

Act No. 54
Public Acts of 1993
Approved by the Governor
June 3, 1993
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Bullard, Bryant, Jamian, Dobb, Johnson, Munsell, Gustafson, Middaugh, Kaza, Brackenridge, Walberg, Shugars, Whyman, Dalman, DeMars, Galloway, London, Dolan, Llewellyn, Vorva, Bankes, Cropsey, Middleton, Jersevic, Randall, Nye, Bodem, Curtis, Martin, Voorhees, Profit, Dobronski, Hill, McNutt, Rocca, Jaye, Porreca, Stille, McManus, Gnodtke, Oxender, Fitzgerald, DeLange, Goschka, Bandstra, Allen, Byrum, Baade, Bender, Hammerstrom, Bobier, Crissman, Gernaat, Horton, McBryde, Griffin, Gilmer, Harder, Sikkema, Kukuk, Lowe and Rhead
Reps. Alley, Barns, Freeman, Gagliardi, Gubow, Harrison, Jacobetti, Mathieu, Olshove, Palamara, Scott, Varga, Wetters, Willard and Joe Young, Jr. named co-sponsors

ENROLLED HOUSE BILL No. 4597

AN ACT to amend the title and sections 2, 2a, 3, 5, 6, 13, 15, 16, 19, and 21 of Act No. 188 of the Public Acts of 1899, entitled "An act to provide for the taxation of inheritances, transfers of property by will, transfer of property by the intestate laws of this state or transfers of property 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," Sections 2, 2a, and 21 as amended by Act No. 65 of the Public Acts of 1992 and section 3 as amended by Act No. 474 of the Public Acts of 1980, being sections 205.202, 205.202a, 205.203, 205.205, 205.206, 205.213, 205.215, 205.216, 205.219, and 205.221 of the Michigan Compiled Laws; and to add sections 23, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56.

The People of the State of Michigan enact:

Section 1. The title and sections 2, 2a, 3, 5, 6, 13, 15, 16, 19, and 21 of Act No. 188 of the Public Acts of 1899, sections 2, 2a, and 21 as amended by Act No. 65 of the Public Acts of 1992 and section 3 as amended by Act No. 474 of the Public Acts of 1980, being sections 205.202, 205.202a, 205.203, 205.205, 205.206, 205.213, 205.215, 205.216, 205.219, and 205.221 of the Michigan Compiled Laws, are amended and sections 23, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 are added to read as follows:

TITLE

An act to provide for the taxation of estates and generation-skipping transfers of property; to prescribe the powers and duties of certain personal representatives and state departments; to provide for the assessment and collection of the tax; and to provide for the administration and enforcement of this act.

Sec. 2. (1) Where the persons entitled to a beneficial interest in the property are the grandfather, grandmother, father, mother, husband, wife, child, legally adopted child, stepchild, brother, sister, wife or widow of a son, or the husband or widower of a daughter of the decedent grantor, donor, or vendor, or for the use of a person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a parent, if the relationship began at or before the child's seventeenth birthday and continued until the death of the decedent grantor, donor, or vendor,

or to or for the use of a lineal descendant of or a lineal descendant of a stepchild of the decedent grantor, donor, or vendor, the transfer of property of the clear market value of \$10,000.00 or for a decedent who dies after December 31, 1992 but before January 1, 1994, \$15,000.00, for a decedent who dies after December 31, 1993 but before January 1, 1995, \$25,000.00, or, for a decedent who dies after December 31, 1994, \$50,000.00 is exempt from all taxation under this act.

(2) Where the transfer is to a husband or wife the transfer of property of the clear market value of \$65,000.00 shall be exempt from all taxation under this act. If property is not transferred to a minor child or children, the widow shall be entitled to an additional exemption of \$5,000.00 for each child to whom property is not transferred.

(3) If the clear market value of the property transferred to each of the persons included in the classes specified in subsection (1) exceeds the exemptions specified, the exemptions shall first be deducted from the value of the property. When the clear market value of the property does not exceed \$50,000.00 before deducting the exemptions, the transfer of the property in excess of the exemptions and up to \$50,000.00 shall be taxed at the rate of 2% of the clear market value of the property. When the clear market value of the property exceeds \$50,000.00 the excess over exemptions of the first \$50,000.00 shall be taxed as provided in this subsection and the transfer of that portion of the property in excess of \$50,000.00 and up to \$250,000.00 shall be taxed at the rate of 4% of the clear market value of the property. The transfer of that portion of the property in excess of \$250,000.00 and up to \$500,000.00 shall be taxed at the rate of 7% of the clear market value of the property. The transfer of that portion of the property in excess of \$500,000.00 and up to \$750,000.00 shall be taxed at the rate of 8% of the clear market value of the property. The transfer of that portion of the property in excess of \$750,000.00 shall be taxed at the rate of 10% of the clear market value of the property.

(4) The exemptions of section 1 and subsections (1), (2), and section 2d shall apply and be granted to each beneficiary's interest in the property, and not to the entire estate of a decedent. A deduction or exemption from the tax shall not be made for an allowance granted by the order of a court for the maintenance and support of the widow or family of a decedent pending the administration of the estate when there is income from the estate accruing after death, which is available to pay the allowance, or for a longer period than 1 year, or for a greater amount than is actually used and expended for the maintenance and support of the widow or family for 1 year.

(5) Except as provided in this act, in cases other than those specified in subsection (3), the tax shall be at the rate of 12% upon the clear market value of the property transferred not exceeding \$50,000.00, 14% upon all in excess of \$50,000.00 and up to \$500,000.00, and 17% upon all in excess of \$500,000.00.

(6) For the estate of a decedent who dies after December 31, 1992, a tax is not imposed under this section on the transfer of any property, real or personal, of a family-owned business or the transfer of the ownership of a family-owned business to a qualified heir or heirs.

Sec. 2a. (1) If the total of inheritance taxes levied and imposed by this act upon the inheritance or transfers of property of a resident or nonresident decedent does not equal or exceed the maximum credit for state death taxes allowable to the estate of the decedent against the federal estate tax imposed with respect thereto, there is levied and imposed an additional estate tax that is equal to the differences between the maximum credit allowed and the tax otherwise imposed by this act.

(2) A proper reduction of the amount of tax levied under subsection (1) shall be made on account of any real and tangible personal property located outside this state that is a part of the gross transfers of a resident decedent.

(3) The tax levied under subsection (1) upon the transfers of nonresident decedents shall be that proportion of the total tax as the gross property within this state bears to the gross property of the decedent wherever located.

(4) The purpose of this section is to obtain the maximum benefit of the credit allowed under the provisions of the federal estate tax and it shall be liberally construed to effect this purpose.

(5) The additional tax shall be levied and assessed upon the transfers and against the interests of beneficiaries liable for inheritance taxes, who would be liable to pay the federal estate tax before deducting the credit. The person required to file the federal estate tax return shall file a duplicate of the federal return and all adjustments, corrections, and the final determination of that return with the probate court. Upon the final determination of the federal estate tax and the maximum credit allowable, appropriate adjustment shall be made to any partial or interim inheritance tax determinations or orders.

(6) A tax is imposed upon every generation-skipping transfer in which the original transferor is a resident of this state at the date of the transfer by the original transferor. The tax is equal to the maximum allowable federal credit under the internal revenue code for state generation-skipping transfer taxes paid to the states. This tax shall be reduced by the amount of all generation-skipping taxes paid to states other than this state, which amount shall not exceed an amount equal to the proportional share of that maximum allowable federal credit that the gross value of all transferred real and tangible personal property subject to generation-skipping transfer taxes located in states other than this state bears to the gross value of all transferred property subject to generation-skipping taxes wherever located. A tax is imposed upon every generation-skipping transfer in which the original transferor is not a resident of this state at the date of the transfer by the original transferor but in which the property transferred includes real or tangible personal property located in this state. The tax is an amount equal to the proportional share of the maximum

allowable federal credit under the internal revenue code for state generation-skipping transfer taxes paid to the states that the gross value of all transferred real and tangible personal property subject to generation-skipping transfer taxes located in this state bears to the gross value of all transferred property subject to generation-skipping transfer taxes wherever located. The time for the filing of the return and the due date of the taxes under this subsection are the same as the filing of the return date and due date of the federal generation-skipping transfer tax provided for in the internal revenue code.

(7) "Federal estate tax" means the tax levied and imposed under the provisions of the internal revenue code, in effect on the date of death of the decedent.

Sec. 3. (1) The tax and the interest on the tax provided for in this act shall become a lien upon the property transferred until paid, unless payment of the tax has been deferred as permitted by this section or section 2d. If a deferral of payment is granted under this section or section 2d, the lien provided by this section shall attach at the end of the deferral period granted by this section or section 2d. The person to whom the property is transferred and the administrator, executor, and trustee of every estate transferred, shall be personally liable for the tax until its payments; except that the executor or administrator shall not be personally liable for the tax upon a reversion or remainder consisting of real estate where the election provided for in section 7 or the deferral in this section or section 2d is made. The tax shall be paid to the state of Michigan. When the inheritance tax, administration fee, and penalty and interest, if applicable, for the estate are paid, the revenue commissioner shall provide notice, on a form prescribed by the department, to the judge of probate who shall file and preserve it in that office. It shall be a voucher in settlement of the accounts of the executor, administrator, or trustee of the estate upon which the tax is paid. The preparation and mailing of the receipts shall not prejudice the right of the state to a review of the determination fixing the tax. The receipts issued under this section shall show whether the amount paid is a payment of the tax upon any beneficial interest or upon the entire transfer. But an executor, administrator, or trustee of an estate, in settlement of which a tax is due under this act, shall not be discharged and the estate or trust closed by a decree of the court, unless there is produced a receipt signed by the revenue commissioner. All taxes imposed by this act shall accrue and be due and payable at the time of transfer, which is the date of death, except that taxes upon the transfer of any estate, property, or interest limited, conditioned, dependent, or determinable upon the happening of a contingency or future event, by reason of which the clear market value cannot be ascertained at the time of the transfer, shall accrue and become due and payable when the persons or corporations beneficially entitled shall come into actual possession or enjoyment.

(2) The tax and the interest on the tax provided for in this act may be deferred for reasonable cause shown by the executor, administrator, or trustee of the estate of a decedent who was a professional artist at the date of his or her death for not more than 10 years without penalty or interest. The executor, administrator, or trustee of the estate may make the deferral 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 determine whether there is reasonable cause shown to grant a deferral, the length of time for the deferral, and the manner of payment of the tax.

(3) A proceeding to enforce a lien against any property under this act shall be instituted by information, in the name of the people of this state, addressed to the circuit court for the county in which the property is situated. It shall be signed by the attorney general and need not be otherwise verified. A person owning the property or an interest in the property as shown by the record in the office of the register of deeds, or by the records of the probate court, at the time of the commencement of the proceedings, shall be made a party to the action, and all other persons having a right or interest in the property, may make themselves parties to the proceeding, on motion to the court, and notice to complainant, and may file their intervening or cross-claims, or answers claiming the benefit of cross-claims, and notices of lis pendens therein. Intervening or cross-claims shall be made on oath.

(4) The information shall show the name of the deceased, the date of death, the place of residence at the time of death, the county in which the estate was probated, the description of the property transferred, whether by will or under the intestate laws, and against which the lien exists, the name of the person or persons to whom it was transferred, the amount of taxes determined by the probate court upon the transfer, the date of the determination and whether the property is owned by the person or persons to whom it was transferred by will or under the intestate laws or by a subsequent purchaser, naming that purchaser. The information shall also show that the taxes determined upon the transfer of the property have not been paid and the amount of interest due upon the date of the filing of the information. In those cases in which the property upon which the lien exists is owned by the person or persons to whom it was transferred by will or under the intestate laws, the petition for relief shall be that the court determine the amount due; that the defendant pay to the county treasurer of the county, in which the estate was probated, for and in behalf of this state, whatever sum shall appear to be due, together with the costs of the proceeding, and that in default of that payment the property upon which the lien exists, may be sold in the manner provided in this act, to satisfy the taxes, interest, and cost. In those cases in which the property upon which the lien exists is owned by a subsequent purchaser, the petition for relief shall be that the court determine the amount due and that the property upon which the lien exists may be sold in the manner provided in this act to satisfy the taxes, interest, and costs of the proceeding. The information

may contain other and further allegations and petitions considered material and permitted by the rules and practice of the court.

(5) A certified copy of the order of determination of the inheritance tax, for which the lien exists, certified by either the judge or register of probate of the court that determined the tax or by the revenue commissioner, may be attached to the information. When attached, the copy shall be considered a part of the information and shall be prima facie evidence of the determination of the inheritance tax and the accruing of the lien against the property. A certificate of the revenue commissioner stating that the inheritance tax, or any part of the tax determined upon the transfer of the property upon which the lien exists, has not been paid, may be attached to the information. When attached, the certificate shall be considered a part of the information and shall be prima facie evidence of the nonpayment of the amount of the tax and interest shown to be unpaid by the certificate.

(6) If an infant, insane, or otherwise mentally incompetent person has an interest in the property upon which the lien exists, service of process shall be made upon that person in the same manner and with the same effect as upon persons not under a disability, whether the infant, insane, or otherwise mentally incompetent person is within or without the jurisdiction.

(7) After the issuing and service of process against the infant, insane, or otherwise incompetent person, a guardian ad litem may be appointed for the infant, insane, or otherwise incompetent person by the court upon motion of the attorney general, or the guardian ad litem may be appointed by the court upon the request of the infant, and in the case of an insane or otherwise incompetent person, at the request of the person's general guardian.

(8) If upon the hearing of the cause it appears that the inheritance taxes or interest, or both, upon the transfer of the property upon which the lien exists have not been paid, the court shall decree the amount of taxes and interest on the taxes found to be due, together with costs to be determined by the court, to be paid by the person or persons owning the property, or any interest in the property, within 3 months after the entry of the decree and that in default of payment that the property upon which the lien exists, be sold to satisfy the taxes, interest, and costs. If it appears that the person or persons to whom was transferred the property by will or under the intestate laws have parted with their interest before the institution of the proceedings provided for in this section, and that the property is owned by a subsequent purchaser, the court shall decree that the property be sold to satisfy the taxes, interest, and costs, unless the owner satisfies the taxes, interest, and costs within 3 months after the entry of the decree. However, in those cases in which it appears that 2 or more pieces or parcels of land were transferred by will or under the intestate laws to 1 person, and that that person, before the institution of the proceedings provided for in this section, has parted with any or all of the pieces or parcels of land, and that the court can ascertain from the order of determination the amount of inheritance tax determined upon the transfer of each piece or parcel, and that the lien against all of the pieces or parcels is being foreclosed in 1 proceeding, the court may decree the sale of that piece or parcel to satisfy the amount of tax determined upon the transfer of that piece or parcel, together with the interest thereon and pro rata costs of the proceeding. A piece or parcel of property shall not be sold to satisfy taxes, interest, and costs within 3 months after the entry of the decree. If the person or persons owning the property or an interest in the property, or the person's heirs, executors, administrators, or a person lawfully claiming from or under him or them, within 6 months after the time of the sale redeems the entire premises sold, by paying to the register of deeds in whose office the deed is deposited, as provided by subsection (12), for the benefit of the purchaser, or the purchaser's executors, administrators, or assigns the sum which was bid at the time of sale, with interest, at the rate of 6%, together with the sum of \$1.00 as a fee for the care and custody of the redemption money, and the fee paid by the purchaser for recording his or her deed, then the deed shall be void and of no effect, but if a distinct lot or parcel separately sold is redeemed leaving a portion of the premises unredeemed, then the deed shall be inoperative merely to the parcel or parcels redeemed and to those portions not redeemed shall remain valid and of full effect.

(9) If it appears to the court after the expiration of 3 months from the date of entry of the decree from a certificate of the state of Michigan to whom the taxes, interest, penalties, and costs were to be paid, attached to a petition of the attorney general for an order of sale of the property, that the same have not been paid, the court shall enter an order directing the circuit court commissioner, or some other person duly authorized by the order of the court, to sell the property. The sale shall be at public vendue between the hours of 9 a.m. and 6 p.m. at the courthouse or at another place as the court directs, within 60 days after the date of the order and on the date specified on the order. The court may, if necessary, by further order adjourn the sale from time to time. The circuit court commissioner, or other person authorized to make the sale, may, if bids are not received equal to the amount of taxes, interest, and costs, adjourn the sale from time to time, but the sale shall not be adjourned for more than 60 days at any 1 time.

(10) Upon receipt of a certified copy of the order of sale the circuit court commissioner, or other person duly authorized by the order of the court to conduct the sale, shall publish the sale in some newspaper printed in the county or another paper as the court may direct, once in each week, for 3 weeks in succession. If the sale is adjourned by order of the court, or by the circuit court commissioner, or other person duly authorized by the order of the court, to conduct the sale the same publication shall be had of the order or notice adjourning the sale as is provided in this section for publishing the order of sale. Proof of publication shall be filed with the court before the sale.

(11) The circuit court commissioner, or other person authorized to make the sale shall make and file a report of the sale. The report shall be entitled in the court and cause, and shall be certified and filed with the court.

(12) Deeds shall thereupon be executed by the circuit court commissioner or other person making the sale, specifying the names of the parties in the action, the date of the determination of the inheritance tax, the name of the deceased, the county in which the estate was probated, with a description of the premises and the amount for which each parcel of land described was sold. The commissioner, or other person making the sale, shall indorse upon each deed when the deed shall become operative, if the premises are not redeemed according to law. The deed or deeds, as soon as practicable and within 20 days after the sale, shall be deposited with the register of deeds of the county in which the land described is situated, and the register shall indorse on the deed the time the deed was received, shall record the deed at length in a book to be provided for in his or her office for that purpose, and shall index the deed in the regular index of deeds. The fees for recording the deed shall be paid by the purchaser and be included among the other costs and expenses. If the premises or a parcel of the premises shall be redeemed, the register of deeds shall write on the face of the record the word "Redeemed", stating at what date the entry is made and signing the entry with his or her official signature. Unless the premises described in the deed, or a parcel of the premises, is redeemed within the time limited for redemption, as provided in this section, the deed shall thereupon as to all parcels not redeemed, become operative and shall vest in the grantee named in the deed, the grantee's heirs or assigns all the right, title and interest therein which the person or persons received either from the deceased by reason of the transfer to them by will or under the intestate laws, or as subsequent purchasers.

(13) The proceeds of each sale provided for in this section shall be paid to the treasurer of the county where the estate was probated, to be applied to the discharge of the tax, interest, penalty, and costs, and if there is any surplus, it shall be brought into court for the use of the defendant, or the person entitled thereto, subject to the order of the court. The redemption money paid to the register of deeds shall be paid to the persons entitled to the money as soon as practical, and in those cases in which the state was the purchaser, the money shall be paid to the state of Michigan, and if there be any surplus after the tax, interest, penalty, and costs are satisfied, that surplus shall be brought into court for the use of the defendant or the person entitled to the surplus, subject to the order of the court.

(14) Upon the filing of the information, a fee of \$2.00 shall be paid to the court, which shall be in full of all register fees and charges in the proceedings. The circuit court commissioner, or other person authorized by the court to make the sale, shall be entitled to the following fees and no others: For attending and adjourning a sale, \$1.00; for attending and making a sale, \$1.50; mileage, 1 way, 10 cents per mile; executing deed or deeds on real estate sales, 25 cents for each deed necessarily executed; making and filing a report of sale, \$1.00. The cost of publishing any legal notices required to be published shall be at the rate of 70 cents per folio for the first insertion, and 35 cents per folio for each subsequent insertion. The fees which are provided for in this act shall be added by the circuit court commissioner, or other person duly authorized to make the sale, to the tax, interest, penalties, and costs awarded by the court as charges against the land.

Sec. 5. Every executor, administrator, trustee or other person shall have full power to sell or mortgage so much of the property of the decedent as will enable him or her to pay such tax in the same manner as he or she might be entitled by law to do for the payment of the debts of a decedent or ward; except that in cases where the transfer is to 2 or more persons in common, and 1 or more of them shall have paid his or her proportion of such tax, such executor, administrator, trustee, or other person shall sell or mortgage only the interest of such of the persons to whom the property was transferred as have not paid the tax, to pay the tax due upon such share or shares. Any such administrator, executor, trustee or other person having in charge or in trust any legacy or property for distribution subject to such tax, shall deduct the tax therefrom; and within 30 days thereafter shall pay over the same to the state of Michigan as herein provided. If such legacy or property be not in money, he or she shall collect the tax thereon as determined by the judge of probate from the person entitled thereto, unless such tax has been paid to the state of Michigan. He or she shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act to any person until the tax assessed thereon has been paid to him or her or to the state of Michigan. If any such legacy shall be charged upon or payable out of real property and is taxable under this act, the devisee charged with the payment of such legacy shall deduct such tax therefrom and pay it to the state of Michigan or the administrator, executor or trustee. And the payment thereof shall be enforced by the executor, administrator or trustee, in the same manner as payment of the legacy might be enforced, or by the attorney general or prosecuting attorney by the appropriate legal proceeding. If such legacy shall be given in money to any such person for a limited period, the administrator, executor, trustee or other person shall retain the tax upon the whole amount, but if not in money, he or she shall make such application to the court having jurisdiction of an accounting by him or her, to make an apportionment, if the case require it, of the sum to be paid by such legatee and for such further order relative thereto as the case may require.

Sec. 6. If any debt shall be allowed against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required to refund the amount of such debts or any part thereof, an

equitable proportion of the tax shall, upon the order of the court, be paid to him or her by the executor, administrator, trustee or other person, if the tax has not been paid to the state of Michigan. When any amount of said tax shall have been paid erroneously to the state of Michigan by reason of the allowance of debts or otherwise, it shall be lawful for the auditor general, upon satisfactory proof by the order or certificate of the proper court of the allowance of such debts or of the reversal, correction or alteration, in accordance with law, of the order fixing such tax, to draw his or her warrant upon the state treasury for such erroneous payment, to be refunded to the executor, administrator, trustee, person or persons entitled to receive it, and charge the same to the fund which receives credit from the payment of taxes under the provisions of this act: Provided, however, That all applications for such refunding of erroneous tax shall be made within 6 months from the allowance of such debts or the reversal, correction or alteration of said order.

Sec. 13. (1) The report of the appraiser shall be filed in the office of the judge of probate, and from such report and other proof relating to any estate before the judge of probate, the judge of probate shall forthwith, as of course, determine the clear market value of all estates as of the date of transfer, and the amount of tax to which the same is liable, or the judge of probate may so determine the clear market value of all estates and the amount of tax to which the same are liable without appointing an appraiser. The judge of probate may, and shall on application of the attorney general or commissioner of revenue, require the executor, administrator or trustee of any estate to file with him or her a petition containing an itemized statement, under oath, of the personal property and real property within his or her knowledge or possession or under his or her control as executor, administrator or trustee, which statement shall indicate the date from which interest and dividends were due and unpaid upon each item of the personal estate, together with the rate of such interest and also of the amount and character of any encumbrances upon such real estate at the time of the death of the deceased, and other data, such as debts, expenses of administration and other charges which constitute proper deductions in reaching a taxable remainder under the provisions of this act.

(2) The judge of probate before final determination of the tax upon the estate of decedent, may make a partial determination of tax upon any legacies or devises, or upon the real estate of a decedent, or upon the estate of the decedent as a whole, and may authorize and direct any executor or administrator to pay to the state of Michigan a sum in gross on account of the inheritance tax due from the estate when by reason of claims made against the estate, litigation, nonreceipt of final determinations made in federal estate tax returns or other unavoidable cause of delay, the tax cannot be completely determined by the court within either 105 days of the date of death or 9 months from its accrual. The judge of probate in the order determining the tax upon such estate shall state the amount authorized to be paid in gross and the date of such order.

(3) The commissioner of insurance, on the application of any judge of probate, or the commissioner of revenue, shall determine the value of any future or contingent estate, income or interest limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any appraiser's report, or facts stated by the judge of probate, and certify the same to the commissioner of revenue or the judge of probate, and his or her certificate shall be prima facie evidence that the method of computation adopted therein is correct.

(4) The judge of probate shall immediately give notice upon the final determination by him or her of the value of any estate which is taxable under this act, and of the tax to which the same is liable, to each heir, legatee or devisee or his or her attorney and of the tax assessed upon his or her share of the estate, by mailing such notice postage prepaid to the last known address of each such persons, or his or her attorney except those who were in court in person or by attorney at the time the tax was so determined.

(5) The judge of probate upon the written application of any person interested, filed with him or her within 90 days after the final determination by him or her of any tax under this act, may grant a rehearing upon the matter of determining such tax. The attorney general may file the written application for rehearing upon the matter of determining such tax any time prior to the allowance of the final account. If the state appeals from the appraisal, assessment or determination of the tax, it shall not be necessary to give any bond. If, on rehearing, the judge shall modify his or her former determination he or she shall enter an order redetermining the tax, and make the necessary entries in the book provided for in section 17, and make report thereof to the commissioner of revenue and county treasurer as provided in section 18.

Sec. 15. Any person shall, upon written request to the department of treasury, be entitled to a certified copy of the receipt issued by the state of Michigan under section 3 of this act for the payment of any tax under this act, which receipt shall designate upon what real property, if any, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipts may be recorded in the office of the register of deeds of the county in which such property is situated, in a book to be kept by him or her for that purpose, which shall be labeled "Transfer Tax."

Sec. 16. The treasurer for the state of Michigan shall collect on all taxes paid under this act an additional 1/2 of 1%, which fee shall be paid to the county having jurisdiction of the decedent's estate. This fee is an administration fee for the costs incurred by the probate court in administering this act. This fee shall be credited to the general fund of the county.

Sec. 19. If the fee collected on the inheritance tax under section 16 for a county is not paid to the county treasurer, the state treasurer shall pay interest at the rate of 8% per annum in addition to the amount of delinquent fees then in arrears.

Sec. 21. As used in this act:

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

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

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

(d) "Qualified farm real and personal property" means real and personal property located in this state that on the date of the decedent's death was devoted primarily to an agricultural use, and, for a decedent who dies before January 1, 1993, meets all the following conditions or, for a decedent who dies after December 31, 1992, meets the conditions in either subparagraph (i) or (ii):

(i) The real property is eligible as farmland pursuant to the farmland and open space preservation act, Act No. 116 of the Public Acts of 1974, as amended, being sections 554.701 to 554.719 of the Michigan Compiled Laws.

(ii) Fifty percent or more of the adjusted value of the estate consists of the adjusted value of real or personal property that on the date of the decedent's death, was devoted primarily to an agricultural use, and that was acquired from or transferred from the decedent to a qualified heir.

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

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

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

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

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

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

(f) "Agricultural use" means property that is substantially devoted to the production of plants and animals useful to people, including forages and sod crops; grains and feed crops; dairy and dairy products; poultry; livestock, including breeding and grazing; fish; timber; fruits; vegetables; flowers; Christmas trees; plants or trees grown in an agricultural nursery; and other similar uses and activities.

(g) "Qualified heir" means an individual entitled to any beneficial interest in property who is the grandfather, grandmother, father, mother, husband, wife, child, legally adopted child, stepchild, brother, sister, wife or widow of a son, or husband or widower of a daughter of the decedent grantor, donor, or vendor, or for the use of a person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a parent, if the relationship began at or before the child's seventeenth birthday and continued until the death of the decedent grantor, donor, or vendor, or to or for the use of a lineal descendant of or a lineal descendant of a stepchild of the decedent grantor, donor, or vendor, or farm business partner, or to or for the use of any person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a farm business partner.

(h) "Soil conservation district agency" means the agency of the district where the real property is located created pursuant to the soil conservation districts law, Act No. 297 of the Public Acts of 1937, as amended, being sections 282.1 to 282.16 of the Michigan Compiled Laws.

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

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

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

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

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

Sec. 23. Notwithstanding any other provisions of this act, the following apply:

(a) Sections 1 through 22 apply only to the estate of a resident or nonresident decedent dying before October 1, 1993 or to a generation-skipping transfer that occurs after December 31, 1992 but before October 1, 1993.

(b) Sections 31 to 56 apply only to the estate of a resident or nonresident decedent dying after September 30, 1993 or to a generation-skipping transfer that occurs after September 30, 1993.

Sec. 31. This act shall be known and may be cited as the "Michigan estate tax act".

Sec. 32. (1) A tax is imposed upon the transfer of the estate of every person who at the time of death was a resident of this state. The tax is equal to the maximum allowable federal credit under the internal revenue code for estate, inheritance, legacy, and succession taxes paid to the states. This tax shall be reduced by the amount of all estate, inheritance, legacy, and succession taxes paid to states other than Michigan, which amount shall not exceed an amount equal to the proportional share of that maximum allowable federal credit that the gross value of all real and tangible personal property located in states other than this state bears to the gross value of all property included in the decedent's gross estate wherever located.

(2) A tax is imposed upon the transfer of property located in this state of every person who at the time of death was not a resident of this state. The tax is an amount equal to the proportional share of the maximum allowable federal credit under the internal revenue code for estate, inheritance, legacy, and succession taxes paid to the states, that the gross value of all real and tangible personal property located in this state bears to the gross value of all property included in the decedent's gross estate wherever located.

Sec. 33. (1) A tax is imposed upon every generation-skipping transfer in which the original transferor is a resident of this state at the date of the transfer made by the original transferor. The tax is equal to the maximum allowable federal credit under the internal revenue code for state generation-skipping transfer taxes paid to the states. This tax shall be reduced by the amount of all generation-skipping taxes paid to states other than this state, which amount shall not exceed an amount equal to the proportional share of that maximum allowable federal credit that the gross value of all transferred real and tangible personal property subject to generation-skipping transfer taxes located in states other than this state bears to the gross value of all transferred property subject to generation-skipping taxes wherever located.

(2) A tax is imposed upon every generation-skipping transfer in which the original transferor is not a resident of this state at the date of the transfer by the original transferor but in which the property transferred includes real or tangible personal property located in this state. The tax is an amount equal to the proportional share of the maximum allowable federal credit under the internal revenue code for state generation-skipping transfer taxes paid to the states that the gross value of all transferred real and tangible personal property subject to generation-skipping transfer taxes located in this state bears to the gross value of all transferred property subject to generation-skipping transfer taxes wherever located.

Sec. 34. The personal representative, within 2 months after the decedent's death, or within 2 months after qualifying as the personal representative, whichever is later, shall give written notice that he or she is the personal representative to the department on a form prescribed by the department. However, the department may waive the filing of this notice.

Sec. 35. The personal representative of every estate required by the laws of the United States to file a federal return shall file a return with the department on or before the last day prescribed by law for filing the federal return including all supplemental data, if any, necessary to determine the correct tax under this act. However, the department may waive this requirement. The department shall extend the time for filing the return if the time for filing the federal return is extended. The aggregate of extensions granted under this act with respect to any return shall not exceed the aggregate of extensions allowable under the internal revenue code for the federal return.

Sec. 36. The transfer taxes imposed by this act are due and payable on or before the last day prescribed by law for paying the corresponding federal transfer taxes pursuant to the federal return excluding extensions and shall be paid by the personal representative to the department. The department shall extend the time for payment of the tax or any part of the tax if the time for paying the federal transfer tax is extended. The aggregate of extensions granted under this act with respect to any transfer shall not exceed the aggregate of extensions allowable under the internal revenue code with respect to that transfer. Interest and penalties as provided for in Act No. 122 of the Public Acts of 1941, being

sections 205.1 to 205.31 of the Michigan Compiled Laws, shall be added to the amount of the tax unpaid for the period of the extension.

Sec. 37. The person liable for payment of the federal transfer tax is personally liable for the tax, penalties, and interest imposed by this act to the same extent as the federal transfer tax.

Sec. 38. (1) If the federal authorities increase or decrease the amount of the federal transfer tax, an amended return shall be filed with the department showing all changes made in the original return and the amount of increase or decrease in the federal transfer tax within 60 days after a final determination if there is an increase in the amount owed the state, or within 1 year after a final determination if there is a refund owed by the state.

(2) A claim for a refund of the tax shall be made within 1 year from the date of the final determination of the federal transfer tax. For purposes of this subsection, a determination is considered to have become final on the date of the internal revenue service closing letter or the date of receipt of a refund of a federal transfer tax, whichever is later.

(3) Notwithstanding any other provision of this section, a tax may not be refunded pursuant to any allegation that the decedent was a resident of another state unless this state is a party to a compromise agreement between the decedent's transferee and the other state or unless this state is allowed to intervene as a party in any action in the other state in which the residency of the decedent is at issue.

Sec. 39. If upon examination of any return the department determines that any additional tax interest or penalty is owing, the tax together with any applicable penalty and interest shall be assessed.

Sec. 40. (1) Penalties and interest provided for under sections 23 and 24 of Act No. 122 of the Public Acts of 1941, being sections 205.23 and 205.24 of the Michigan Compiled Laws, shall be calculated on the balance of the tax due.

(2) Interest on refunds shall accrue from 45 days after the date the tax was paid or the due date of the tax excluding extensions, whichever is later.

Sec. 41. Upon payment of the tax under this act, the department shall issue to the personal representative receipts in triplicate, each of which is sufficient evidence of payment and entitles the personal representative to be credited and allowed that amount by the probate court having jurisdiction. If the personal representative files a complete return and makes a written application to the department for determination of the amount of the tax and discharge from personal liability for the tax, the department as soon as possible, but not later than 1 year after receipt of the application, shall notify the personal representative of the amount of the tax. Upon payment of the tax, the personal representative is discharged from personal liability for any additional tax found to be due and is entitled to receive from the department a receipt in writing showing the discharge. However, a discharge does not operate to release the gross estate of the lien of any additional tax subsequently found to be due while the title to the gross estate remains in the personal representative or in the heirs, devisees, or distributees. If after a discharge is given the title to any portion of the gross estate has passed to a bona fide purchaser for value, that portion of the gross estate is not subject to a lien or any claim or demand for the tax.

Sec. 42. The tax due under this act shall be apportioned as provided by the uniform estate tax apportionment act, Act No. 144 of the Public Acts of 1963, being sections 720.11 to 720.21 of the Michigan Compiled Laws, or any successor act in effect.

Sec. 43. The tax imposed under section 32 is a lien upon the gross estate of the decedent until paid in full. Any part of the gross estate used for the payment of claims against the estate and expenses of its administration is divested of any lien for taxes. Any part of the gross estate, other than real estate, of a resident decedent transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth is divested of the lien, and the lien shall then attach to the consideration received for the property from the purchaser, mortgagee, or pledgee. Any real estate that is part of the gross estate of a decedent transferred to a bona fide purchaser or mortgagee shall be divested of the lien, the lien shall attach to the consideration received for the real property, and the department shall issue a waiver releasing the property from the lien if 1 of the following applies:

(a) The transfer of the real estate is necessary for payment of claims against the estate and expenses of administration even though other assets are then available for sale or mortgage.

(b) The department is satisfied that no tax liability exists or that the tax liability of an estate has been fully discharged or provided for.

(c) Except when the department has filed a notice of tax lien with the county in which the real estate is located, there is made a partial payment with the department of an amount equal to either of the following, whichever is applicable:

(i) If the transfer occurs before the due date for the filing of the return including extensions, 8% of the net cash proceeds payable at closing to the seller in the case of a sale or to the mortgagor in the case of a mortgage.

(ii) If the transfer occurs after the due date for the filing of the return including extensions, 16% of the net cash proceeds payable at closing to the seller in the case of a sale or to the mortgagor in the case of a mortgage, or the amount of the unpaid tax as reflected on the return filed with the department, whichever is less.

(d) The seller, purchaser, or mortgagee makes a partial payment of an amount determined by the department to be sufficient to ensure payment of the tax.

(e) The seller, purchaser, or mortgagee makes a partial payment of an amount determined by the probate court to be sufficient to ensure payment of the tax.

(f) The seller or mortgagor is a person who holds the real property as a surviving joint tenant or tenant by the entireties.

Sec. 44. If a personal representative makes a distribution either in whole or in part of any of the property subject to the transfer tax under this act to the heirs, next of kin, distributees, legatees, or devisees without having paid or secured the tax due the state under this act or without having obtained the release of the property from the lien of the tax, the personal representative becomes personally liable for the tax, accrued penalties, and interest due the state, or as much of the tax, penalties, and interest that remains due and unpaid, to the full extent of the full value of any property belonging to the person or estate that comes into the personal representative's possession, custody, or control as required by law.

Sec. 45. Every personal representative has the same right and power to take possession of or sell, convey, and dispose of real estate as assets of the estate for the payment of the tax imposed by this act as the personal representative has for the payment of the debts of the decedent.

Sec. 46. (1) The probate court has exclusive jurisdiction of any court proceedings concerning this act. Every action shall be brought in the probate court for the county in which the estate is being or has been administered or, if there has been no administration in this state, in the county where any of the property of the estate is situated.

(2) A personal representative or any person who is in actual or constructive possession of any property included in the gross estate of the decedent who is aggrieved by a decision by the department may appeal that decision by petitioning the probate court with notice to the department and to all other interested parties as determined by court rule.

(3) An action may be brought by the department in the probate court within the times provided by this act to recover the amount of any taxes, penalties, and interest due under this act.

(4) Nothing in this act shall be construed to prevent a personal representative from bringing or maintaining an action in probate court within any period otherwise prescribed by law to determine any question bearing upon the taxable situs of property, the domicile of a decedent, or otherwise affecting the jurisdiction of the state to impose a tax under this act with respect to a particular item or items of property.

(5) All appeals of determinations made by the department under this act shall be made to the probate court.

Sec. 47. A final account of a personal representative of the estate when the value of the gross estate wherever situated exceeds the federal unified credit equivalent under the internal revenue code shall not be allowed by the probate court unless the account shows, and the probate judge finds, that the tax imposed by the provisions of this act upon the personal representative, which has become payable, has been paid. The department's certificate of nonliability for the tax or its receipt for the amount of tax paid shall be conclusive in the proceedings as to the liability or the payment of the tax.

Sec. 48. Upon the request of the department each probate court of this state, on or before the tenth day of every month, shall notify the department of the names of all decedents; the names and addresses of the respective personal representatives appointed; the amount of the bonds, if any, required by the court; and the probable value of the estates, in all estates of decedents whose wills have been probated or upon which letters of authority have been sought or granted during the preceding month. A probate court shall also furnish any further information from the records and files of the probate court in regard to those estates requested by the department.

Sec. 49. If the personal representative of the estate of a nonresident is a corporation duly authorized, qualified, and acting as a personal representative in the jurisdiction of the domicile of the decedent, the corporation has the same powers and duties concerning notices and the filing of returns required by this act and may bring and defend actions as authorized or permitted by this act to the same extent as an individual personal representative. However, nothing in this act shall be taken or construed as authorizing a corporation not authorized to do business in this state to qualify or

act as a personal representative, an administrator, or in any other fiduciary capacity, if otherwise prohibited by the laws of this state, except to the extent expressly provided in this act.

Sec. 50. If it appears to the department that an estate is not subject to any tax under this act, the department shall issue to the personal representative or to the heirs, devisees, or distributees of the decedent a certificate in writing to that effect, showing nonliability to tax. The certificate of nonliability has the same force and effect as a receipt showing payment. The certificate of nonliability shall be in a form recordable with the register of deeds and admissible in evidence in the same manner as receipts showing payment of taxes.

Sec. 51. If a receipt for the payment of taxes or a certificate of nonliability for taxes has not been issued or recorded as provided for in this act, the property constituting the estate of the decedent in this state is considered discharged of all liability for taxes under this act 20 years from the date of the decedent's death.

Sec. 52. All taxes and fees levied and collected under this act shall be paid into the state treasury to the credit of the general fund.

Sec. 53. 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 applies:

(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, that 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 in that state, territory, or country, provided the state, territory, or country of residence of the 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 are considered territories of the United States. As used in this section, "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" is construed to exclude all property commonly classified 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.

Sec. 54. (1) The taxes imposed by this act shall be administered by the revenue division of the department of treasury pursuant to Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws. If there is a conflict between the provisions of this act and Act No. 122 of the Public Acts of 1941, the provisions of this act apply.

(2) The department may promulgate rules under this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, necessary for the administration and enforcement of this act.

(3) The department may prescribe and make available forms considered necessary under this act.

Sec. 55. (1) If not otherwise provided for in this act, the rules of interpretation and construction applicable to the internal revenue code shall apply to and be followed in the interpretation of this act.

(2) The value or gross value of property under this act shall be the value of that property as finally determined for federal transfer tax purposes. That value is conclusive and is not subject to challenge in this state.

Sec. 56. As used in this act:

(a) "Decedent" means a deceased person and includes, but is not limited to, a testator, grantor, bargainor, vendor, donor, or person who dies intestate.

(b) "Department" means the revenue division of the department of treasury.

(c) "Federal generation-skipping transfer tax" means the tax imposed by chapter 13 of subtitle B of the internal revenue code.

(d) "Federal return" means any United States transfer tax return including federal estate tax returns and generation-skipping tax returns unless the context indicates a similar Michigan tax return.

(e) "Generation-skipping transfer" means every transfer subject to the federal generation-skipping transfer tax in which the original transferor is a resident of this state at the date of the transfer by the original transferor or the property transferred is real or personal property situated in this state.

(f) "Gross estate" means the gross estate determined under the internal revenue code.

(g) "Internal revenue code" means the United States internal revenue code of 1986, in effect on January 1, 1993.

(h) "Intangible personal property" means incorporeal personal property including, but not limited to, deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt, and choses in action generally.

(i) "Nonresident" means an individual who is not a resident.

(j) "Original transferor" means any grantor, donor, trustor, testator, or person who by grant, gift, trust, will, or otherwise, makes a transfer of real or personal property that results in a federal generation-skipping transfer tax.

(k) "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, company, estate, or any other group or combination acting as a unit. Person does not include public corporations.

(l) "Personal representative" means the personal representative appointed by the probate court, including an independent personal representative, or, if a personal representative is not acting, then any person who is in the actual or constructive possession of any property included in the gross estate of the decedent or any other person who is required to file a return or pay the taxes due under any provision of this act.

(m) "Resident" means that term as defined in section 18 of the income tax act of 1967, Act No. 281 of the Public Acts of 1967, being section 206.18 of the Michigan Compiled Laws. However, nothing in this act diminishes the settling of domiciles of decedents under Act No. 173 of the Public Acts of 1956, being sections 205.601 to 205.607 of the Michigan Compiled Laws.

(n) "Tangible personal property" means corporeal personal property.

(o) "Transfer" means the passing of property or any interest in property, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment.

(p) "Transfer tax" includes an estate, generation-skipping, inheritance, legacy, or succession tax for residents and nonresidents, including aliens.

(q) "United States" when used in a geographical sense includes only the 50 states and the District of Columbia.

Section 2. Sections 3, 5, 6, 13, 15, 16, and 19 of Act No. 188 of the Public Acts of 1899, as amended by this amendatory act, shall take effect September 1, 1993.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.

