personal property to a qualified heir is exempt from taxation under section 2.

History: Add. 1978, Act 628, Imd. Eff. Jan. 6, 1979;—Am. 1992, Act 65, Imd. Eff. May 28, 1992;—Am. 1996, Act 54, Imd. Eff. Feb. 26, 1996.

Compiler's note: In subsection (5), the phrase “total amount of otherwise and deferred taxes” evidently should read “total amount of otherwise exempt and deferred taxes.”

For applicability of section, see MCL 205.223(a).

Popular name: Inheritance Tax