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**SUBSTITUTE SENATE BILL 5171**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Judiciary (originally sponsored by Senators Kline and Rockefeller; by request of Uniform Legislation Commission)

READ FIRST TIME 01/29/09.

1 AN ACT Relating to modifying the Washington principal and income  
2 act of 2002; amending RCW 11.104A.180 and 11.104A.290; adding a new  
3 section to chapter 11.104A RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 11.104A.180 and 2002 c 345 s 409 are each amended to  
6 read as follows:

7 (a) In this section(~~(7)~~):

8 (1) "Payment" means a payment that a trustee may receive over a  
9 fixed number of years or during the life of one or more individuals  
10 because of services rendered or property transferred to the payer in  
11 exchange for future payments. The term includes a payment made in  
12 money or property from the payer's general assets or from a separate  
13 fund created by the payer(~~, including~~). For purposes of subsections  
14 (d), (e), (f), and (g) of this section, the term also includes any  
15 payment from any separate fund, regardless of the reason for the  
16 payment.

17 (2) "Separate fund" includes a private or commercial annuity, an  
18 individual retirement account, and a pension, profit-sharing, stock-  
19 bonus, or stock-ownership plan.

1 (b) To the extent that a payment is characterized as interest  
2 (~~(or)~~), a dividend, or a payment made in lieu of interest or a  
3 dividend, a trustee shall allocate (~~(it)~~) the payment to income. The  
4 trustee shall allocate to principal the balance of the payment and any  
5 other payment received in the same accounting period that is not  
6 characterized as interest, a dividend, or an equivalent payment.

7 (c) If no part of a payment is characterized as interest, a  
8 dividend, or an equivalent payment, a trustee shall allocate to income  
9 four percent of the total value of the interests of the trustee in the  
10 plan, annuity, or similar payment as of the first business day of the  
11 accounting period and the balance to principal.

12 (~~(d) (If, to obtain an estate tax marital deduction for a trust, a~~  
13 ~~trustee must allocate more of a payment to income than provided for by~~  
14 ~~this section, the trustee shall allocate to income the additional~~  
15 ~~amount necessary to obtain the marital deduction.~~

16 ~~(e))~~ Except as otherwise provided in subsection (e) of this  
17 section, subsections (f) and (g) of this section apply, and subsections  
18 (b) and (c) of this section do not apply, in determining the allocation  
19 of a payment made from a separate fund to:

20 (1) A trust to which an election to qualify for a marital deduction  
21 under 26 U.S.C. Sec. 2056(b)(7) of the federal internal revenue code of  
22 1986, as amended as of the effective date of this act, has been made;  
23 or

24 (2) A trust that qualifies for the marital deduction under 26  
25 U.S.C. Sec. 2056(b)(5) of the federal internal revenue code of 1986, as  
26 amended as of the effective date of this act.

27 (e) Subsections (d), (f), and (g) of this section do not apply if  
28 and to the extent that the series of payments would, without the  
29 application of subsection (d) of this section, qualify for the marital  
30 deduction under 26 U.S.C. Sec. 2056(b)(7)(C) of the federal internal  
31 revenue code of 1986, as amended as of the effective date of this act.

32 (f) A trustee shall determine the internal income of each separate  
33 fund for the accounting period as if the separate fund were a trust  
34 subject to this section. Upon request of the surviving spouse, the  
35 trustee shall demand that the person administering the separate fund  
36 distribute the internal income to the trust. The trustee shall  
37 allocate a payment from the separate fund to income to the extent of  
38 the internal income of the separate fund and distribute that amount to

1 the surviving spouse. The trustee shall allocate the balance of the  
2 payment to principal. Upon request of the surviving spouse, the  
3 trustee shall allocate principal to income to the extent the internal  
4 income of the separate fund exceeds payments made from the separate  
5 fund to the trust during the accounting period.

6 (g) If a trustee cannot determine the internal income of a separate  
7 fund but can determine the value of the separate fund, the internal  
8 income of the separate fund is deemed to equal three percent of the  
9 fund's value, according to the most recent statement of value preceding  
10 the beginning of the accounting period. If the trustee can determine  
11 neither the internal income of the separate fund nor the fund's value,  
12 the internal income of the fund is deemed to equal the product of the  
13 interest rate and the present value of the expected future payments, as  
14 determined under 26 U.S.C. Sec. 7520 of the federal internal revenue  
15 code of 1986, as amended as of the effective date of this act, for the  
16 month preceding the accounting period for which the computation is  
17 made.

18 (h) This section does not apply to a payment((s)) to which RCW  
19 11.104A.190 applies.

20 **Sec. 2.** RCW 11.104A.290 and 2002 c 345 s 505 are each amended to  
21 read as follows:

22 (a) A tax required to be paid by a trustee based on receipts  
23 allocated to income must be paid from income.

24 (b) A tax required to be paid by a trustee based on receipts  
25 allocated to principal must be paid from principal, even if the tax is  
26 called an income tax by the taxing authority.

27 (c) A tax required to be paid by a trustee on the trust's share of  
28 an entity's taxable income must be paid ((proportionately)):

29 (1) From income to the extent that receipts from the entity are  
30 allocated only to income; ((and))

31 (2) From principal to the extent that((:—(i))) receipts from the  
32 entity are allocated only to principal; ((and

33 ~~(ii) The trust's share of the entity's taxable income exceeds the~~  
34 ~~total receipts described in (1) and (2)(i) of this subsection.~~

35 ~~(d) For purposes of this section, receipts allocated to principal~~  
36 ~~or income must be reduced by the amount distributed to a beneficiary~~

1 ~~from principal or income for which the trust receives a deduction in~~  
2 ~~calculating the tax))~~

3 (3) Proportionately from principal and income to the extent that  
4 receipts from the entity are allocated to both income and principal;  
5 and

6 (4) From principal to the extent that the tax exceeds the total  
7 receipts from the entity.

8 (d) After applying subsections (a) through (c) of this section, the  
9 trustee shall adjust income or principal receipts to the extent that  
10 the trust's taxes are reduced because the trust receives a deduction  
11 for payments made to a beneficiary.

12 NEW SECTION. Sec. 3. A new section is added to chapter 11.104A  
13 RCW, to be codified as RCW 11.104A.906, to read as follows:

14 TRANSITIONAL MATTERS. RCW 11.104A.180 applies to a trust described  
15 in RCW 11.104A.180(d) on and after the following dates:

16 (a) If the trust is not funded as of the effective date of this  
17 act, the date of the decedent's death.

18 (b) If the trust is initially funded in the calendar year beginning  
19 January 1, 2009, the date of the decedent's death.

20 (c) If the trust is not described in subsection (a) or (b) of this  
21 section, January 1, 2009.

22 NEW SECTION. Sec. 4. Captions used in this act are not any part  
23 of the law.

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