

# HOUSE BILL No. 6122

May 15, 2008, Introduced by Rep. Bieda and referred to the Committee on Tax Policy.

A bill to amend 1993 PA 330, entitled  
"State real estate transfer tax act,"  
by amending sections 2, 3, 6, and 12 (MCL 207.522, 207.523,  
207.526, and 207.532), section 6 as amended by 2003 PA 128.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 2. As used in this act:

2           (A) "CONTROLLING INTEREST" MEANS MORE THAN 80% OF THE TOTAL  
3 VALUE OF ALL CLASSES OF STOCK OF A CORPORATION; MORE THAN 80% OF  
4 THE TOTAL INTEREST IN CAPITAL AND PROFITS OF A PARTNERSHIP,  
5 ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER UNINCORPORATED  
6 FORM OF DOING BUSINESS; OR MORE THAN 80% OF THE BENEFICIAL INTEREST  
7 IN A TRUST.

8           (B) ~~(a)~~"Person" means an individual, partnership,  
9 corporation, limited liability company, association, governmental

1 entity, or other legal entity. If used in a penalty clause, person  
2 includes the partners or members of a firm, a partnership, or an  
3 association and the officers of a corporation.

4 (C) ~~(b)~~ "Property" includes land, tenements, real estate, and  
5 real property and all rights to and interests in land, tenements,  
6 real estate, or real property. **UNLESS OTHERWISE EXEMPTED BY SECTION**  
7 **6, THE TAX IMPOSED UNDER SECTION 3 SHALL ALSO BE PAYABLE UPON**  
8 **DOCUMENTS THAT CONVEY OR TRANSFER ANY BENEFICIAL INTEREST IN**  
9 **PROPERTY, EVEN THOUGH THAT INTEREST MAY BE DESIGNATED AS PERSONAL**  
10 **PROPERTY.**

11 (D) ~~(e)~~ "Tax" means the state real estate transfer tax imposed  
12 under this act.

13 (E) "TRANSFER", **UNLESS OTHERWISE EXEMPT UNDER THIS ACT, MEANS**  
14 **THE CONVEYANCE OF TITLE TO OR OTHER TRANSFER OF A PRESENT INTEREST**  
15 **OR BENEFICIAL INTEREST OR ANY OTHER INTEREST IN PROPERTY BY ANY**  
16 **METHOD, INCLUDING, BUT NOT LIMITED TO, SALE, EXCHANGE, ASSIGNMENT,**  
17 **SURRENDER, MORTGAGE, FORECLOSURE, TRANSFER IN LIEU OF FORECLOSURE,**  
18 **OPTION, TRUST, OR CONVEYANCE UPON LIQUIDATION, OR BY A RECEIVER, OR**  
19 **TRANSFER OR ACQUISITION OF A CONTROLLING INTEREST IN ANY ENTITY**  
20 **WITH AN INTEREST IN THE PROPERTY.**

21 (F) ~~(d)~~ "Treasurer" means the state treasurer.

22 (G) ~~(e)~~ "Value" means the current or fair market worth in  
23 terms of legal monetary exchange at the time of the transfer  
24 **WHETHER ACTUALLY PAID OR REQUIRED TO BE PAID FOR THE PROPERTY**  
25 **INTEREST, INCLUDING PAYMENT FOR AN OPTION OR CONTRACT TO PURCHASE**  
26 **PROPERTY, WHETHER OR NOT EXPRESSED IN THE DEED AND WHETHER PAID OR**  
27 **REQUIRED TO BE PAID BY MONEY, PROPERTY, OR ANY OTHER THING OF**

1 VALUE. THE TAX SHALL BE BASED ON THE VALUE OF THE REAL PROPERTY  
2 TRANSFERRED AND SHALL BE COLLECTED AT THE TIME THE INSTRUMENT OF  
3 CONVEYANCE IS SUBMITTED FOR RECORDING. IN THE CASE OF A CONTROLLING  
4 INTEREST IN ANY ENTITY THAT OWNS REAL PROPERTY, VALUE SHALL MEAN  
5 THE VALUE OF THE REAL PROPERTY OR INTEREST IN THE PROPERTY,  
6 APPORTIONED BASED ON THE PERCENTAGE OF THE OWNERSHIP INTEREST  
7 TRANSFERRED OR ACQUIRED IN THE ENTITY.

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

11 (a) Contracts for the sale or exchange of property or any  
12 interest in the property or any combination of sales or exchanges  
13 or any assignment or transfer of property or any interest in the  
14 property.

15 (b) Deeds or instruments of conveyance of property or any  
16 interest in property, for consideration.

17 (C) **CONTRACTS FOR THE TRANSFER OR ACQUISITION OF A CONTROLLING**  
18 **INTEREST IN ANY ENTITY WITH AN INTEREST IN THE PROPERTY EVEN THOUGH**  
19 **THAT INTEREST MAY BE DESIGNATED AS PERSONAL PROPERTY.**

20 (2) The person who is the seller or grantor of the property is  
21 liable for the tax imposed under this act.

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

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

26 (b) A written instrument evidencing a contract or transfer  
27 that is not to be performed wholly within this state only to the

1 extent the written instrument includes land lying outside of this  
2 state.

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

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

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

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

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

13 (h) Any of the following written instruments:

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

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

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

1 guaranteed or insured by the grantee.

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

5 (j) A conveyance from an individual to that individual's  
6 child, stepchild, or adopted child.

7 (k) A conveyance from an individual to that individual's  
8 grandchild, step-grandchild, or adopted grandchild.

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

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

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

16 (o) ~~A land contract in which the legal title does not pass to~~  
17 ~~the grantee until the total consideration specified in the contract~~  
18 ~~has been paid.~~ **CONVEYANCE THAT MEETS 1 OF THE FOLLOWING:**

19 (i) **A TRANSFER BETWEEN ANY CORPORATION AND ITS STOCKHOLDERS OR**  
20 **CREDITORS, OR BETWEEN ANY LIMITED LIABILITY COMPANY AND ITS MEMBERS**  
21 **OR CREDITORS WHEN THE TRANSFER IS TO EFFECTUATE A DISSOLUTION OF**  
22 **THE CORPORATION OR LIMITED LIABILITY COMPANY AND IT IS NECESSARY TO**  
23 **TRANSFER THE TITLE OF REAL PROPERTY FROM THE ENTITY TO THE**  
24 **STOCKHOLDERS, MEMBERS, OR CREDITORS.**

25 (ii) **A TRANSFER BETWEEN ANY LIMITED LIABILITY COMPANY AND ITS**  
26 **MEMBERS IF THE OWNERSHIP INTERESTS IN THE LIMITED LIABILITY COMPANY**  
27 **ARE HELD BY THE SAME PERSONS AND IN THE SAME PROPORTION AS IN THE**

1 **LIMITED LIABILITY COMPANY PRIOR TO THE TRANSFER.**

2 (p) A written instrument evidencing the transfer of mineral  
3 rights and interests.

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

7 (r) A transfer made pursuant to a bona fide sales agreement  
8 made before the date the tax is imposed under sections 3 and 4, if  
9 the sales agreement cannot be withdrawn or altered, or contains a  
10 fixed price not subject to change or modification. ~~However, a sales~~  
11 ~~agreement for residential construction may be adjusted up to 15% to~~  
12 ~~reflect changes in construction specifications.~~

13 (s) A written instrument evidencing a contract or transfer of  
14 property to a person sufficiently related to the transferor to be  
15 considered a single employer with the transferor under section  
16 414(b) or (c) of the internal revenue code of 1986, 26 U.S.C.—USC  
17 414.

18 (t) A written instrument conveying an interest in property for  
19 which an exemption is claimed under section 7cc of the general  
20 property tax act, 1893 PA 206, MCL 211.7cc, if the state equalized  
21 valuation of that property is equal to or lesser than the state  
22 equalized valuation on the date of purchase or on the date of  
23 acquisition by the seller or transferor for that same interest in  
24 property. If after an exemption is claimed under this subsection,  
25 the sale or transfer of property is found by the treasurer to be at  
26 a value other than the true cash value, then a penalty equal to 20%  
27 of the tax shall be assessed in addition to the tax due under this

1 act to the seller or transferor.

2 (u) A written instrument transferring an interest in property  
3 pursuant to a foreclosure of a mortgage including a written  
4 instrument given in lieu of foreclosure of a mortgage. This  
5 exemption does not apply to a subsequent transfer of the foreclosed  
6 property by the entity that foreclosed on the mortgage.

7 (v) A written instrument conveying an interest from a  
8 religious society in property exempt from the collection of taxes  
9 under section 7s of the general property tax act, 1893 PA 206, MCL  
10 211.7s, to a religious society if that property continues to be  
11 exempt from the collection of taxes under section 7s of the general  
12 property tax act, 1893 PA 206, MCL 211.7s.

13 Sec. 12. (1) The tax imposed by this act shall be paid only  
14 once **ON EACH TRANSFER RECORDED AND IN THE COUNTY IN WHICH THE**  
15 **WRITTEN INSTRUMENT IS REQUIRED TO BE RECORDED.** ~~A tax shall not be~~  
16 ~~imposed on a written instrument that transfers property if the~~  
17 ~~written instrument is given and the transfer made pursuant to a~~  
18 ~~written executory contract upon which the tax was previously paid.~~  
19 **IF THERE IS A CONVEYANCE OF REAL ESTATE THAT WAS PREVIOUSLY SOLD BY**  
20 **A SELLER OR GRANTOR UNDER A LAND CONTRACT OR OTHER EXECUTORY**  
21 **CONTRACT, A CREDIT FOR THE AMOUNT OF ANY TAX PREVIOUSLY PAID BY**  
22 **THAT TRANSFEROR OR A PERSON SUFFICIENTLY RELATED TO THE TRANSFEROR**  
23 **TO BE CONSIDERED A SINGLE EMPLOYER WITH THE TRANSFEROR UNDER**  
24 **SECTION 414(B) OR (C) OF THE INTERNAL REVENUE CODE, 26 USC 414, ON**  
25 **THE PRIOR TRANSFER SHALL BE GIVEN TO THE SELLER OR GRANTOR TOWARD**  
26 **THE TAX DUE UPON THE WRITTEN INSTRUMENT RECORDED TRANSFERRING THE**  
27 **SAME REAL ESTATE AND ANY IMPROVEMENTS UPON THE REAL ESTATE SO THAT**

1 THE TAX IMPOSED IS ONLY ON THE NEW CONSIDERATION GIVEN FOR THE  
2 PROPERTY. IF THE TAX DUE UPON THE TRANSFER IS GREATER THAN THE  
3 CREDIT GIVEN UNDER THIS SECTION, THE DIFFERENCE SHALL BE PAID BY  
4 THE GRANTOR OR SELLER. IF THE CREDIT ALLOWED IS GREATER THAN THE  
5 AMOUNT OF TAX DUE, NO REFUND OR CARRYOVER CREDIT SHALL BE ALLOWED.

6 A written instrument that is evidence of indebtedness or of a  
7 contract right is subject to the tax imposed by this act only to  
8 the extent of the new consideration given for the property. A  
9 written instrument that is given to supplement, reform, or correct  
10 a prior written instrument is subject to the tax imposed by this  
11 act only to the extent of the new consideration given for the  
12 property.

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

19 (3) THE TAX IMPOSED UNDER THIS ACT SHALL BE PAID TO THE COUNTY  
20 TREASURER WHERE THE PROPERTY IS LOCATED NO LATER THAN THE FIFTEENTH  
21 DAY AFTER THE DELIVERY OF THE INSTRUMENT EFFECTING THE CONVEYANCE  
22 BY THE SELLER OR GRANTOR TO THE BUYER OR GRANTEE OR NO LATER THAN  
23 THE FIFTEENTH DAY AFTER THE TRANSFER OF A CONTROLLING INTEREST IN  
24 ANY ENTITY WITH AN INTEREST IN THE PROPERTY. FOR PURPOSES OF THIS  
25 SECTION, THE DATE OF THE INSTRUMENT EFFECTING THE TRANSFER SHALL BE  
26 PRESUMED TO BE THE DATE OF DELIVERY OF THE INSTRUMENT.

27 (4) THE BURDEN OF PROVING TO THE SATISFACTION OF THE



1 DEPARTMENT THE VALUE OF THE PROPERTY TRANSFERRED SHALL BE ON THE  
2 PERSON LIABLE FOR PAYMENT OF THE TAX.