

HOUSE BILL No. 6197

May 20, 2010, Introduced by Rep. Kandreas and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 1213 (MCL 700.1213), as amended by 2000 PA 54,
and by adding section 2723.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1213. If an individual includes a provision in a will,
2 trust document, or beneficiary designation that is designed to
3 reduce federal estate tax liability to zero or the lowest possible
4 amount payable by describing a portion or amount measured by
5 reference to the unified credit, the exemption equivalent, other
6 credits, or other deductions, then unless specifically stated
7 otherwise, the reference to the credits, exemption, or deductions
8 shall be considered to include a reference to the family-owned

1 business deduction available under section 2057 of the internal
2 revenue code of 1986, 26 ~~U.S.C.~~ **USC** 2057, if that deduction is
3 elected. Unless specifically stated otherwise, **AND SUBJECT TO**
4 **SECTION 2723**, the reference to the unified credit or exemption
5 equivalent, or to the family-owned business deduction, shall be
6 considered to refer to the credit, exemption, or deduction as it
7 exists at the time of death of the individual.

8 **SEC. 2723. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (4),**
9 **A WILL, TRUST, OR BENEFICIARY DESIGNATION OF OR BY A DECEDENT WHO**
10 **DIES AFTER DECEMBER 31, 2009 AND BEFORE JANUARY 1, 2011 SHALL BE**
11 **PRESUMED TO REFER TO THE FEDERAL ESTATE TAX AND FEDERAL GENERATION-**
12 **SKIPPING TRANSFER TAX LAWS AS THEY APPLY TO ESTATES OF DECEDENTS**
13 **WHO DIE ON DECEMBER 31, 2009 IF EITHER OF THE FOLLOWING APPLIES TO**
14 **THE WILL, TRUST, OR BENEFICIARY DESIGNATION:**

15 (A) THE WILL, TRUST, OR BENEFICIARY DESIGNATION CONTAINS A
16 FORMULA REFERRING TO THE UNIFIED CREDIT, ESTATE TAX EXEMPTION,
17 APPLICABLE EXEMPTION AMOUNT, APPLICABLE CREDIT AMOUNT, APPLICABLE
18 EXCLUSION AMOUNT, TAXABLE ESTATE, GROSS ESTATE, ESTATE TAX VALUE,
19 GENERATION-SKIPPING TRANSFER TAX EXEMPTION, GST EXEMPTION, MARITAL
20 DEDUCTION, MAXIMUM MARITAL DEDUCTION, UNLIMITED MARITAL DEDUCTION,
21 INCLUSION RATIO, APPLICABLE FRACTION, OR ANY SECTION OF THE
22 INTERNAL REVENUE CODE OF 1986, 26 USC 1 TO 9834, RELATING TO THE
23 FEDERAL ESTATE TAX OR GENERATION-SKIPPING TRANSFER TAX.

24 (B) THE WILL, TRUST, OR BENEFICIARY DESIGNATION MEASURES A
25 SHARE OF AN ESTATE, TRUST, OR CONTRACTUAL BENEFIT SUBJECT TO A
26 BENEFICIARY DESIGNATION BASED ON THE AMOUNT THAT CAN PASS FREE OF
27 FEDERAL ESTATE TAX OR THE AMOUNT THAT CAN PASS FREE OF FEDERAL

1 GENERATION-SKIPPING TRANSFER TAX OR BASED ON A SIMILAR PROVISION OF
2 FEDERAL ESTATE TAX OR FEDERAL GENERATION-SKIPPING TRANSFER TAX LAW.

3 (2) A PRESUMPTION THAT ARISES UNDER SUBSECTION (1) IS A
4 REBUTTABLE PRESUMPTION THAT THE DECEDENT INTENDED THAT THE
5 APPLICABLE FORMULA BE CONSTRUED AS PROVIDED IN SUBSECTION (1). A
6 FIDUCIARY OF AN ESTATE, TRUST, OR CONTRACTUAL BENEFIT SUBJECT TO A
7 BENEFICIARY DESIGNATION UNDER WHICH THE PRESUMPTION IS APPLICABLE
8 SHALL GIVE NOTICE TO EACH BENEFICIARY WHOSE INTEREST IS AFFECTED BY
9 THE PRESUMPTION. A BENEFICIARY WHOSE INTEREST IS AFFECTED BY THE
10 PRESUMPTION OR A FIDUCIARY OF THE WILL, TRUST, OR CONTRACTUAL
11 BENEFIT SUBJECT TO A BENEFICIARY DESIGNATION MAY COMMENCE A
12 PROCEEDING TO DETERMINE WHETHER THE DECEDENT INTENDED THAT THE
13 FORMULA BE CONSTRUED AS PROVIDED UNDER SUBSECTION (1). SOLELY FOR
14 THE PURPOSE OF DETERMINING THE INTENT OF THE DECEDENT REGARDING THE
15 FORMULA UNDER THIS SECTION, THE COURT MAY CONSIDER THE SURROUNDING
16 CIRCUMSTANCES AND THE RULES OF CONSTRUCTION. A PERSON WHO COMMENCES
17 A PROCEEDING UNDER THIS SECTION HAS THE BURDENS OF PROOF AND
18 PERSUASION IN ESTABLISHING THE DECEDENT'S INTENT THAT THE FORMULA
19 SHOULD NOT BE CONSTRUED AS PROVIDED IN SUBSECTION (1). A PROCEEDING
20 UNDER THIS SUBSECTION SHALL BE COMMENCED WITHIN WHICHEVER OF THE
21 FOLLOWING 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.

25 (3) A PRESUMPTION UNDER SUBSECTION (1) DOES NOT APPLY WITH
26 RESPECT TO A WILL, TRUST, OR BENEFICIARY DESIGNATION THAT IS
27 EXECUTED OR AMENDED AFTER DECEMBER 31, 2009, OR THAT MANIFESTS AN

1 INTENT THAT A CONTRARY RULE SHALL APPLY IF THE DECEDENT DIES ON A
2 DATE ON WHICH THERE IS NO THEN-APPLICABLE FEDERAL ESTATE OR
3 GENERATION-SKIPPING TRANSFER TAX.

4 (4) IF THE FEDERAL ESTATE TAX OR FEDERAL GENERATION-SKIPPING
5 TRANSFER TAX BECOMES APPLICABLE BEFORE JANUARY 1, 2011, THE
6 REFERENCE IN SUBSECTION (1) TO JANUARY 1, 2011 SHALL REFER INSTEAD
7 TO THE EARLIER DATE ON WHICH THE TAX TAKES EFFECT.

8 (5) THIS SECTION IS A REMEDIAL RESPONSE TO CHANGES IN THE
9 FEDERAL ESTATE TAX AND GENERATION SKIPPING TRANSFER TAX AND TAKES
10 EFFECT RETROACTIVELY ON JANUARY 1, 2010.