

HOUSE BILL No. 5237

December 15, 2011, Introduced by Rep. Ouimet and referred to the Committee on Tax Policy.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending section 2723 (MCL 700.2723), as added by 2010 PA 224.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2723. (1) Except as provided in ~~subsections~~**SUBSECTION**
2 (3), and ~~(4)~~,**FOR PURPOSES OF INTERPRETING** a will, trust, or
3 beneficiary designation of or by a decedent who dies after December
4 31, 2009 and before January 1, 2011, ~~shall be~~**A WILL, TRUST, OR**
5 **BENEFICIARY DESIGNATION IS** presumed to refer to the federal estate
6 tax and federal generation-skipping transfer tax laws as they apply
7 to estates of decedents who die on ~~December 31, 2009~~**JANUARY 1,**
8 **2010, IN ACCORDANCE WITH SECTION 302(C) OF THE 2010 FEDERAL TAX**
9 **RELIEF ACT WITHOUT REGARD TO THE ELECTION PERMITTED BY SECTION**

1 **301(C) OF THAT ACT**, if either of the following applies to the will,
2 trust, or beneficiary designation:

3 (a) The will, trust, or beneficiary designation contains a
4 formula referring to the unified credit, estate tax exemption,
5 applicable exemption amount, applicable credit amount, applicable
6 exclusion amount, taxable estate, gross estate, estate tax value,
7 generation-skipping transfer tax exemption, GST exemption, marital
8 deduction, maximum marital deduction, unlimited marital deduction,
9 inclusion ratio, applicable fraction, or any section of the
10 internal revenue code of 1986, 26 USC 1 to 9834, relating to the
11 federal estate tax or generation-skipping transfer tax.

12 (b) The will, trust, or beneficiary designation measures a
13 share of an estate, trust, or contractual benefit subject to a
14 beneficiary designation based on the amount that can pass free of
15 federal estate tax or the amount that can pass free of federal
16 generation-skipping transfer tax or based on a similar provision of
17 federal estate tax or federal generation-skipping transfer tax law.

18 (2) A presumption that arises under subsection (1) is a
19 rebuttable presumption that the decedent intended that the
20 ~~applicable~~ formula be construed as provided in subsection (1). A
21 fiduciary of an estate, trust, or contractual benefit subject to a
22 beneficiary designation under which the presumption is applicable
23 shall give notice to each beneficiary whose interest is affected by
24 the presumption. **A PRESUMPTION THAT ARISES UNDER SUBSECTION (1)
25 DOES NOT PRECLUDE A FIDUCIARY FROM MAKING ANY AVAILABLE ELECTION,
26 INCLUDING AN ELECTION UNDER SECTION 301(C) OF THE 2010 FEDERAL TAX
27 RELIEF ACT. A FIDUCIARY WHO HAS MADE AN ELECTION UNDER SECTION**

1 301(C) OF THE 2010 FEDERAL TAX RELIEF ACT MAY COMMENCE A PROCEEDING
2 TO DETERMINE WHETHER THE DECEDENT WOULD NOT HAVE INTENDED THE
3 FORMULA TO BE CONSTRUED AS PROVIDED IN SUBSECTION (1). ALL
4 INTERESTED PERSONS AFFECTED BY A PRESUMPTION THAT ARISES UNDER
5 SUBSECTION (1) MAY ENTER INTO A NONJUDICIAL SETTLEMENT UNDER
6 SECTION 7111 THAT THE DECEDENT INTENDED THE FORMULA TO BE CONSTRUED
7 IN A DIFFERENT MANNER FROM THE PRESUMPTION UNDER SUBSECTION (1). A
8 beneficiary whose interest is affected by the presumption or a
9 fiduciary of the will, trust, or contractual benefit subject to a
10 beneficiary designation may commence a proceeding to determine
11 whether the decedent intended that the formula be construed as
12 provided under subsection (1). Solely for the purpose of
13 determining the intent of the decedent regarding the formula under
14 this section, the court may consider the surrounding circumstances
15 and the rules of construction. A person who commences a proceeding
16 under this section has the burdens of proof and persuasion in
17 establishing the decedent's intent that the formula should not be
18 construed as provided in subsection (1). A proceeding under this
19 subsection shall be commenced **OR A NONJUDICIAL SETTLEMENT UNDER**
20 **THIS SUBSECTION SHALL BE EXECUTED** within whichever of the following
21 is earlier:

22 (a) Two years after the decedent's death.

23 (b) Six months after the fiduciary sent the beneficiary a
24 notice of the presumption under this subsection **OR THE DUE DATE FOR**
25 **FILING THE FEDERAL ESTATE TAX RETURN OF THE DECEDENT, IF LATER.**

26 (3) A presumption under subsection (1) does not apply with
27 respect to a will, trust, or beneficiary designation that is

1 executed or amended after December 31, 2009–2010, or that manifests
2 an intent that a contrary rule shall apply if the decedent dies on
3 a date ~~on which there is~~ **WHEN** no then ~~applicable~~ federal estate or
4 generation-skipping transfer tax **WOULD APPLY**.

5 ~~—— (4) If the federal estate tax or federal generation-skipping~~
6 ~~transfer tax becomes applicable before January 1, 2011, the~~
7 ~~reference in subsection (1) to January 1, 2011 shall refer instead~~
8 ~~to the earlier date on which the tax takes effect.~~

9 (4) ~~(5)~~—This section is a remedial response to changes in the
10 federal estate tax and generation-skipping transfer tax and takes
11 effect retroactively on January 1, 2010.

12 (5) **AS USED IN THIS SECTION, "2010 FEDERAL TAX RELIEF ACT"**
13 **MEANS THE TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION, AND**
14 **JOB CREATION ACT OF 2010, PUBLIC LAW 111-312.**