PERSONAL PROPERTY TRUST PERPETUITIES ACT

Act 148 of 2008

AN ACT to exclude certain personal property held in trust from the rule against perpetuities and similar rules that potentially affect the duration of trusts.

History: 2008, Act 148, Imd. Eff. May 28, 2008

The People of the State of Michigan enact:

554.91 Short title.

Sec. 1.

This act shall be known and may be cited as the "personal property trust perpetuities act".

History: 2008, Act 148, Imd. Eff. May 28, 2008

CAUTION! This document is from an archive and may contain outdated information.

554.92 Vesting of future interests; timing; exceptions; definitions.

Sec. 2.

(1) Except as provided in subsection (2), the period during which the vesting of a future interest in property may be postponed by the exercise of a second power is determined under the uniform statutory rule against perpetuities by reference to the time of the creation of the power of appointment that subjected property to, or created, the second power. Except as provided in subsection (2), a nonvested interest, a general power of appointment not presently exercisable because of a condition precedent, or a nongeneral or testamentary power of appointment created, or to which property is subjected, by the exercise of the second power is invalid to the extent of the exercise of the second power unless the interest or power satisfies the uniform statutory rule against perpetuities measured from the time of the creation of the power of appointment that subjected property to, or created, the second power.

(2) To the extent a second power is created or has property subjected to it by the exercise of a first power, subsection (1) does not apply to any future interest created by exercise of the second power if the instrument exercising the first power to subject property to or create the second power expressly declares that subsection (1) does not apply to any future interest created by exercise of the second power or, if the second power is a nonfiduciary power, otherwise clearly indicates that the donee of the first power intends to spring the so-called Delaware tax trap by subjecting property to or creating the second power. For purposes of an express declaration that subsection (1) does not apply, subsection (1) may be referred to as the anti-Delaware-tax-trap provision of the personal property trust perpetuities act.

(3) As used in this section:

(a) "Fiduciary" means, with respect to a power of appointment, that the power is held by a trustee in a fiduciary capacity.

(b) "First power" means a nonfiduciary, nongeneral power of appointment over personal property held in trust that is exercised so as to subject the property to, or to create, another power of appointment.

(c) "Nonfiduciary" means, with respect to a power of appointment, that the power of appointment is not held by a trustee in a fiduciary capacity.

(d) "Second-order fiduciary power" means a fiduciary power of appointment that is created or has property subjected to it by the exercise of 1 of the following:

(i) A first power.

(ii) A fiduciary power of appointment that was created or had property subjected to it by the exercise of a first power.

(iii) A fiduciary power of appointment whose creation or control over property subject to the power is traceable through an unbroken succession of previous exercises of fiduciary powers to the exercise of a fiduciary power that was created or had property subjected to it by the exercise of a first power.

(e) "Second power" means a power of appointment over personal property held in trust, other than a presently exercisable general power, that is created or to which property is subjected by the exercise of either a first power or a second-order fiduciary power.

(f) "Uniform statutory rule against perpetuities" means the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.71 to 554.78.

CAUTION! This document is from an archive and may contain outdated information.

History: 2008, Act 148, Imd. Eff. May 28, 2008 ;-- Am. 2012, Act 484, Imd. Eff. Dec. 28, 2012 ;-- Am. 2022, Act 154, Imd. Eff. July 19, 2022

554.93 Interests in personal property held in trust; application of rules.

Sec. 3.

(1) Except as provided in section 2, an interest in, or power of appointment over, personal property held in trust is not invalidated by a rule against any of the following:

(a) Perpetuities.

(b) Suspension of absolute ownership.

(c) Suspension of the power of alienation.

(d) Accumulations of income.

(2) Except as provided in section 2, all of the following may be indefinitely suspended, postponed, or allowed to go on with respect to personal property held in trust:

(a) The vesting of a future interest.

(b) The satisfaction of a condition precedent to the exercise of a general power of appointment.

(c) The exercise of a nongeneral or testamentary power of appointment.

(d) Absolute ownership.

(e) The power of alienation.

(f) Accumulations of income.

History: 2008, Act 148, Imd. Eff. May 28, 2008 ;-- Am. 2012, Act 484, Imd. Eff. Dec. 28, 2012 ;-- Am. 2022, Act 154, Imd. Eff. July 19, 2022

554.94 Applicability of act to certain personal property; scope of trust.

Sec. 4.

(1) This act applies only to a nonvested interest in, or power of appointment over, personal property held in a trust that is either revocable on, or created after, May 28, 2008, and only to the extent that the trust is not a special appointee trust.

(2) For purposes of this section, both of the following apply:

(a) A trust that is created by the exercise of a power of appointment is created when the power has been irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) A trust is a "special appointee trust" to the extent it includes assets that were held in a trust that was irrevocable on September 25, 1985, and both of the following apply to the assets:

(i) The assets have continuously been held in trust since September 25, 1985.

(ii) The assets have not become subject to a general power of appointment since September 25, 1985.

History: 2008, Act 148, Imd. Eff. May 28, 2008 ;-- Am. 2011, Act 12, Imd. Eff. Mar. 24, 2011 ;-- Am. 2022, Act 154, Imd. Eff. July 19, 2022

CAUTION! This document is from an archive and may contain outdated information.