

1998 PUBLIC AND LOCAL ACTS

[No. 277]

(SB 754)

AN ACT to amend 1899 PA 188, entitled "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," by amending sections 40, 41, 43, 50, and 56 (MCL 205.240, 205.241, 205.243, 205.250, and 205.256), sections 40, 41, 43, and 50 as added by 1993 PA 54 and section 56 as amended by 1994 PA 372.

The People of the State of Michigan enact:

205.240 Calculation of penalties and interest; accrual of interest on refunds. [M.S.A. 7.591(10)]

Sec. 40. (1) Penalties and interest provided for under sections 23 and 24 of 1941 PA 122, MCL 205.23 and 205.24, shall be calculated on the balance of the tax due.

(2) Interest on refunds shall accrue in accordance with section 30 of 1941 PA 122, MCL 205.30.

205.241 Issuance of receipts; determination of tax and discharge from personal liability; operation of discharge. [M.S.A. 7.591(11)]

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. The department shall prepare the discharge of liability receipt in a form recordable by the register of deeds. 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.

205.243 Tax as lien against gross estate; attachment to consideration received for property; waiver. [M.S.A. 7.591(13)]

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 then attaches 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 is divested of the lien, the lien attaches to the consideration received for the

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real property, and the department shall issue a waiver releasing the property from the lien in a form recordable with the register of deeds if 1 or more of the following apply:

(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, a partial payment is made 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 for a sale or to the mortgagor for 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 for a sale or to the mortgagor for 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.

205.250 Certificate of nonliability. [M.S.A. 7.591(20)]

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 his or her legal 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.

205.256 Additional definitions. [M.S.A. 7.591(26)]

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 bureau of revenue 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.

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(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, 1998 or, at the option of the personal representative, in effect on the date of the decedent's death.

(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. A safe and collateral deposit company, trust company, corporation, bank, or other institution is not the personal representative of property held in a safe deposit box or of money or property on deposit if the indicated ownership or registered title denotes ownership by right of survivorship. A safe and collateral deposit company, trust company, corporation, bank, or other institution is the personal representative of property that it is holding if it is a court-appointed personal representative, including an independent personal representative, or, if a personal representative is not acting, if it is holding property in a fiduciary capacity as a trustee or successor trustee.

(m) "Resident" means that term as defined in section 18 of the income tax act of 1967, 1967 PA 281, MCL 206.18. However, nothing in this act diminishes the settling of domiciles of decedents under 1956 PA 173, MCL 205.601 to 205.607.

(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.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 1998.

This act is ordered to take immediate effect.

Approved July 26, 1998.

Filed with Secretary of State July 27, 1998.
