

PERSONAL PROPERTY TRUST PERPETUITIES ACT (EXCERPT)
Act 148 of 2008

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.

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.