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House Bill 6197 (as passed by the House) Sponsor: Representative Andrew Kandrevas

House Committee: Judiciary Senate Committee: Judiciary

Date Completed: 11-29-10

CONTENT

The bill would amend the Estates and Protected Individuals Code (EPIC) to specify that a will, trust, or beneficiary designation of or by a decedent who died after December 31, 2009, and before January 1, 2011, would be presumed to refer to the Federal estate tax and Federal generation-skipping transfer tax laws as they applied to estates of decedents who died on December 31, 2009. The presumption would apply if the will, trust, or beneficiary designation either: 1) contained a formula referring to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, taxable estate, gross estate, estate tax value, generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum marital deduction, unlimited marital deduction, inclusion ratio, applicable fraction, or any section of the Internal Revenue Code relating to the Federal estate tax or generation-skipping transfer tax; or 2) measured 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 the amount that can pass free of Federal generation-skipping transfer tax or based on a similar provision of Federal estate tax or Federal generation-skipping transfer tax law.

The presumption would be a rebuttable presumption that the decedent intended that the applicable formula be construed as described above. A fiduciary of an estate, trust, or contractual benefit subject to a beneficiary designation under which the presumption was applicable would have to notify each beneficiary whose interest was affected by the presumption.

A beneficiary whose interest was affected by the presumption or a fiduciary of the will, trust, or contractual benefit could commence a proceeding to determine whether the decedent intended that the formula be construed as provided in the bill. Solely for the purpose of determining the decedent's intent regarding the formula, the court could consider the surrounding circumstances and the rules of construction. A person who commenced a proceeding would have the burdens of proof and persuasion in establishing the decedent's intent that the formula should not be construed as provided in the bill.

A proceeding under the bill would have to be commenced within the earlier of the following:

- -- Two years after the decedent's death.
- -- Six months after the fiduciary sent the beneficiary a notice of the presumption.

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The presumption would not apply with respect to a will, trust, or beneficiary designation that was executed or amended after December 31, 2009, or that manifested an intent that a contrary rule would apply if the decedent died on a date on which there was no thenapplicable Federal estate or generation-skipping transfer tax.

If the Federal estate tax or Federal generation-skipping transfer tax became applicable before January 1, 2011, the reference in the bill to that date would refer instead to the earlier date on which the tax took effect.

The bill specifies that it would be a remedial response to changes in the Federal estate tax and generation skipping transfer tax and would take effect retroactively on January 1, 2010.

MCL 700.1213 et al. Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bill Bowerman

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.