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BILL



ANALYSIS

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House Bill 5237 (as passed by the House)

Sponsor: Representative Mark Ouimet

House Committee: Tax Policy

Senate Committee: Finance

Date Completed: 6-5-12

### **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 either of the following applies to the will, trust, or beneficiary designation:

- The will, trust, or designation contains a formula referring to the unified credit; estate tax exemption; applicable exemption amount, credit amount, or exclusion amount; taxable or gross estate; estate tax value, GST tax exemption, maximum or unlimited marital deduction; inclusion ratio; applicable fraction; or any section of the Federal Estate Tax Code of 1986 relating to the Federal estate tax or GST tax.
- The will, trust, or designation 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 tax or GST tax or based on a similar provision of Federal estate tax or GST tax law.

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. 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.

Currently, a beneficiary whose interest is affected by the presumption, or the fiduciary of the will, trust, or contractual benefit subject to a beneficiary designation, may commence a proceeding to determine whether the decedent intended the formula to be construed as provided in EPIC. The proceeding must be commenced within two years after the decedent's death, or within six months after the fiduciary sent the beneficiary a notice of the presumption, whichever is earlier.

The bill would require a proceeding to be commenced or a nonjudicial settlement to be executed within the following period, whichever was earlier:

- Two years after the decedent's death.
- Six months after the fiduciary sent the beneficiary a notice of the presumption or the due date for filing the Federal estate tax return of the decedent, if later.

As used in the bill, "2010 federal tax relief act" would mean the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.

MCL 700.2723

### **BACKGROUND**

Public Act 224 of 2010 enacted the presumption in the Estates and Protected Individuals Code regarding the estates of decedents who died in 2010. At the time, the Federal estate tax and the generation-skipping transfer tax had been repealed, but only for 2010. As a result, there was a concern that wills written in previous years would refer to a Federal law that no longer existed, leading to unanticipated consequences. Public Act 224 addressed this concern by creating the presumption that a will, trust, or beneficiary designation is to be read according to the tax laws in effect in 2009, if the decedent died in 2010.

Public Act 224 was signed into law on December 10, 2010, and specified that it was retroactive to January 1, 2010. On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, which contains the new Federal estate tax law.

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.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.