

Act No. 224
Public Acts of 2010
Approved by the Governor
December 10, 2010
Filed with the Secretary of State
December 10, 2010
EFFECTIVE DATE: December 10, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Rep. Kandrevas

ENROLLED HOUSE BILL No. 6197

AN ACT to amend 1998 PA 386, entitled “An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts,” 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:

Sec. 1213. If an individual includes a provision in a will, trust document, or beneficiary designation that is designed to reduce federal estate tax liability to zero or the lowest possible amount payable by describing a portion or amount measured by reference to the unified credit, the exemption equivalent, other credits, or other deductions, then unless specifically stated otherwise, the reference to the credits, exemption, or deductions shall be considered to include a reference to the family-owned business deduction available under section 2057 of the internal revenue code of 1986, 26 USC 2057, if that deduction is elected. Unless specifically stated otherwise, and subject to section 2723, the reference to the unified credit or exemption equivalent, or to the family-owned business deduction, shall be considered to refer to the credit, exemption, or deduction as it exists at the time of death of the individual.

Sec. 2723. (1) Except as provided in subsections (3) and (4), a will, trust, or beneficiary designation of or by a decedent who dies after December 31, 2009 and before January 1, 2011 shall be presumed to refer to the federal estate tax and federal generation-skipping transfer tax laws as they apply to estates of decedents who die on December 31, 2009 if either of the following applies to the will, trust, or beneficiary designation:

(a) The will, trust, or beneficiary designation contains 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 of 1986, 26 USC 1 to 9834, relating to the federal estate tax or generation-skipping transfer tax.

(b) The will, trust, or beneficiary 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 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.

(2) A presumption that arises under subsection (1) is a rebuttable presumption that the decedent intended that the applicable formula be construed as provided in subsection (1). A fiduciary of an estate, trust, or contractual benefit subject to a beneficiary designation under which the presumption is applicable shall give notice to each beneficiary whose interest is affected by the presumption. A beneficiary whose interest is affected by the presumption or a fiduciary of the will, trust, or contractual benefit subject to a beneficiary designation may commence a proceeding to determine whether the decedent intended that the formula be construed as provided under subsection (1). Solely for the purpose of determining the intent of the decedent regarding the formula under this section, the court may consider the surrounding circumstances and the rules of construction. A person who commences a proceeding under this section has the burdens of proof and persuasion in establishing the decedent's intent that the formula should not be construed as provided in subsection (1). A proceeding under this subsection shall be commenced within whichever of the following is earlier:

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

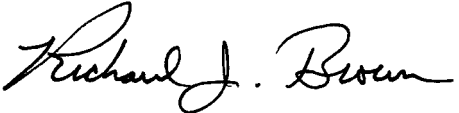
(b) Six months after the fiduciary sent the beneficiary a notice of the presumption under this subsection.

(3) A presumption under subsection (1) does not apply with respect to a will, trust, or beneficiary designation that is executed or amended after December 31, 2009, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax.

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor