

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2012**

Introduced by Reps. Walsh, Crawford, Haveman, Lyons, Heise and Johnson

# **ENROLLED HOUSE BILL No. 5154**

AN ACT to amend 2004 PA 159, entitled "An act to enact the uniform principal and income act; to prescribe the manner in which receipts and expenditures of trusts and estates are credited and charged between income and principal, and the manner in which income is apportioned among beneficiaries at the beginning and upon the termination of a trust or estate; to make uniform the law with respect to principal and income allocation; and to repeal acts and parts of acts," by amending sections 409 and 505 (MCL 555.809 and 555.905) and by adding section 606.

*The People of the State of Michigan enact:*

Sec. 409. (1) As used in this section:

(a) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of 1 or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (4) to (7), payment also includes any payment from any separate fund, regardless of the reason for the payment.

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

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

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

(4) Except as otherwise provided in subsection (5), subsections (6) and (7) apply, and subsections (2) and (3) do not apply, in determining the allocation of a payment made from a separate fund to either of the following:

(a) A trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the internal revenue code of 1986, 26 USC 2056, has been made.

(b) A trust that qualifies for the marital deduction under section 2056(b)(5) of the internal revenue code of 1986, 26 USC 2056.

(5) Subsections (4), (6), and (7) do not apply if and to the extent that the series of payments would, without the application of subsection (4), qualify for the marital deduction under section 2056(b)(7)(C) of the internal revenue code of 1986, 26 USC 2056.

(6) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this act. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(7) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 3.5% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the internal revenue code of 1986, 26 USC 7520, for the month preceding the accounting period for which the computation is made.

(8) This section does not apply to payments to which section 410 applies.

Sec. 505. (1) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

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

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid as follows:

(a) From income to the extent that receipts from the entity are allocated only to income.

(b) From principal to the extent that receipts from the entity are allocated only to principal.

(c) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal.

(d) From principal to the extent that the tax exceeds the total receipts from the entity.


(4) After applying subsections (1) to (3), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Sec. 606. Section 409 applies to a trust described in section 409(4) on and after the following dates:

(a) If the trust is not funded as of the effective date of the amendatory act that added this section, the date of the decedent's death.

(b) If the trust is initially funded beginning January 1 of the calendar year in which the amendatory act that added this section takes effect, the date of the decedent's death.

(c) If the trust is not described in subdivision (a) or (b), January 1 of the calendar year in which the amendatory act that added this section takes effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor