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House Bill 4619 (Substitute H-2 as passed by the House)
Sponsor: Representative Jim Haadsma
House Committee: Financial Services
Senate Committee: Judiciary and Public Safety

Date Completed: 6-13-22

CONTENT

The bill would amend the Personal Property Trust Perpetuities Act to create the "anti-Delaware-tax-trap" provision as an exception to provisions regarding the determination of the period during which vesting of a future interest in property may be postponed.

Anti-Delaware Tax Trap

Under the Act, 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. 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.

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

- A first power
- A fiduciary power of appointment that was created or had property subjected to it by the exercise of a first power.
- A fiduciary power of appointment whose creation or control over property subject to the power is traceable through a 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.

("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.)

The bill would amend the definition of "second-order fiduciary power" to refer to an *unbroken* succession of previous exercises of fiduciary powers.

Additionally, under the bill, the provision described above would be subject to the following: to the extent a second power was created or had property subjected to it by the exercise of a first power, the provision described above would 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 declared that the provision did not apply to any future interest created by exercise of the second power or, if the second power were a nonfiduciary power, otherwise clearly indicated that the donee of the first power intended to spring the so-called Delaware tax trap by subjecting property to or creating the second power. For purposes of an express declaration that the above provision did not apply, the provision could be referred to as the anti-Delaware-tax trap provision of the Act.

Applicability

Section 4 of the Act specifies that the 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.

For purposes of Section 4, 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:

- The assets have been held in trust continuously since September 25, 1985.
- The assets have not become subject to a general power of appointment since September 25, 1985.

Under the bill, also for purposes of Section 4, a trust that was created by the exercise of a power of appointment would be created when it had been irrevocably exercised or when a revocable exercise became irrevocable.

MCL 554.92-554.94

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

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

Fiscal Analyst: Michael Siracuse

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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.