

HB 2685

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2009



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2685

(By Delegates Blair, Guthrie and Walters)



Passed April 10, 2009

In Effect Ninety Days from Passage

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SECRETARY OF STATE**

H. B. 2685

(BY DELEGATES BLAIR, GUTHRIE AND WALTERS)

[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §44B-4-409 of the Code of West Virginia, 1931, as amended; to amend and reenact §44B-5-505 of said code; and to amend said code by adding thereto a new section, designated §44B-6-606, all relating to amending the Uniform Principal and Income Act; complying with IRS comments regarding allocation of IRA distributions; clarifying the formula for calculating how much a trust needs to distribute and how much it can use to pay taxes; and providing effective dates of amendments.

Be it enacted by the Legislature of West Virginia:

That §44B-4-409 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44B-5-505 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §44B-6-606, all to read as follows:

**ARTICLE 4. ALLOCATION OF RECEIPTS DURING
ADMINISTRATION OF TRUST**

PART 3—RECEIPTS NORMALLY APPORTIONED

**§44B-4-409. Deferred compensation, annuities and similar
payments.**

1 (a) In this section:

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

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

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

21 (c) If no part of a payment is characterized as interest, a
22 dividend, or an equivalent payment, and all or part of the
23 payment is required to be made, a trustee shall allocate to
24 income ten percent of the part that is required to be made

25 during the accounting period and the balance to principal. If
26 no part of a payment is required to be made or the payment
27 received is the entire amount to which the trustee is entitled,
28 the trustee shall allocate the entire payment to principal. For
29 purposes of this subsection, a payment is not required to be
30 made to the extent that it is made because the trustee
31 exercises a right of withdrawal.

32 (d) Except as otherwise provided in subsection (e),
33 subsections (f) and (g) apply, and subsections (b) and (c) do
34 not apply, in determining the allocation of a payment made
35 from a separate fund to:

36 (1) a trust to which an election to qualify for a marital
37 deduction under 26 U.S.C. § 2056(b)(7), as amended, has
38 been made; or

39 (2) a trust that qualifies for the marital deduction under
40 26 U.S.C. § 2056(b)(5), as amended.

41 (e) Subsections (d), (f), and (g) do not apply if and to the
42 extent that the series of payments would, without the
43 application of subsection (d), qualify for the marital
44 deduction under 26 U.S.C. § 2056(b)(7)(C), as amended.

45 (f) A trustee shall determine the internal income of each
46 separate fund for the accounting period as if the separate fund
47 were a trust subject to this chapter. Upon request of the
48 surviving spouse, the trustee shall demand that the person
49 administering the separate fund distribute the internal income
50 to the trust. The trustee shall allocate a payment from the
51 separate fund to income to the extent of the internal income
52 of the separate fund and distribute that amount to the
53 surviving spouse. The trustee shall allocate the balance of the
54 payment to principal. Upon request of the surviving spouse,
55 the trustee shall allocate principal to income to the extent the

56 internal income of the separate fund exceeds payments made
57 from the separate fund to the trust during the accounting
58 period.

59 (g) If a trustee cannot determine the internal income of a
60 separate fund but can determine the value of the separate
61 fund, the internal income of the separate fund is deemed to
62 equal four percent of the fund's value, according to the most
63 recent statement of value preceding the beginning of the
64 accounting period. If the trustee can determine neither the
65 internal income of the separate fund nor the fund's value, the
66 internal income of the fund is deemed to equal the product of
67 the interest rate and the present value of the expected future
68 payments, as determined under 26 U.S.C. § 7520, as
69 amended, for the month preceding the accounting period for
70 which the computation is made.

71 (h) This section does not apply to a payment to which
72 section four hundred ten of this article applies.

ARTICLE 5. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST.

§44B-5-505. Income taxes.

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

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

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

8 (1) from income to the extent that receipts from the entity
9 are allocated only to income;

10 (2) from principal to the extent that receipts from the
11 entity are allocated only to principal;

12 (3) proportionately from principal and income to the
13 extent that receipts from the entity are allocated to both
14 income and principal; and

15 (4) from principal to the extent that the tax exceeds the
16 total receipts from the entity.

17 (d) After applying subsections (a) through (c), the trustee
18 shall adjust income or principal receipts to the extent that the
19 trust's taxes are reduced because the trust receives a
20 deduction for payments made to a beneficiary.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§44B-6-606. Transitional Matters.

1 Section four hundred nine, article four of this chapter, as
2 amended during the regular session of the 2009 Legislature,
3 applies to a trust described in subsection (d) of section four
4 hundred nine, article four of this chapter on and after the
5 following dates:

6 (1) If the trust is not funded as of the effective date of the
7 amendments to this chapter enacted during the regular
8 session of the two thousand nine legislature, the date of the
9 decedent's death.

10 (2) If the trust is initially funded in the calendar year
11 beginning the first day of January, two thousand nine, the
12 date of the decedent's death.

13 (3) If the trust is not described in paragraph (1) or (2), the
14 first day of January, two thousand nine.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



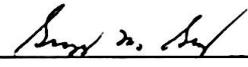
Chairman House Committee

Originating in the House.

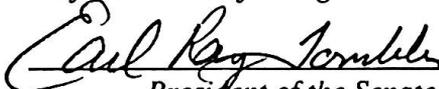
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

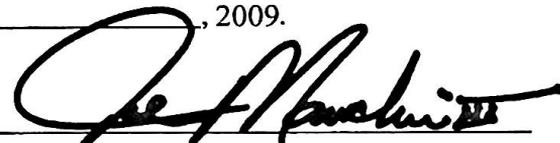


President of the Senate



Speaker of the House of Delegates

The within is approved this the 24th
day of April, 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 21 2009

Time

4:00 pm