

SENATE BILL NO. 348—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Revises certain provisions of the Uniform Principal and Income Act (1997). (BDR 13-1280)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trusts; revising certain provisions of the Uniform Principal and Income Act (1997); and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill revises certain existing provisions of the Uniform Principal and Income Act to conform with certain rulings from the Internal Revenue Service regarding the manner in which an individual retirement account or other similar retirement plan left to a trust instead of directly to a spouse qualifies for the federal estate marital tax deduction and thus prevents estate tax from incurring until the surviving spouse dies. Specifically, **section 1** provides, in part, that: (1) the spouse has a right to require the income from the individual retirement account or other similar plan to be distributed to the spouse; and (2) to the extent that the individual retirement account or other plan earns income, the trustee is required to pay to the spouse any distributions received from the individual retirement account or other plan. (NRS 164.865)

Section 2 of this bill revises certain existing provisions of the Uniform Principal and Income Act governing taxes required to be paid by a trustee on the trust's share of an entity's taxable income. Specifically, **section 2**: (1) requires the trustee to pay the taxes on the trust's share of an entity's taxable income from income or principal, or both, under certain circumstances; and (2) provides a formula for calculating the amount a trust needs to distribute to a mandatory income beneficiary and the amount it can use to pay taxes. (NRS 164.920)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 164.865 is hereby amended to read as follows:

164.865 1. As used in this section ~~["payment"]~~:



1 (a) "Payment" means a payment that a trustee may receive over
2 a fixed number of years or during the life of one or more natural
3 persons because of services rendered or property transferred to the
4 payor in exchange for future payments. The term includes a
5 payment made in money or property from the payor's general assets
6 or from a separate fund created by the payor . ~~[-including]~~ *As used*
7 *in subsections 4 to 7, inclusive, the term also includes any*
8 *payment from any separate fund, regardless of the reason for the*
9 *payment.*

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

13 2. To the extent that a payment is characterized as interest , ~~for~~
14 a dividend or a payment made in lieu of interest or a dividend, a
15 trustee shall allocate ~~the~~ *the payment* to income. He shall allocate to
16 principal the balance of the payment and any other payment
17 received in the same accounting period that is not characterized as
18 interest, a dividend or an equivalent payment.

19 3. If no part of a payment is characterized as interest, a
20 dividend or an equivalent payment, and all or part of the payment is
21 required to be made, a trustee shall allocate to income 10 percent of
22 the part that is required to be made during the accounting period and
23 the balance to principal. If no part of a payment is required to be
24 made or the payment received is the entire amount to which the
25 trustee is entitled, he shall allocate the entire payment to principal.
26 For purposes of this subsection, a payment is not "required to be
27 made" to the extent that it is made because the trustee exercises a
28 right of withdrawal.

29 4. ~~If, to obtain an estate tax marital deduction for a trust, a~~
30 ~~trustee must allocate more of a payment to income than provided for~~
31 ~~by this section, he shall allocate to income the additional amount~~
32 ~~necessary to obtain the marital deduction.~~

33 ~~—5.] Except as otherwise provided in subsection 5, the~~
34 *provisions of subsections 6 and 7 apply and the provisions of*
35 *subsections 2 and 3 do not apply in determining the allocation of a*
36 *payment made from a separate fund to:*

37 (a) *A trust to which an election to qualify for a marital*
38 *deduction under section 2056(b)(7) of the Internal Revenue Code,*
39 *26 U.S.C. § 2056(b)(7), has been made; or*

40 (b) *A trust that qualifies for the marital deduction under*
41 *section 2056(b)(5) of the Internal Revenue Code, 26 U.S.C. §*
42 *2056(b)(5).*

43 5. *The provisions of subsections 4, 6 and 7 do not apply if and*
44 *to the extent that the series of payments would, without the*
45 *application of subsection 4, qualify for the marital deduction*



1 under section 2056(b)(7)(C) of the Internal Revenue Code, 26
2 U.S.C. § 2056(b)(7)(C).

3 6. A trustee shall determine the internal income of each
4 separate fund for the accounting period as if the separate fund
5 were a trust subject to NRS 164.780 to 164.925, inclusive. Upon
6 request of the surviving spouse, the trustee shall demand that the
7 person administering the separate fund distribute the internal
8 income to the trust. The trustee shall allocate a payment from the
9 separate fund to income to the extent of the internal income of the
10 separate fund and distribute that amount to the surviving spouse.
11 The trustee shall allocate the balance of the payment to principal.
12 Upon request of the surviving spouse, the trustee shall allocate
13 principal to income to the extent the internal income of the
14 separate fund exceeds payments made from the separate fund to
15 the trust during the accounting period.

16 7. If a trustee cannot determine the internal income of a
17 separate fund but can determine the value of the separate fund,
18 the internal income of the separate fund is deemed to equal 4
19 percent of the value of the fund, according to the most recent
20 statement of value preceding the beginning of the accounting
21 period. If the trustee can determine neither the internal income of
22 the separate fund nor the value of the fund, the internal income of
23 the fund is deemed to equal the product of the interest rate and the
24 present value of the expected future payments, as determined
25 under section 7520 of the Internal Revenue Code, 26 U.S.C. §
26 7520, for the month preceding the accounting period for which the
27 computation is made.

28 8. This section does not apply to ~~{payments}~~ a payment to
29 which NRS 164.870 applies.

30 **Sec. 2.** NRS 164.920 is hereby amended to read as follows:

31 164.920 1. A tax required to be paid by a trustee based on
32 receipts allocated to income must be paid from income.

33 2. A tax required to be paid by a trustee based on receipts
34 allocated to principal must be paid from principal, even if the tax is
35 called an income tax by the taxing authority.

36 3. A tax required to be paid by a trustee on the trust's share of
37 an entity's taxable income must be paid : ~~{proportionately:}~~

38 (a) From income to the extent that receipts from the entity are
39 allocated **only** to income; ~~{and}~~

40 (b) From principal to the extent that ~~{:~~

41 ~~—— (1) Receipts}~~ receipts from the entity are allocated **only** to
42 principal; ~~{and}~~

43 ~~—— (2) The trust's share of the entity's taxable income exceeds~~
44 ~~the total receipts described in paragraph (a) and subparagraph (1).}~~



1 (c) *Proportionately from principal and income to the extent*
2 *that receipts from the entity are allocated to both income and*
3 *principal; and*

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

6 4. ~~For the purposes of this section, receipts allocated to~~
7 ~~principal or income must be reduced by the amount distributed to a~~
8 ~~beneficiary from principal or income for which the trust receives a~~
9 ~~deduction in calculating the tax.] After applying the provisions of~~
10 *subsections 1, 2 and 3, the trustee shall adjust income or principal*
11 *receipts to the extent that the taxes on the trust are reduced*
12 *because the trust receives a deduction for payments made to a*
13 *beneficiary.*

14 **Sec. 3.** The provisions of NRS 164.865, as amended by
15 section 1 of this act, apply to a trust described in subsection 4 of
16 NRS 164.865 on and after the following dates:

17 1. If the trust is not funded as of October 1, 2009, the date of
18 the decedent's death.

19 2. If the trust is initially funded in the calendar year beginning
20 January 1, 2009, the date of the decedent's death.

21 3. If the trust is not described in subsection 1 or 2, January 1,
22 2009.

