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
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.

(a) In this section:

(1) “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. For purposes of subsections (d), (e), (f), and (g), the term also includes any payment from any separate fund, regardless of the reason for the payment.

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

(b) 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.

(c) 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.

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

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

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

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

(f) 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 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.

(g) 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 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 26 U.S.C. § 7520, as amended, for the month preceding the accounting period for which the computation is made.

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

ARTICLE 5. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST.

§44B-5-505. Income taxes.

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

(b) 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.

(c) A tax required to be paid by a trustee on the trust’s share of an entity’s taxable income must be paid:
(1) from income to the extent that receipts from the entity are allocated only to income;

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

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

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

(d) After applying subsections (a) through (c), 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.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§44B-6-606. Transitional Matters.

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

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

(2) If the trust is initially funded in the calendar year beginning the first day of January, two thousand nine, the date of the decedent’s death.
(3) If the trust is not described in paragraph (1) or (2), the 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