

Act No. 330
Public Acts of 1993
Approved by the Governor
December 31, 1993
Filed with the Secretary of State
December 31, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Bullard, Munsell, Dalman and Bender

ENROLLED HOUSE BILL No. 5110

AN ACT to impose a state tax on the transfer of an interest in real property; to provide for the administration of this act; to prescribe the powers and duties of certain state and local officers; to provide for the collection and distribution of the tax; and to prescribe penalties and provide remedies.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "state real estate transfer tax act".

Sec. 2. As used in this act:

- (a) "Person" means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity. If used in a penalty clause, person includes the partners or members of a firm, a partnership, or an association and the officers of a corporation.
- (b) "Property" includes land, tenements, real estate, and real property and all rights to and interests in land, tenements, real estate, or real property.
- (c) "Tax" means the state real estate transfer tax imposed under this act.
- (d) "Treasurer" means the state treasurer.
- (e) "Value" means the current or fair market worth in terms of legal monetary exchange at the time of the transfer.

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

- (a) Contracts for the sale or exchange of property or any interest in the property or any combination of sales or exchanges or any assignment or transfer of property or any interest in the property.
- (b) Deeds or instruments of conveyance of property or any interest in property, for consideration.
- (2) The person who is the seller or grantor of the property is liable for the tax imposed under this act.

Sec. 4. There is imposed, in addition to all other taxes, a tax upon all written instruments described in section 3 executed outside of this state if the contract or transfer evidenced by the written instrument concerns property wholly located within this state. A written instrument described in this section is subject to this act.

Sec. 5. (1) Except as otherwise provided in this section, the tax imposed under sections 3 and 4 is levied at the following rate:

(a) Beginning May 1, 1994, if the sales tax is levied at a rate of 4% under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws, \$5.00 for each \$500.00 or fraction of \$500.00 of the total value of the property being transferred. However, if on May 1, 1994, the sales tax is levied at a rate of 6% under Act No. 167 of the Public Acts of 1933, then no tax shall be levied under this subdivision.

(b) Beginning January 1, 1995, if the sales tax is levied at a rate of 6% under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws, \$10.00 for each \$500.00 or fraction of \$500.00 of the total value of the property being transferred.

(2) A written instrument subject to the tax imposed by this act shall state on its face the total value of the real property being transferred unless an affidavit is attached to the written instrument declaring the total value of the real property being transferred. The form of the affidavit shall be prescribed by the department of treasury. If the sale or transfer is of a combination of real and personal property, the tax shall be imposed only upon the transfer of the real property if the values of the real and personal property are stated separately on the face of the written instrument or if an affidavit is attached to the written instrument setting forth the respective values of the real and personal property.

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

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

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

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

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

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

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

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

(h) Any of the following written instruments:

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

(ii) A written instrument given in foreclosure or in lieu of foreclosure of a loan made, guaranteed, or insured by the United States, this state, a political subdivision or municipality of this state, or an officer of the United States or of this state, or a political subdivision or municipality of this state acting in his or her official capacity.

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

(i) A conveyance from a husband or wife or husband and wife creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.

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

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

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

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

(n) A written instrument evidencing the transfer of mineral rights and interests.

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

(p) A transfer made pursuant to a bona fide sales agreement made before the date of enactment of this act if the sales agreement cannot be withdrawn or altered, or contains a fixed price not subject to change or modification. However, a sales agreement for residential construction may be adjusted up to 15% to reflect changes in construction specifications.

(q) 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, as amended.

Sec. 7. A tax is not imposed by this act upon a written instrument that conveys or transfers property or an interest in the property to a receiver, administrator, or trustee, whether special or general, in a bankruptcy or insolvency proceeding.

Sec. 8. (1) The payment of the tax imposed by this act shall be evidenced by the affixing of a documentary stamp or stamps to each written instrument subject to the tax imposed by this act by the person making, executing, issuing, or delivering the written instrument. The stamp required by this act may also serve as the stamp required under section 7 of Act No. 134 of the Public Acts of 1966, being section 207.507 of the Michigan Compiled Laws. The stamps required by this section shall be purchased only in the county in which the property is located.

(2) The person using or affixing the stamps shall affix the stamps so that removal requires the continued application of steam or water. The person using or affixing the stamps shall write or stamp on the stamps his or her initials and the date upon which the stamps are affixed or used so that the stamps cannot again be used.

(3) The treasurer may prescribe another method of cancellation as he or she considers appropriate. If the county treasurer is required to utilize a tax meter machine under section 7 of Act No. 134 of the Public Acts of 1966, the tax meter machine shall be used to evidence the payment of the tax imposed by this act.

Sec. 9. (1) The treasurer shall prescribe and prepare for use by a county treasurer adhesive stamps of the denominations and quantities that are necessary for the payment of the tax imposed by this act and the tax imposed by Act No. 134 of the Public Acts of 1966, being sections 207.501 to 207.513 of the Michigan Compiled Laws. The county treasurer shall requisition the stamps as required.

(2) The treasurer shall prescribe conditions under which a county treasurer may utilize a tax meter machine to evidence the payment of the tax imposed under this act or the tax imposed under Act No. 134 of the Public Acts of 1966. The treasurer shall provide for the use of a tax meter machine or for the sale of the stamps in such places as he or she considers necessary.

Sec. 10. The tax imposed under this act shall be collected by the county treasurer and deposited with the treasurer as provided in this section. By the fifteenth day of each month, the county treasurer shall, on a form prescribed by the treasurer, itemize the tax collected the preceding month and transmit the form and the tax collected to the treasurer. The county treasurer may retain the interest earned on the money collected pursuant to this act while held by the county treasurer, as reimbursement for the costs incurred by the county in collecting and transmitting the tax imposed by this act. The money retained by the county treasurer under this section shall be deposited in the treasury of the county where the tax is collected to the credit of the general fund.

Sec. 11. The treasurer shall credit the proceeds of the tax collected by county treasurers under this act to the state treasury to the credit of the state school aid fund established in section 11 of article IX of the state constitution of 1963.

Sec. 12. (1) The tax imposed by this act shall be paid only once. A tax shall not be imposed on a written instrument that transfers property if the written instrument is given and the transfer made pursuant to a written executory contract upon which the tax was previously paid. A written instrument that is evidence of indebtedness or of a contract right is subject to the tax imposed by this act only to the extent of the new consideration given for the property. A written instrument that is given to supplement, reform, or correct a prior written instrument is subject to the tax imposed by this act only to the extent of the new consideration given for the property.

(2) A written instrument that would be subject to the tax imposed by this act except for the provisions of this section shall state on its face that the instrument is exempt by reason of the prior payment or partial payment of the tax on another written instrument executed on part of the same transaction and the date of payment.

Sec. 13. (1) A written instrument subject to the tax imposed by this act shall not be recorded in the office of the register of deeds of any county of this state unless documentary stamps as required by this act have been purchased at the time of presentation by the party liable for the tax under section 3(2). The stamps shall be affixed to the face of the instrument before recording unless the person specifically requests that the instrument be recorded before the stamps are affixed. If so requested, the stamps may be affixed to the reverse side of the written instrument. However, if it is necessary to record the reverse side of the written instrument, the stamps shall be affixed after recording by the register of deeds. If the written instrument is not subject to the tax, the written instrument shall state on its face the reason for the exemption. A written instrument accepted for recording that does not comply with this act does not affect the validity of the recording as to notice.

(2) An affidavit attached to a written instrument under section 5 shall not be recorded and shall be detached from the written instrument before recording. The affidavit shall be used for auditing purposes only and shall not be disclosed to any other person.

Sec. 14. (1) A person shall not do any of the following:

(a) Fraudulently cut, tear, or remove a documentary stamp from a written instrument.

(b) Fraudulently affix to a written instrument upon which the tax is imposed by this act any of the following:

(i) A documentary stamp that has been cut, torn, or removed from another written instrument upon which the tax is imposed by this act.

(ii) A documentary stamp of insufficient value.

(iii) A forged or counterfeited stamp.

(iv) An impression of a forged or counterfeited stamp, die, plate, or other article.

(c) Willfully remove or alter the cancellation marks of a documentary stamp, restore a documentary stamp with the intent to use or cause the same to be used after it has already been used, knowingly buy, sell, offer for sale, or give away an altered or restored stamp to a person for use, or knowingly use an altered or restored stamp.

(d) Knowingly or willfully prepare, keep, sell, offer for sale, or have in his or her possession a forged or counterfeited documentary stamp.

(e) Knowingly or willfully issue a false or fraudulent affidavit described in section 5.

(2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than \$500.00, or both.

Sec. 15. The tax imposed under this act is in addition to and may be collected with the tax imposed under Act No. 134 of the Public Acts of 1966, being sections 207.501 to 207.513 of the Michigan Compiled Laws.

Sec. 16. This act shall be administered by the revenue division of the department of treasury under Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws.

Sec. 17. This act shall not take effect unless Senate Joint Resolution S is submitted to the voters and the following bills are enacted into law:

- (a) House Bill No. 5109.
- (b) House Bill No. 5116.
- (c) House Bill No. 5009.
- (d) House Bill No. 5010.
- (e) House Bill No. 5118.
- (f) House Bill No. 5097.
- (g) House Bill No. 5123.
- (h) House Bill No. 4279.
- (i) House Bill No. 5102.
- (j) House Bill No. 5103.
- (k) House Bill No. 5104.
- (l) House Bill No. 5106.
- (m) House Bill No. 5111.
- (n) House Bill No. 5115.
- (o) House Bill No. 5112.
- (p) House Bill No. 5120.
- (q) House Bill No. 5129.
- (r) House Bill No. 5224.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.