

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property Probate and Trust Section, Estate and Trust Tax Planning Committee

Address c/o Richard R. Gans, Esq., Chair, Estate and Trust Tax Planning Committee
1515 Ringling Blvd., Ste. 1000, Sarasota, Florida 34236

Position Type RPPTL Section

CONTACTS

Board & Legislation Committee Appearance Michael Gelfand, Esq., Gelfand & Arpe
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Appearances before Legislators Peter M. Dunbar, Esq.
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Meetings with Legislators/staff Michael Gelfand, Esq., Peter M. Dunbar, Esq. and Martha Edenfield, Esq.

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* be filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format – Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

**If Applicable,
List The Following**

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position _____ Support _____ Oppose _____ Technical Assistance _____ Other _____

Proposed Wording of Position for Official Publication:

“Support amendment of the Florida Probate Code and the Florida Trust Code to add new provisions in each to permit a court to construe provisions in wills and trusts that relate to the federal estate and generation-skipping transfer taxes in light of the unexpected suspension of these taxes for 2010 only, so as to give effect to the intent of the trust settlor or decedent.”

Reasons for Proposed Advocacy:

The suspension of the federal estate and GST taxes for 2010 only casts the interpretation of widely-used tax-related formulas, and other provisions in estate planning documents that are phrased in terms of a desired tax outcome, in significant doubt. Even if the tax provisions in these documents were clear on their face, in many instances the result compelled by application of the plain language during the 2010 federal transfer tax hiatus will not be consistent with the settlor's or decedent's intent.

There is now no statutory provision in the Florida Probate Code, and no clear precedent in common law, that would allow a court to construe tax formulas and other provisions in wills to fulfill the testator's intent in light of the disruption brought to wills by the suspension of the federal estate and GST taxes in 2010. Likewise, although the Florida Trust Code contains several provisions that allow a court to construe a trust instrument, none of those provisions clearly makes the court available to construe a trust agreement in light of the particular effects wrought by the 2010 federal tax suspension.

The proposed changes would permit fiduciaries and beneficiaries to request a court to construe formula and other tax-related provisions so as to give effect to the trust settlor's or decedent's intent.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

None known

(Indicate Bar or Name Section)

(Support or Oppose)

(Date)

Others

(May attach list if
More than one)

N / A

(Indicate Bar or Name Section)

(Support or Oppose)

(Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations – Standing Board Policy 9.50(c). Please include all responses with this requested form.

Referrals

1. The Tax Law Section of The Florida Bar

(Support, Oppose or No Position)

2. The Florida Bankers Association

(Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised.

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