
SENATE BILL 5171

State of Washington

61st Legislature

2009 Regular Session

By Senators Kline and Rockefeller; by request of Uniform Legislation Commission

Read first time 01/15/09. Referred to Committee on Judiciary.

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 [insert number at least
9 three percent and not more than five percent] of the fund's value,
10 according to the most recent statement of value preceding the beginning
11 of the accounting period. If the trustee can determine neither the
12 internal income of the separate fund nor the fund's value, the internal
13 income of the fund is deemed to equal the product of the interest rate
14 and the present value of the expected future payments, as determined
15 under 26 U.S.C. Sec. 7520 of the federal internal revenue code of 1986,
16 as amended as of the effective date of this act, for the month
17 preceding the accounting period for which the computation is 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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