

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2073
(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to amend and reenact sections 59-04.2-17 and 59-04.2-28 of the North Dakota Century Code, relating to payments under the Uniform Principal and Income Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 59-04.2-17 of the North Dakota Century Code is amended and reenacted as follows:

59-04.2-17. (409) Deferred compensation, annuities, and similar payments.

1. In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one 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, ~~including~~. For purposes of subsections 4, 5, 6, and 7, the term includes any payment from a separate fund, regardless of the reason for the payment. In this section, "separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.
2. To the extent that a payment is characterized as interest ~~or~~, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate ~~it~~ 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 ten percent 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. ~~If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction. 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 a trust to which an election to qualify for marital deduction under section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made or to a trust that qualified for the marital deduction under section 2056(b)(5) of the Internal Revenue Code of 1986, as amended.~~
5. Subsections 4, 6, and 7 do not apply if and to the extent that the series of payments would, without application of subsection 4, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.
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 chapter. Upon request of the

surviving spouse, the trustee shall demand of the persons administering the separate fund that this internal income be distributed 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 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 a separate fund, the internal income of the separate fund is deemed to equal four percent 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, as amended, for the month preceding the accounting period for which the computation is made.

- 5- 8. This section does not apply to ~~payments~~ a payment to which section 59-04.2-18 applies.

SECTION 2. AMENDMENT. Section 59-04.2-28 of the North Dakota Century Code is amended and reenacted as follows:

59-04.2-28. (505) Income taxes.

1. A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.
2. A tax required to be paid by a trustee based on receipts allocated to principal must 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 ~~proportionately~~:
 - a. From income to the extent that receipts from the entity are allocated to income;
 - b. From principal to the extent that:
 - (1) ~~Receipts~~ receipts from the entity are allocated only to principal; ~~and~~
 - (2) ~~The trust's share of the entity's taxable income exceeds the total receipts described in subdivision a and paragraph 1 of this subdivision.~~
 - c. Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and
 - d. From principal to the extent that the tax exceeds the total receipts from the entity.
4. ~~For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax. After applying subsections 1 through 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.~~

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2073.

Senate Vote: Yeas 43 Nays 0 Absent 4

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State