



Senate Fiscal Agency
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BILL



ANALYSIS

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House Bill 5237 (as reported without amendment)

Sponsor: Representative Mark Ouimet

House Committee: Tax Policy

Senate Committee: Finance

CONTENT

The bill would amend the Estates and Protected Individuals Code (EPIC) to revise a rebuttable presumption regarding the Federal estate tax and generation-skipping transfer (GST) tax laws that apply to a will, trust, or beneficiary designation of a person who died in 2010.

Currently, a will, trust, or beneficiary designation of or by a decedent who died in 2010 is presumed to refer to the Federal estate tax and GST tax laws as they apply to estates of decedents who died on December 31, 2009. The presumption arises if the will, trust, or designation either 1) contains a formula referring to a particular term or any section of the Federal Estate Code of 1986 relating to the Federal estate tax or GST tax; or 2) measures a share of an estate, trust, or contractual benefit subject to a beneficiary designation based on the amount that can pass free of Federal estate or GST tax.

Under the bill, if either of those conditions applied, there would be a presumption that a will, trust, or beneficiary designation of or by a decedent who died in 2010 referred to the Federal estate tax and GST tax laws as they apply to estates of decedents who died on January 1, 2010, in accordance with Section 302(c) of the 2010 Federal Tax Relief Act without regard to the election permitted by Section 301(c) of that Act. (Section 301 of the Federal Act establishes a new estate tax, and Section 302(c) exempts the first \$5.0 million. Under Section 301(c), if a person died in 2010, the executor may elect to apply the law that was in effect in 2010, when there was no estate tax, or to apply the new estate tax law.)

The bill states that this presumption would not preclude a fiduciary from making any available election, including an election under Section 301(c) of the Federal Act. A fiduciary who made an election under that section could commence a proceeding to determine whether the decedent would not have intended the formula to be construed as provided in EPIC. Also, all interested people affected by the presumption could enter into a nonjudicial settlement that the decedent intended the formula to be construed in a manner different from the presumption under EPIC.

MCL 700.2723

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate impact on local courts. To the extent that it would result in more nonjudicial agreements among interested parties (and thereby avoid a proceeding), it could result in reduced caseload for local courts.

Date Completed: 6-8-12

Fiscal Analyst: Dan O'Connor